Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 18, 2020** *which reads as follows:*

"G.R. No. 237760 (Alster International Shipping Services, Inc./Rigel Shiffahrts GMBH and/or Felix Valenzona, *Petitioners, v.* **Zaldy Z. Gersalia,** *Respondent*). – Petitioners assail the Decision dated 10 August 2017[1] and Resolution dated 26 February 2018[2] promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 133032, which reversed the findings of the National Labor Relations Commission (NLRC) and ordered petitioners to solidarily pay respondent total and permanent disability benefits and attorney's fees.

Antecedents

The summary of factual antecedents was presented by the CA in this wise:

> On March 15, 2012, petitioner Zaldy Z. Gersalia instituted with the labor arbiter a complaint for permanent disability compensation against private respondents local agent Alster International Shipping Services, Inc. (Alster), foreign principal Rigel Schiffahrts GMBH (Rigel), and Felix G. Valenzona (President and/or General Manager of Alster). In his position paper, petitioner alleged that he was hired by Alset (sic) on behalf of Rigel as Oiler on board the vessel MT Murray Star for period of six (6) months with a basic monthly salary of US$ 693.00, exclusive of overtime and other benefits; that the contract commenced on April 11, 2011; that on September 11, 2011, petitioner was on his way to the vessel's engine room to perform maintenance work when he collapsed, rending him unconscious;

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1 *Rollo*, pp. 57-70; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Romeo F. Barza and Pablito A. Perez of the Sixteenth Division, Court of Appeals, Manila.

2 *Id.* at 72-73.

that he regained consciousness when he was brought to Alaska Regional Hospital; that he was confined in said hospital for two (2) weeks; that while he was at the Alaska Regional Hospital, petitioner underwent a series of medical examinations, particularly Embolization Intracranial/SP or Coil Embolization and CT Angiography and he was later diagnosed to be suffering from "Subarachnoid hemorrhage, right middle cerebral artery aneurysm"; that petitioner was transferred to the intensive care unit of the hospital and was advised to undergo rehabilitation; that petitioner was discharged from the hospital on October 6, 2011 and the doctor recommended that petitioner be repatriated to the Philippines for further medical evaluation and treatment as he could no longer perform his duties as Oiler on board the vessel; and that petitioner was repatriated to the Philippines on October 9, 2011 and he arrived in Manila on the same day.

Petitioner also stated that upon his arrival in Manila, petitioner was fetched by an ambulance, brought to Manila Doctor's Hospital, and later referred to the NGC Medical Special Clinic, Inc. for continuous medical check up and treatment; that he was also referred to the University Physician's Medical Center (UPMC) were he underwent a Cranial CT Scan; that in the Radiographic Report from UPMC dated November 23, 2011, he was found to have "Intracranial and extracalvarial metallic densities, as described; Right temporal cortical lobe hypodensity likely encephalomalacic changes; Megasicterna magna; Maxillary sinus disease; and Mild cerebral atrophy"; that petitioner's condition did not improve despite medical treatment and his condition continued to worsen to the point that he was experiencing blurring vision and persisting mild headaches; that he was referred to the Eye Referral Center, where petitioner was diagnosed with Terson's Syndrome; and that petitioner underwent Closed Vitrectormy (sic), as evidenced by the Operating Room Record dated January 20, 2012.

Petitioner also stated that he sought the services of Dr. Manuel Jacinto, an independent medical specialist from Sta. Teresita General Hospital who issued a medical certificate dated April 25, 2012 that petitioner's disability is "Total Permanent" and cause of injury is "Work-Related/Work-Aggravated"; that he is entitled to permanent disability benefits in the sum of US$89,100.00 pursuant to the Vereinte Dienstleistungsgewerkschaft DI/IMEC-IBF Fleet Agreement (otherwise known as the Total Crew Cost Fleet Agreement for German Beneficially Owned Flag of Convenience Ships), which is a collective bargaining agreement (hereinafter referred to as CBA); that his illness is compensable because it is work-related/workaggravated; that the findings of the Dr. Jacinto should be given weight in assessing the degree of disability of petitioner; that petitioner is entitled to his sick wages for 130 days as provided in Article 23 of the CBA; and that petitioner is entitled

to moral and exemplary damages, as well as attorney's fees.

In their position paper, private respondents averred that petitioner is covered under the Total Crew Cost Fleet Agreement for German Beneficially Owned Flag of Convenience Ships; that petitioner was diagnosed to have Cerebral Aneurysm by the company-designated physician; that petitioner was in the midst of being treated when he filed the instant case; that petitioner refused to negotiate with private respondents despite repeated attempts by the latter; that petitioner is not entitled to disability compensation because under the CBA, petitioner is only entitled to compensation if the disability was caused by an accident and Cerebral Aneurysm is not caused by an accident and further, not a work-related illness under the POEA Standard Employment Contract (POEA Standard Contract); that the company-designated physician who treated the petitioner from his repatriation declared that the illness is not workrelated on November 24, 2011; that Cerebral Aneurysm is not a compensable disease under Section 32-A of the POEA Standard Contract; and that petitioner is not entitled to damages.[3]

Ruling of the Labor Arbiter

On 28 January 2013, the Labor Arbiter issued a decision awarding permanent and total disability benefits to respondent, *viz:*

WHEREFORE, premises considered, judgment is hereby rendered ordering ALSTER INTERNATIONAL SHIPPING SERVICES, INC., RIGEL SCHIFFAHRTS GMB and FELIX G. VALENZONA to pay ZALDY Z. GERSALIA permanent total disability compensation in the amount of US$60,000.00 plus attorney's fees of US$6,000.00.

SO ORDERED.[4]

As ruled by the Labor Arbiter, respondent is not entitled to compensation benefits under their collective bargaining agreement since his illness was not the result of an accident. However, respondent should be awarded permanent and total disability benefits since his illness is work-related and his medical condition has not improved after 200 days.[5]

Ruling of the NLRC

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[3] *Id.* at 57-61.
[4] *Id.* at 372-373; penned by Labor Arbiter Julia Cecily Coching Sosito.
[5] *Id.* at 370-372.

In a Decision dated 26 July 2013, the NLRC reversed the findings of the Labor Arbiter and dismissed respondent's complaint, to wit:

> **WHEREFORE**, complainant's appeal is hereby DISMISSED for lack of merit while that of respondents is hereby GRANTED. Accordingly, the Labor Arbiter's Decision dated January 28, 2013 is REVERSED and SET ASIDE, and the complainant's suit for total permanent disability benefits is DISMISSED.
>
> **SO ORDERED.**[6]

The NLRC agreed with the Labor Arbiter that respondent did not suffer an accident while on-board petitioners' ship. However, it gave more credence to the assessment of the company-designated physician declaring respondent's illness as not work-related. While respondent indeed consulted with his own physician, he failed to secure the medical view of a third doctor. His failure to follow the designated procedure, thus, results to the assessment of the company-designated physician being declared as final. Moreover, the NLRC noted that respondent consulted with his own physician more than five (5) weeks after he instituted his complaint. This raises doubts as to the accuracy and credibility of the medical report of respondent's physician.[7]

Ruling of the CA

On 10 August 2017, the CA promulgated the assailed decision, which ordered petitioners to pay respondent total and permanent disability compensation, thus:

> **WHEREFORE**, the decision dated July 26, 2013 and resolution dated October 18, 2013 issued by public respondent National Labor Relations Commission in NLRC LAC No. (M) 03-000255-13 are ANNULLED and SET ASIDE. Private Respondents Alster International Shipping Services, Inc./RIGER Shiffarts GMBH, ad Felix Valenzona are ordered to pay, jointly and severally, petitioner Zaldy Z. Gersalia Sixty Thousand US Dollars (US$60,000.00) as total and permanent disability compensation

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[6] *Id.* at 481; penned by Commissioner Perlita B. Velasco, and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[7] *Id.* at 479-480.

> and then percent (10%) of the monetary award as attorney's fees, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.
>
> **SO ORDERED.**[8]

The CA, in annulling the NLRC ruling, ruled that respondent is entitled to permanent and total disability benefits due to the lack of a final assessment and a certification of fitness for sea service from the company-designated physician. Even after 240 days have lapsed, there is no evidence that the company-designated physician issued a disability assessment. A perusal of respondent's medical reports also failed to show how further treatments would address respondent's illness. Hence, petitioners are solidarily liable for the monetary claims awarded to respondent.[9]

Issues

Aggrieved by the CA's decision, petitioners now raise the following issues for this Court's discussion:

> A. The Court of Appeals committed serious and reversible mistakes of fact and of law and gravely abused its discretion in reversing the judgment of the NLRC and awarding permanent total disability benefits to the Respondent based on the terms of the POEA SEC when the timely and validly issued medical assessment of the company-designated physician categorically states that the illness of the Respondent is not work-related.
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> B. The Court of Appeals committed serious and reversible mistakes of fact and of law and gravely abused its discretion in allowing the Respondent to recover compensation albeit the apparent lack of cause of action and the premature filing of the complaint against the Petitioners.
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> C. The Court of Appeals committed serious and reversible mistakes of fact and of law and gravely abused its discretion in granting attorney's fees to the Respondent even though the Petitioners were merely asserting their right based on the POEA SEC, in utter good faith and without any intent to commit a wrongful act.
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> D. The Court of Appeals committed serious and reversible mistakes of fact and of law and gravely abused its discretion in

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[8] *Id.* at 69-70.
[9] *Id.* at 67-68.

> holding the individual respondent, Felix G. Valenzona, jointly and solidarily liable with the respondent company when it has not been shown by any iota of evidence that he consented to any wrongful act or that he committed an act in bad faith.[10]

Petitioners insist there is no causal connection between respondent's illness and the work for which he had been contracted. While aneurysm can be considered an occupational disease as a cerebrovascular event, respondent failed to satisfy the requirements for compensability under Sec. 32(A) of the POEA-Standard Employment Contract (POEA-SEC). Moreover, respondent reneged on his contractual obligation to continuously report to the company-designated physician until final assessment is issued when he lodged the present complaint during his treatment. Thus, respondent's complaint is premature. There is also no basis for the award of attorney's fees and for holding Felix Valenzona jointly and severally liable for the monetary awards.[11]

Respondent argues that the company-designated physician failed to give him a final disability assessment within 120 days from his repatriation. His illness was no longer improving and he is still unfit to resume sea duties. Hence, he is entitled to his monetary claims.[12]

Based on the foregoing, the central issue in this case is the entitlement of respondent to permanent and total disability benefits.

Ruling of the Court

The petition lacks merit.

There was no justifiable reason for an extension of the 120-day period to give a final medical assessment.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.,*[13] the Court already clarified the rules governing the period for the company-designated physician to issue a final disability assessment, to wit:

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10 *Id.* at 17, 25, 41.
11 *Id.* at 17-45.
12 *Id.* at 709-727.
13 G.R. No. 211882, 29 July 2015.

> In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* shall govern:
>
> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3.If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. (Emphasis supplied)

Hence, it is mandatory for the company-designated physician to issue a final disability assessment within the 120/240-day period. However, to avail of the extended 240-day period, the company-designated physician must show justifiable reasons for the extension such as when the illness still requires medical attendance beyond the initial 120 days. Otherwise, the seafarer's disability shall be conclusively presumed to be permanent and total.[14]

In this case, respondent was repatriated to the Philippines on 09 October 2011. This gives the company-designated physician until 06 February 2011 to issue a final medical assessment absent any proof of a justifiable reason for extension of the period to 240 days.

Tracing respondent's medical records, we note that the company-designated physician had primarily diagnosed respondent's illness as cerebral aneurysm. Thereafter, respondent underwent a closed vitrectomy on 20 January 2012 to address his headache and blurred vision due to the ruptured cerebral aneurysm. Before the lapse of the 120-day period, respondent reported to the company-designated

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[14] *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, 11 March 2019.

physician for several check-ups where he was simply advised to continue medication.[15] Nowhere in these medical reports nor in those issued after the 120-day period show any medical intervention necessitating the need to extend the initial 120 days. Instead, there was only a constant recommendation to continue respondent's medications. Taking these into account, the Court sees no justifiable reason why the company-designated physician did not issue a final medical assessment within the initial 120-day period as there was no proof of a necessity to undergo further treatment. Indeed, the company-designated physician must perform some complete and definite medical assessment to show the illness requires medical attendance beyond 120 days, but not to exceed 240 days. The employer bears the burden of proving a reasonable justification to invoke the 240-day period.[16]

Petitioners argue that as early as 24 November 2011, the company-designated physician already issued a final assessment declaring respondent's illness as not work-related. Suffice it to say this is not the final medical assessment contemplated by our laws. A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.[17] Verily, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[18] The Court has not hesitated to set aside tardy, doubtful and incomplete assessments even if issued by a company-designated physician,[19] as in this case.

Respondent's cause of action already existed at the time of filing of his complaint.

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[15] Check-ups were conducted on 24 January 2012, 27 January 2012, and 03 February 2012; See *Rollo*, p. 11, 472.

[16] *Pastrana v. Bahia Shipping Services*, G.R. No. 227419, 10 June 2020 [per J. Caguoia].

[17] *Jebsens Maritime, Inc. v. Mirasol*, G.R. No. 213874, 19 June 2019 [per J. Caguoia].

[18] *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, 23 July 2018.

[19] *See Toquero v. Crossworld Marine Services, Inc.*, G.R. No. 213482, 26 June 2019.

On the basis of our discussion above, the Court finds no merit in petitioners' argument that respondent prematurely filed his complaint as he had no cause of action when he instituted the case on 05 March 2012. As aptly ruled in *Gamboa v. Maunlad Trans, Inc.*,[20] a seafarer may pursue an action for total and permanent disability benefits if the company-designated physician failed to issue a final disability assessment even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability.

Since the company-designated physician failed to issue a final disability assessment within the mandatory 120-day period, it was unnecessary for respondent to even refer to his doctor of choice, much less to a third doctor agreed upon by the parties. Such conflict resolution mechanism as outlined in Section 20(A)(3)[21] of the POEA-SEC only takes effect if the company-designated physician had issued a valid and definite medical assessment. Without such valid final and definitive assessment, the law already steps in to consider the seafarer's disability as total and permanent.[22]

The monetary awards and the persons held jointly and severally liable are correct

It has been consistently held that the award of attorney's fees is legally and morally justifiable in actions where an employee was forced to litigate and incur expenses to protect his rights and interest.[23] Such justification is clear in this case as respondent was forced to

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[20] G.R. No. 232905, 20 August 2018.

[21] 3. 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 except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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; see *Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships,* POEA Memorandum Circular No. 010-10, 26 October 2010.

[22] *Razonable v. Maersk-Filipinas Crewing, Inc.*, G.R. No. 241674, 10 June 2020.

[23] *Meco Manning & Crewing Services, Inc. v. Cuyos*, G.R. No. 222939, 03 July 2019.

retain the services of his counsel thereby incurring expenses as a result of petitioners' refusal to pay disability benefits. Thus, respondent is entitled to attorney's fees equivalent to ten percent (10%) of his total monetary award.

Finally, Section 10[24] of Republic Act (RA) 8042,[25] as amended by RA 10022,[26] provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors, and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it.[27] To recall, petitioner Alster International Shipping Services, Inc. (Alster) is a corporation engaged in the recruitment and placement of Filipino seafarers for its foreign principal. Felix Valenzona, the President and/or General Manager of Alster,[28] is therefore solidarily liable with his co-petitioners for the monetary claims awarded to respondent.

WHEREFORE, the petition is hereby **DENIED**. The Decision dated 10 August 2017 and Resolution dated 26 February 2018 promulgated by the Court of Appeals in CA-G.R. SP No. 133032 are **AFFIRMED**.

SO ORDERED." (CARANDANG, *J.*, on official leave)

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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[24] SEC. 10. *Money claims.* – *x x x*
The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

[25] Migrant Workers and Overseas Filipinos Act of 1995, Republic Act No. 8042, 07 June 1995.

[26] An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipino Act of 1995, Republic Act No. 10022, 08 March 2010.

[27] *See also Meco Manning & Crewing Services, Inc. v. Cuyos*, G.R. No. 222939, 03 July 2019.

[28] *Rollo*, p. 68.

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