Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BAHIA SHIPPING SERVICES, INC. and/or V-SHIP NORWAY and/or CYNTHIA C. MENDOZA,	**G.R. No. 207639**
Petitioners,	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
CARLOS L. FLORES, JR.,* Respondent.	Promulgated: JUL 01 2015

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RESOLUTION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 25, 2013 and the Resolution[3] dated May 31, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 121673, which affirmed the Resolutions dated May 27, 2011[4] and July 25, 2011[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 12-001014-10 finding respondent Carlos L. Flores, Jr. (respondent) to be suffering from a permanent total disability, and accordingly, ordered petitioners Bahia Shipping Services, Inc., V-Ship Norway, and Cynthia C. Mendoza (petitioners) to pay him the corresponding disability benefits.

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* Respondent's name varies throughout the records. The variations are "Carlos L. Flores, Sr." and "Carlos L. Flores." See *rollo*, pp. 70, 339, 417, 419, and 444.

1 Id. at 67-100.

2 Id. at 46-60. Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rodil V. Zalameda concurring.

3 Id. at 62-63.

4 Id. at 30-41. Penned by Commissioner Teresita D. Castillon-Lora with Presiding Commissioner Raul T. Aquino and Commissioner Napoleon M. Menese concurring.

5 Id. at 43-44.

The Facts

On January 9, 2009, petitioner Bahia Shipping Services, Inc. hired respondent to work as a "Fitter" on board the vessel Front Fighter owned by V-Ship Norway, for a period of nine (9) months, with such being covered by an employment contract[6] and a Collective Bargaining Agreement between the Associated Marine Officers' and Seamen's Union of the Philippines and petitioners (CBA).[7] On April 15, 2009 and while on board overhauling the relief valve of the vessel, a spring valve flew and hit the left side of respondent's face, causing severe injuries to his teeth as well as multiple abrasions to his cheek, lips, and nose. He was taken to a hospital in Singapore, where he was diagnosed to be suffering from "blunt injuries to the left side of face" and was declared to be unfit to return to ship. After undergoing an operation to treat his injury, respondent was repatriated to the Philippines on April 18, 2009 for further treatment.[8]

Upon repatriation, respondent went to petitioners' accredited doctors for immediate care and treatment who then made him undergo a series of tests for months. On July 17, 2009, Dr. Wilanie Romero-Dacanay, the company-designated physician, gave respondent an interim disability rating of Grade 7 (moderate residual or disorder). [9]

On September 4, 2009, respondent sought a second opinion from an independent physician, Dr. Rimando C. Saguin, who diagnosed him to have "Blunt injury on the Left Face with multiple abrasions, error of refraction, senile nuclear/corticol cataract, both eyes, vitreous floating left eye" and certified that because of his condition, he cannot work as a seafarer in any capacity. [10] Thus, on September 10, 2009, respondent filed a complaint before the NLRC against petitioners for disability benefits, among others.[11] This notwithstanding, respondent continued to undergo treatment from the company-designated physician to treat his condition until October 12, 2009. Thereafter, respondent's treatment stopped and the company-designated physician did not issue his final disability rating.[12]

In defense, petitioners countered, *inter alia*, that respondent's complaint should be dismissed on account of prematurity, considering that he was still undergoing treatment when he filed his complaint.[13]

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6 Id. at 153.
7 Id. at 154-202.
8 Id. at 46-47.
9 Id. at 47-48. See also Medical Report dated July 17, 2009 prepared by Dr. Wilanie Romero-Dacanay; id. at 221.
10 Id. at 48-49. See also Medical Certificate dated September 4, 2009 prepared by Dr. Rimando C. Saguin; id. at 271.
11 Id. at 49.
12 Id. at 47-48.
13 Id. at 50.

The LA Ruling

In a Decision[14] dated September 15, 2010, the Labor Arbiter (LA) ruled in respondent's favor, and accordingly, ordered petitioners to jointly and severally pay him the amounts of: (*a*) US$118,800.00 or its peso equivalent as permanent total disability benefits in accordance with the CBA; (*b*) ₱50,000.00 as moral damages; (*c*) ₱25,000.00 as exemplary damages; and (*d*) 10% of the total monetary awards as attorney's fees.[15]

The LA found respondent to be suffering from a permanent total disability, given that from the time of his repatriation until the case was decided, there was no declaration from either the company-designated or the independent physicians that respondent was fit to work. According to the LA, the fact that respondent was never again summoned by petitioners for another sea duty bolsters the notion that he is indeed permanently and totally disabled.[16]

Dissatisfied, petitioners appealed to the NLRC.

The NLRC Ruling

In a Resolution[17] dated May 27, 2011, the NLRC affirmed the LA ruling with modification deleting the awards for moral and exemplary damages.[18] The NLRC held that the failure of the company-designated physician to make an assessment of respondent's condition within the 120-day period from his repatriation deemed his disability to be permanent and total, and thus, he must be given the corresponding benefits in accordance with the CBA.[19]

Petitioners moved for reconsideration but the same was denied in a Resolution[20] dated July 25, 2011. Aggrieved, they elevated the case to the CA by way of *certiorari*.

The CA Ruling

In a Decision[21] dated March 25, 2013, the CA affirmed the NLRC ruling. It held, *inter alia*, that respondent's disability should be viewed as permanent and total in view of the fact that the company-designated

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14 Id. at 12-28. Penned by Labor Arbiter Enrique L. Flores, Jr.
15 Id. at 28.
16 Id. at 26 and 51.
17 Id. at 30-41.
18 Id. at 40.
19 Id. at 37-40.
20 Id. at 43-44.
21 Id. at 46-60. Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rodil V. Zalameda concurring.

physician failed to declare him fit for duty or issue a final disability assessment within 120 days from his repatriation. [22]

Petitioners moved for reconsideration, which was, however, denied in a Resolution[23] dated May 31, 2013; hence, this petition.[24]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly affirmed the NLRC ruling holding respondent to be entitled to permanent total disability benefits.

The Court's Ruling

The petition is denied.

At the outset, the Court notes that petitioners correctly ascribed error on the part of the CA in holding that respondent's inability to obtain gainful employment for more than 120 days after his repatriation, and that the failure of the company-designated physician to declare him fit to work or to give him a final disability rating within the same period *ipso facto* rendered respondent's disability to be permanent and total. In *Vergara v. Hammonia Maritime Services, Inc.*, [25] the Court held that the company-designated physician is given a leeway of an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability. Thus, it is only upon the lapse of 240 days from repatriation, or when so declared by the company-designated physician, that a seafarer may be deemed totally and permanently disabled, *viz.*:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract [(SEC)] and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.**

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22 Id. at 55-58.
23 Id. at 62-63.
24 Id. at 67-100.
25 588 Phil. 895 (2008).

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> As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.** In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work.[26] (Emphases and underscoring supplied)

Be that as it may, the CA is nevertheless correct in holding that respondent is deemed to be suffering from a permanent total disability. Records reveal that after respondent was repatriated on April 18, 2009, he underwent continuous medical care from the company-designated physician. He was even given an interim disability rating of Grade 7 (moderate residual or disorder) on July 17, 2009,[27] and thereafter, went through further tests and procedures. However, after October 12, 2009, respondent's treatment stopped without him recovering from his ailment. Notably, the company-designated physician neither issued to respondent a fit-to-work certification nor a final disability rating on or before December 14, 2009, the 240th day since respondent's repatriation. Case law instructs that, if after the lapse of the 240-day period, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the seafarer is totally and permanently disabled arises.[28] Perforce, it is but proper to hold that respondent was permanently and totally disabled, and hence, entitled to the corresponding benefits stated under the CBA.

WHEREFORE, the petition is **DENIED**. The Decision dated March 25, 2013 and the Resolution dated May 31, 2013 of the Court of Appeals in CA-G.R. SP No. 121673 are hereby **AFFIRMED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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[26] Id. at 912-913; citations omitted.
[27] See Medical Report dated July 17, 2009 prepared by Dr. Wilanie Romero-Dacanay; id. at 221.
[28] See *Kestrel Shipping Co., Inc. v. Munar*, G.R. No. 198501, January 30, 2013, 689 SCRA 795, 817.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice