Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

WALLEM MARITIME SERVICES, INC., **Petitioner,**	**G.R. No. 160444**
	Present:
	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
- versus -	
	Promulgated:
ERNESTO C. TANAWAN, **Respondent.**	29 AUG 2012

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D E C I S I O N

BERSAMIN, *J.*:

A seafarer, to be entitled to disability benefits, must prove that the injury was suffered during the term of the employment, and must submit himself to the company-designated physician for evaluation within three days from his repatriation.

The Case

For review on *certiorari* is the decision promulgated on November 29, 2002,[1] whereby the Court of Appeals (CA) annulled the decision rendered on June 13, 2001 by the National Labor Relations Commission (NLRC) and reinstated the decision dated January 21, 2000 of the Labor Arbiter.

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[1] *Rollo*, pp. 35-46; penned by Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but now retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo E. Sundiam (deceased) concurring.

Antecedents

On May 12, 1997, the petitioner, then acting as local agent of Scandic Ship Management, Ltd., engaged Ernesto C. Tanawan as dozer driver assigned to the vessel, M/V Eastern Falcon, for a period of 12 months. Under the employment contract, Tanawan was entitled to a basic salary of US$355.00/month, overtime pay of US$2.13/hour, and vacation leave pay of US$35.00/month.[2]

On November 22, 1997, while Tanawan was assisting two co-workers in lifting a steel plate aboard the vessel, a corner of the steel plate touched the floor of the deck, causing the sling to slide and the steel plate to hit his left foot. He was brought to a hospital in Malaysia where his left foot was placed in a cast. His x-ray examination showed he had suffered multiple left toes fracture (*i.e.*, left 2nd proximal phalanx and 3rd to 5th metatarsal).[3]

Following Tanawan's repatriation on November 28, 1997, his designated physician, Dr. Robert D. Lim, conducted the evaluation and treatment of his foot injury at Metropolitan Hospital, the designated hospital. Tanawan was initially evaluated on December 1, 1997 and was referred to Metropolitan Hospital's orthopedic surgeon who reviewed the x-rays and advised Tanawan to continue with his immobilization to allow good fracture healing.[4]

On December 22, 1997, Tanawan's cast was removed, and he was advised to start motion exercises and partial weight bearing.[5] He underwent physical therapy for two months at the St. Camillus Hospital.[6] On March 26,

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2 Records, p. 2.
3 Id., at 27.
4 Id., at 29.
5 Id., at 30.
6 Id., at 68-69.

1998, the orthopedic surgeon suggested pinning and bone grafting of the 5th metatarsal bone after noticing that there was no callous formation there.[7]

On April 7, 1998, Tanawan underwent bone grafting and was discharged on the next day.[8] On May 21, 1998, conformably with the orthopedic surgeon's findings, Dr. Lim reported that Tanawan was already asymptomatic and pronounced him fit to work.[9] It is noted that from November 30, 1997 until April 1998, Tanawan was paid sickness allowances equivalent to his monthly salary.[10]

On March 31, 1988, while Tanawan was still under treatment by Dr. Lim, he also sought the services of Dr. Rimando Saguin to assess the extent of his disability due to the same injury. Dr. Saguin categorized the foot injury as Grade 12 based on the Philippine Overseas Employment Administration (POEA) Schedule of Disability.[11]

On August 25, 1998, due to the worsening condition of his right eye, Tanawan also went to the clinic of Dr. Hernando D. Bunuan for a disability evaluation, not of his foot injury but of an eye injury that he had supposedly sustained while on board the vessel.[12]

Tanawan's position paper narrated how he had sustained the eye injury, stating that on October 5, 1997, the Chief Engineer directed him to spray-paint the loader of the vessel; that as he was opening a can of thinner, some of the thinner accidentally splashed into his right eye; that he was rushed to the Office of the Chief Mate for emergency treatment; and that the ship doctor examined him five days later, and told him that there was nothing to worry about and that he could continue working.[13]

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7 Id., at 33.
8 Id., at 34.
9 Id., at 43.
10 Id., at 37-40.
11 Id., at 71.
12 Id., at 72.
13 Id., at 55.

Dr. Bunuan referred him to Dr. Tim Jimenez, an ophthalmologist, who diagnosed him to be suffering from a retinal detachment with vitreous hemorrhage on the right eye for which surgical repair was needed. Dr. Bunuan categorized his disability as Grade 7.[14]

On November 26, 1998, Tanawan filed in the Arbitration Branch of the NLRC a complaint for disability benefits for the foot and eye injuries, sickness allowance, damages and attorney's fees against the petitioner and its foreign principal.

In its answer, the petitioner denied Tanawan's claim for disability benefits for his foot injury, averring that he was already fit to work based on Dr. Lim's certification;[15] that he did not sustain the alleged eye injury while on board the vessel because no such injury was reported;[16] that the claim for sickness allowance was already paid when he underwent treatment.[17]

Ruling of the Labor Arbiter

On January 21, 2000, the Labor Arbiter ruled in Tanawan's favor, *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered:
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> 1) ORDERING respondents to pay the complainant, jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of actual payment, the following amounts representing the complainant's disability benefits:
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> a) Foot injury – US$5,225.00
> b) Eye injury – US$20,900.00
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> 2) AND ORDERING, FURTHERMORE, respondents to pay the complainant attorney's fees equivalent to ten percent (10%) of the total monetary awards granted to the aforesaid employee under this Decision.

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14 Id., at 72.
15 Id., at 19.
16 Id., at 75.
17 Id., at 18.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[18]

The Labor Arbiter found sufficient evidence to support Tanawan's claim for disability benefits for the foot and eye injuries, according credence to the medical certificate issued by Dr. Saguin classifying Tanawan's foot injury as Grade 12; Tanawan's declaration —which was not contradicted by the petitioner—that some paint thinner splashed into his right eye on October 5, 1997; and the letter of Dr. Bunuan to the effect that the disability due to the eye injury was classified as Grade 7.

The Labor Arbiter discounted Dr. Lim's certification declaring Tanawan fit to work on the ground that Dr. Lim had no personal knowledge of such fact because it had been the orthopedic surgeon who had made the finding; hence, the certification was hearsay evidence, not deserving of any probative weight. The Labor Arbiter denied Tanawan's claim for sickness allowance in light of the showing that such claim had already been paid.[19]

The petitioner appealed to the NLRC. In its appeal, the petitioner contended that Dr. Saguin's certification was issued on March 31, 1998 while Tanawan was still under treatment by Dr. Lim;[20] that the disability grading by Dr. Saguin had no factual or legal basis considering that Tanawan was later declared fit to work on May 21, 1998 by the company-designated physician, the only physician authorized to determine whether a seafarer was fit to work or was disabled;[21] that the medical report of the orthopedic surgeon who actually treated Tanawan reinforced Dr. Lim's fit-to-work certification, because the report stated that Tanawan was already asymptomatic and could go back to work anytime;[22] that Tanawan failed to discharge his burden of proof to establish that he had sustained the injury

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18 Id., at 108-109.
19 Id., at 108.
20 Id., at 272.
21 Id., at 120.
22 Id., at 128.

while on board the vessel; that Tanawan did not submit himself to a post-employment medical examination for the eye injury and did not mention such injury while he underwent treatment for his foot injury, an indication that the eye injury was only an afterthought;[23] that there was also no evidence that the alleged eye injury was directly caused by the thinner, the certification of Dr. Bunuan not having stated its cause;[24] and that a certification from an eye specialist, a certain Dr. Willie Angbue-Te, showed the contrary, because the certification attested that the splashing of some thinner on the eye would not in any way lead to vitreous hemorrhage with retinal detachment, which was usually caused by trauma, pre-existing lattice degeneration, diabetic retinopathy, high myopia, retinal tear or retinal holes.[25]

Ruling of the NLRC

On June 13, 2001, the NLRC reversed the Labor Arbiter's decision and dismissed Tanawan's complaint for lack of merit.[26]

After the NLRC denied his motion for reconsideration,[27] Tanawan commenced a special civil action for *certiorari* in the CA.

Ruling of the CA

On November 29, 2002, the CA rendered its assailed decision in favor of Tanawan,[28] whose dispositive portion reads as follows:

> WHEREFORE, having found that public respondent NLRC committed grave abuse of discretion, the Court hereby ANNULS the

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23 Id., at 122-123.
24 Id., at 270.
25 Id., at 275.
26 Id., at 289.
27 Id., at 318.
28 *Rollo*, pp. 45-46.

> assailed Decision and Resolution and REINSTATES the decision of the Labor Arbiter dated January 21, 2000.
>
> SO ORDERED.

The CA discoursed that what was being compensated in disability compensation was not the injury but the incapacity to work; that considering that the foot injury incapacitated Tanawan from further working as dozer driver for the petitioner's principal, he should be given disability benefits; that Dr. Lim's certification had no probative weight because it was self-serving and biased in favor of the petitioner; that Tanawan's claim for the eye injury was warranted because the injury occurred during the term of the employment contract; and that an injury, to be compensable, need not be work-connected.[29]

On October 17, 2003, the CA denied the petitioner's motion for reconsideration for lack of merit.[30]

Issues

Hence, this appeal, with the petitioner tendering the following issues:

1. WHETHER OR NOT THE STANDARD EMPLOYMENT CONTRACT OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION ("POEA") IS THE LAW BETWEEN THE SEAMAN AND THE MANNING AGENT.

2. WHETHER OR NOT A COMPANY-DESIGNATED PHYSICIAN POSSESSES THE LEGAL AUTHORITY TO DECLARE A SEAMAN FIT OR DISABLED UNDER THE LAW.

3. WHETHER OR NOT A SEAMAN CAN CLAIM DISABILITY BENEFITS AFTER HE FAILED TO REPORT HIS ALLEGED INJURY WITHIN THE THREE-DAY REGLEMENTARY PERIOD AS REQUIRED AND IMPOSED BY LAW.[31]

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29 Id., at 43-45.
30 Id., at 48.
31 Id., at 11.

The petitioner insists that under the POEA Standard Employment Contract (POEA SEC), which governed the relationship between the seafarer and his manning agent, it was the company-designated physician who would assess and establish the fitness or disability of the repatriated seaman; that Tanawan's claim for any disability benefit had no basis because the company-designated physician already pronounced him fit to work; that Tanawan should have reported the eye injury to the company-designated physician within three working days upon his arrival in the country pursuant to Sec. 20(B)(3) of the POEA SEC; that his non-reporting now barred Tanawan from recovering disability benefit for the eye injury; that to ignore the application of the 3-day reglementary period would lead to the indiscriminate filing of baseless claims against the manning agencies and their foreign principals; and that more probative weight should be accorded to the certification of Dr. Lim about the foot injury and the opinion of Dr. Angbue-Te on the alleged eye injury.

On the other hand, Tanawan submits that the determination of the fitness or disability of a seafarer was not the exclusive prerogative of the company-designated physician; and that his failure to undergo a post-employment medical examination for the eye injury within three days from his repatriation did not bar his claim for disability benefits.[32]

Ruling

The petition is partly meritorious.

The employment of seafarers, and its incidents, including claims for death benefits, are governed by the contracts they sign every time they are hired or rehired. Such contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy. While the seafarers and their employers are governed by their

[32] Id., at 131-135.

mutual agreements, the POEA rules and regulations require that the POEA SEC, which contains the standard terms and conditions of the seafarers' employment in foreign ocean-going vessels, be integrated in every seafarer's contract.[33]

The pertinent provision of the 1996 POEA SEC, which was in effect at the time of Tanawan's employment, was Section 20(B), which reads:

> SECTION 20. COMPENSATION AND BENEFITS
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> x x x
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> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS:
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> The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:
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> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
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> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.
>
> However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> 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. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

It is clear from the provision that the one tasked to determine whether the seafarer suffers from any disability or is fit to work is the company-

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[33] *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 596.

designated physician. As such, the seafarer must submit himself to the company-designated physician for a post employment medical examination within three days from his repatriation. But the assessment of the company-designated physician is not final, binding or conclusive on the seafarer, the labor tribunals, or the courts. The seafarer may request a second opinion and consult a physician of his choice regarding his ailment or injury, and the medical report issued by the physician of his choice shall also be evaluated on its inherent merit by the labor tribunal and the court.[34]

Tanawan submitted himself to Dr. Lim, the company-designated physician, for a medical examination on December 1, 1997, which was within the 3-day reglementary period from his repatriation. The medical examination conducted focused on Tanawan's foot injury, the cause of his repatriation. Nothing was mentioned of an eye injury. Dr. Lim treated Tanawan for the foot injury from December 1, 1997 until May 21, 1998, when Dr. Lim declared him fit to work. Within that period that lasted 172 days, Tanawan was unable to perform his job, an indication of a permanent disability. Under the law, there is permanent disability if a worker is unable to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.[35]

That the company-designated physician did not render any finding of disability is of no consequence. Disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability.[36] Even in the absence of an official finding by the company-designated physician to the effect that the seafarer suffers a disability and is unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he is unable to work for more than 120 days.[37] What

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[34] Records, p. 308.
[35] *Palisoc v. Easways Marine Inc.* , G.R. No. 152273, September 11, 2007, 532 SCRA 585, 596-597.
[36] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 213.
[37] *Palisoc v. Easways Marine Inc.*, *supra*, note 35; *Valenzona v. Fair Shipping Corporation*, G.R. No. 176884, October 19, 2011.

clearly determines the seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days.[38] Although the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly (that is, more than 120 days after repatriation).[39]

After the lapse of the 120-day period from his repatriation, Tanawan consulted Dr. Saguin, his own private physician, for the purpose of having an evaluation of the degree of his disability. At that time, he was due to undergo bone grafting and pinning of the 5th metatarsal bone, as Dr. Lim recommended. Dr. Saguin's finding that Tanawan had a Grade 12 disability was, therefore, explicable and plausible.

On the other hand, Tanawan's claim for disability benefits due to the eye injury was already barred by his failure to report the injury and to have his eye examined by a company-designated physician.[40] The rationale for the rule is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult.[41] To ignore the rule might set a precedent with negative repercussions, like opening the floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[42]

Tanawan did not report the eye injury either to the petitioner or to Dr. Lim while he was undergoing treatment for the foot injury. Curiously, he did

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38 *Palisoc v. Easways Marine Inc., supra*.

39 *Valenzona v. Fair Shipping Corporation, supra*, note 37; *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010, 622 SCRA 352, 383-384.

40 *Maunlad Transport, Inc. v. Manigo, Jr.*, G.R. No. 161416, June 13, 2008, 554 SCRA 446, 459.

41 *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 680.

42 Id. at 681.

not even offer any explanation as to why he had his eye examined only on August 25, 1998, or after almost nine months from his repatriation.

Under the 1996 POEA SEC,[43] it was enough to show that the injury or illness was sustained during the term of the contract. The Court has declared that the unqualified phrase "during the term" found in Section 20(B) thereof covered all injuries or illnesses occurring during the lifetime of the contract.[44]

It is the oft-repeated rule, however, that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[45] As such, Tanawan must present concrete proof showing that he acquired or contracted the injury or illness that resulted to his disability *during the term of his employment contract*.[46] Proof of this circumstance was particularly crucial in view of his non-reporting of the injury to the petitioner. Yet, he did not present any proof of having sustained the eye injury during the term of his contract. All that he submitted was his bare allegation that his eye had been splashed with some thinner while he was on board the vessel. He also did not adduce any proof demonstrating that the splashing of thinner could have caused the retinal detachment with vitreous hemorrhage. At the very least, he should have adduced proof that would tie the accident to the eye injury. We note at this juncture that even the certification by Dr. Bunuan provided no information on the possible cause of the eye injury.

Consequently, the claim for disability benefit for the eye injury is denied in view of Tanawan's non-reporting of the injury to the petitioner and

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[43] The POEA SEC was amended in 2000 to include a proviso that the injury or illness must be "work-related."

[44] *Remigio v. National Labor Relations Commission*, *supra*, note 36, p. 205.

[45] *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 545.

[46] *NYK-Fil Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, September 27, 2006, 503 SCRA 595, 606-607.

of his failure to prove that the injury was sustained during the term of his employment.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review; and **DELETES** the award of US$20,900.00 as disability benefits for the eye injury.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice