

P10



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
FEB 12 2020
BY: YCA
TIME: 9:43 AM

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 10, 2019** which reads as follows:*

“G.R. No. 218423 – MAGSAYSAY MARITIME CORP., WELLARD SHIPS PTE., LTD. AND/OR DORIS MAGSAYSAY HO, petitioners, versus ANTONIO QUITEVIS, respondent.

The case before the Court is a Petition for Review on *Certiorari*¹ filed by Magsaysay Maritime Corporation (Magsaysay Maritime), Wellard Ships PTE., LTD. (Wellard Ships) and Doris Magsaysay Ho (collectively referred to as the petitioners) assailing the Court of Appeals’ (CA) Decision² promulgated on January 20, 2015 and Resolution³ dated May 25, 2015 in CA-G.R. SP No. 131864, which had affirmed the ruling of the National Labor Relations Commission (NLRC) granting total and permanent disability compensation to Antonio Quitevis (Quitevis).

The Facts

Quitevis was employed as bosun for the vessel M/V Ocean Drover by Magsaysay Maritime for and on behalf of its foreign principal, Wellard Ships. Quitevis suffered an injury while on board the vessel. On March 1, 2012, while climbing the spiral staircase between decks, he slipped and fell due to the heavy rolling of the ship. His left forearm became swollen, with a deep cut at the back of the wrist and was manifestly deformed. He was brought to the Royal Adelaide Hospital in South Australia and was diagnosed with *Left Ulnar Fracture*. A procedure called “Open Reduction Internal Fixation” was performed on his fracture on March 2, 2012.⁴

- over – eight (8) pages ...

285-B

¹ *Rollo*, pp. 3-34.

² *Id.* at 42-51. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Remedios A. Salazar-Fernando and Edwin D. Sorongon, concurring.

³ *Id.* at 79.

⁴ See CA Decision, *id.* at 42-43.

Quitevis was medically repatriated on March 5, 2012 and was referred to the company designated physician and orthopedic surgeon, Dr. Benigno Agbayani, Jr. (Dr. Agbayani). The initial diagnosis was *Fracture distal 3rd Ulna*.⁵ Quitevis underwent nine sessions of physical therapy.⁶

On April 16, 2012, Dr. Agbayani noted that Quitevis showed significant improvement to his range of motion, strength and intensity of pain.⁷ On May 16, 2012 (which was 72 days from Quitevis' repatriation), Dr. Agbayani declared Quitevis fit to work.⁸

Quitevis sought a second opinion from Dr. Misael Ticman (Dr. Ticman), also an orthopedic surgeon. In an undated Disability Report,⁹ Dr. Ticman diagnosed Quitevis with *Healed Fracture, Radius, L; s/p ORIF plating, radius, L; and Triangular Fibrocartilage Complex Injury, wrist, L* and declared that Quitevis was permanently unfit to work as a seaman in any capacity.¹⁰

Alleging that his claim for disability benefits was unheeded by petitioners, Quitevis filed a complaint¹¹ before the Labor Arbiter (LA) for total and permanent disability compensation on September 5, 2012.¹²

The LA dismissed Quitevis' complaint holding that Dr. Ticman's medical report did not have proper and sufficient basis as it was reached after a single consultation. The LA gave more weight to Dr. Agbayani's findings as the latter had treated the seafarer for a significant period of time.¹³

Quitevis appealed to the NLRC. The NLRC reversed the LA's findings and ruled in favor of Quitevis. In its Decision¹⁴ dated May 9, 2013 the NLRC ordered petitioners to pay Quitevis jointly and severally, the amount of US\$60,000.00 as total and permanent disability benefits, US\$ 2,420.00 as sickness allowance, and attorney's fees of 10% of the total award.¹⁵

- over -

285-B

⁵ CA rollo, p. 106.

⁶ Rollo, p. 43.

⁷ CA rollo, p. 108.

⁸ Rollo, p. 43; id. at 109.

⁹ CA rollo, p. 152.

¹⁰ Rollo, p. 43; id.

¹¹ CA rollo, pp. 74-76.

¹² Rollo, pp. 43-44; id. at 75.

¹³ Rollo, p. 44.

¹⁴ CA rollo, pp. 39-49.

¹⁵ Rollo, p. 48.

Petitioners filed a Motion for Reconsideration¹⁶ (MR) of the NLRC Decision on May 9, 2013. Petitioners also filed a Motion to Refer the Complainant-Appellant to an Independent-Third Doctor¹⁷ (Motion to Refer) dated June 13, 2013. Quitevis filed a Comment/Opposition (to Respondent-Appellee's Motion to Refer)¹⁸ dated July 12, 2013, arguing that the provision in the Philippine Overseas Employment Administration Standard Employment Contract¹⁹ (POEA-SEC) for referral to a third doctor is merely directory and not mandatory. In its Resolution²⁰ dated July 15, 2013, the NLRC denied petitioners' MR without ruling on the Motion to Refer.

Aggrieved, petitioners filed a Petition for *Certiorari* under Rule 65²¹ with the CA on September 20, 2013. Pending resolution of the case, petitioners paid to Quitevis the equivalent in Philippine pesos of the total judgment award amounting to ₱2,965,031.15 on December 12, 2013, in compliance with the Writ of Execution issued by the LA.²²

The CA Decision

The CA dismissed the *certiorari* petition finding no grave abuse of discretion on the part of the NLRC. Citing *Maersk Filipinas Crewing, Inc./ Maersk Services Ltd. v. Mesina*,²³ the CA held that failure to resort to a third doctor does not automatically render the company-designated physician's findings as conclusive because the resort to a third doctor is merely directory and not mandatory, under the POEA-SEC. The CA concluded that Quitevis had sufficiently proven that he was totally and permanently incapacitated to work as a seafarer due to his injury.

Petitioners' MR was denied by the CA in its Resolution dated May 25, 2015.

The Petition

- over -

285-B

¹⁶ CA rollo, pp. 53-66.

¹⁷ Id. at 372-375.

¹⁸ Id. at 376-379.

¹⁹ POEA Memorandum Circular No. 10 (2010) or the AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS.

²⁰ CA rollo, pp. 51-52.

²¹ Id. at 3-28.

²² See Satisfaction of Judgment, Affidavit of Claimant, and Receipt of Payment, rollo, pp. 80-84.

²³ 710 Phil. 531, 545 (2013).

Aggrieved, petitioners filed this case before the Court. In their petition, petitioners aver that the CA committed serious reversible error in giving more credence to the findings of Quitevis' appointed doctor who concluded that he was totally and permanently unfit to work after a single consultation. Petitioners also assert that the company-designated physician's findings should prevail in the absence of a final and binding decision from a jointly agreed third doctor. Petitioners also maintain that the CA and NLRC committed reversible error in awarding sickness allowance when the same had already been paid to petitioner as shown in the Payment Advices,²⁴ Request Orders,²⁵ and Computation Sheets²⁶ covering the total period of March 2, 2012 to May 16, 2012. Thus, petitioners pray that the Court reverse and set aside the CA Decision and Resolution and order Quitevis to return the full amount paid to him.

Quitevis filed his Comment²⁷ on September 18, 2015, maintaining his entitlement to total and permanent disability compensation. He asserts that he is no longer qualified as a seafarer under the Department of Health Administrative Order No. 176, series of 2000 or the Standard Guidelines for Conducting Medical Fitness Examination for Filipino Seafarers due to the injury on his left wrist.²⁸ He also avers that he has been unable to work for more than 120/240 days making his condition, total and permanent disability.²⁹ Quitevis did not controvert petitioners' allegation that he had already received sickness allowance.³⁰ Petitioners filed their Reply³¹ on December 22, 2015.

Issue

Whether the CA committed reversible error in affirming the NLRC's ruling that Quitevis is entitled to total permanent disability benefits.

The Court's Ruling

The Court grants the Petition.

Cases for seafarer's disability compensation usually arise from conflicting findings of the company-designated physician and the

- over -

285-B

²⁴ CA *rollo*, pp. 67, 70 and 73.

²⁵ Id. at 68 and 71.

²⁶ Id. at 69 and 72.

²⁷ *Rollo*, pp. 91-97.

²⁸ Id. at 92-95.

²⁹ Id. at 95.

³⁰ Id. at 91-98.

³¹ Id. at 101-119.

seafarer's personally-appointed doctor. The POEA-SEC provides for a clause to resolve conflicts in such instances:

SECTION 20. x x x

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

3. x x x

x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

Thus, to resolve such disputes, a third doctor may be jointly agreed upon by the parties whose findings shall be final and binding. Despite the use of the permissive word "may" in the provision, the Court has held that referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.³²

In the instant case, Quitevis merely alleged that his "written or oral demands prove to be futile."³³ There is nothing on record to prove that Quitevis formally notified petitioners of the contrary findings of his personal doctor prior to filing the complaint. Notably, petitioners attempted to refer the case to a third doctor when the case was before the NLRC but Quitevis opposed the motion.

As the party contesting the findings of the company-designated physician, it is the seafarer's duty to notify his employer of the contrary findings of his personal doctor, in order to trigger the conflict-resolution process under the POEA-SEC. Upon receipt by the

- over -

285-B

³² *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428, 446 (2015).

³³ Complainant's Position Paper, CA rollo, p. 116.

company, it must set into motion the process of choosing a third doctor who can rule with finality on the disputed medical situation. As the Court held in *Bahia Shipping Services, Inc. v. Constantino*:³⁴

x x x As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, **as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.**

In the absence of a third doctor resolution of the conflicting assessments between Dr. Lim and Dr. Almeda, Dr. Lim's assessment of Constantino's health should stand. Thus, the CA's conclusion that Constantino's inability to work for more than 120 days rendered him permanently disabled cannot be sustained.³⁵ (Emphasis supplied)

The Court ruled similarly in *Yialos Manning Services, Inc. v. Borja*:³⁶

x x x [W]ithout the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld.³⁷

Thus, in case there is a conflict between the medical findings of the company-designated physician and the seafarer-appointed physician as to the disability rating of the seafarer, the parties must comply with the conflict-resolution procedure mandated under the POEA-SEC. The seafarer must notify the employer of the contrary findings of his personal doctor in order to set into motion the mandatory conflict-resolution procedure under the POEA-SEC for the selection of the third doctor. Having failed to comply with the conflict-resolution procedure under the POEA-SEC when he did not notify his employer of the findings of his own doctor, the valid and timely medical pronouncements of the company-designated physician is deemed binding on him.

- over -

285-B

³⁴ 738 Phil. 564 (2014).

³⁵ Id. at 576.

³⁶ G.R. No. 227216, July 4, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534>>.

³⁷ Id.

On the issue of sickness allowance, Section 20(A)(3) of the POEA-SEC also provides:

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

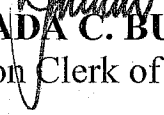
3. x x x [T]he seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of sickness allowance shall be made on a regular basis, but not less than once a month.

Under the quoted provision, an injured or ill seafarer is entitled to sickness allowance equivalent to his basic wage from the time of his sign-off from the vessel until he is declared fit to work or until the degree of disability has been assessed by the company-designated physician. In the instant case, petitioners were able to prove with substantial evidence that Quitevis had already been paid his sickness allowance, as shown by the Payment Advices, Computation Sheets and Request Orders covering the periods from March 2-31, 2012; April 1-30, 2012; and May 1-16, 2012. The Payment Advices dated May 16, 2012, June 21, 2012 and July 16, 2012 also bear Quitevis' signature as acknowledgement that he had received the amounts indicated therein. Thus, the award of sickness allowance must also be deleted. The award of attorney's fees is also deleted for lack of basis.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The Court of Appeals' Decision promulgated on January 20, 2015 and Resolution dated May 25, 2015 in CA-G.R. SP No. 131864 are **SET ASIDE**. The respondent is hereby **DIRECTED** to return to the petitioners the total amount of ₱2,965,031.15 from finality of this Resolution until full payment.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court rm 2/4
285-B

DEL ROSARIO & DEL ROSARIO
Counsel for Petitioners
14th Floor DelRosarioLaw Centre
21st Drive cor. 20th Drive
Bonifacio Global City
1630 Taguig City

Court of Appeals (x)
Manila
(CA-G.R. SP No. 131864)

AYUBO AND MARTIN
LAW OFFICES
Counsel for Respondent
2 Unit D, Galauran Street cor. 10th
Avenue, 1400 Caloocan City

NATIONAL LABOR RELATIONS
COMMISSION
PPSTA Building, Banawe Street
1100 Quezon City
(NLRC NCR Case No. 03-03581-13)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court



285-B

UR

AKF