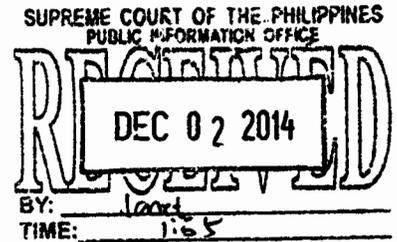




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 12 November 2014 which reads as follows:

G.R. No. 203727 – *Fernando Y. Quong, petitioner, v. EMS Crew Management, Philippines, Incorporated, respondent.*

For resolution is the petition for review on *certiorari*¹ filed by Fernando Y. Quong (*Quong*) questioning the July 3, 2012 Decision² and the October 10, 2012 Resolution³ of the Court of Appeals (*CA*), in CA-G.R. SP No. 123112, which affirmed the June 27, 2011 Decision⁴ and the November 22, 2011 Resolution⁵ of the National Labor Relations Commission (*NLRC*). The *NLRC* Decision modified the September 30, 2010 Decision⁶ of Labor Arbiter Enrique L. Flores (*LA*), by 1] reducing the amount of the permanent total disability benefits awarded in Quong's favor from \$118,800.00 to \$60,000.00; and 2] deleting the award of damages in his favor.

Through this petition, Quong seeks the reinstatement of the *LA* decision, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant finding respondents jointly and solidarily liable to pay (a) permanent total disability benefits according to the C.B.A in the amount of US\$118,800.00 at its peso equivalent at the time of payment; (b) moral damages of ₱20,000.00 and exemplary damages of ₱10,000.00 and (c) attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of payment.

SO ORDERED.⁷

It should be first pointed out that the facts of this case are the same as those in G.R. No. 203878,⁸ which was a petition for review on *certiorari* filed by respondent EMS Crew Management, Phils., Inc. (*EMS*). The said petition sought to dismiss Quong's complaint for recovery of permanent

¹ *Rollo*, pp. 13-55.

² Penned by Associate Justice Amy C. Lazaro-Javier, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Sesinando E. Villon, concurring; *id.* at 56-66.

³ *Id.* at 67.

⁴ *Id.* at 203-214.

⁵ *Id.* at 215-216.

⁶ *Id.* at 322-336.

⁷ *Id.* at 336.

⁸ Entitled *EMS Crew Management Phils. v. Fernando Y. Quong*.

total disability benefits, damages and attorney's fees, on the ground that he failed to prove the gravity and the work-relatedness of his illness. G.R. No. 203878 should have been consolidated with the present case.

At any rate, on December 3, 2012, the Court denied the petition in G.R. No. 203878, after finding no reversible error on the part of the CA in holding that Quong was entitled to recover permanent total disability benefits as a result of his skin and lung condition. On March 13, 2013, the Court resolved to deny the said petition with finality. On May 2, 2013, the denial of the petition in G.R. No. 203878 was declared final and executory and was recorded in the Book of Entries of Judgments.

Considering that the issue of whether Quong was entitled to permanent total disability benefits is already settled, this Court shall resolve the remaining issues presented by the subject petition, that is: 1] whether or not Quong is entitled to the amount of \$118,800.00 as compensation after being found to suffer from permanent total disability; and 2] whether or not Quong is entitled to damages and attorney's fees.

First, the pertinent facts:

On February 2, 2010, Quong filed a complaint for the recovery of permanent disability benefits, damages and attorney's fees against EMS. The complaint stemmed from his claim that he accidentally slipped while carrying various chemicals which poured all over his body. Quong, alleging to be a member of the Associated Marine Officers' and Seamen's Union of the Philippines (*AMOSUP*), asserted that he was entitled to the \$118,800.00 disability benefit stated in the 2008 BELCHEM-ITF-SMOU/SOS TCC Foreign Flag Vessels Seafarers' Agreement which EMS agreed to pay to union members who would suffer from permanent total disability.

Aside from seeking the dismissal of Quong's complaint on the ground that he failed to prove the gravity and work-relatedness of his illness, EMS also pointed out that Quong's claim was based on the wrong collective bargaining agreement. According to EMS, the applicable collective bargaining agreement between them was not the 2008 BELCHEM-ITF-SMOU/SOS TCC Foreign Flag Vessels Seafarers' Agreement, but rather, the 2006 TESMA Maritime Officers' Agreement, which stated that compensation to officers shall only be provided in case a seafarer shall suffer an *injury through an accident*. EMS argued that Quong simply acquired an *illness* while on board the vessel and that there was no evidence to substantiate his claim that he suffered an injury as a result of an accident.

As stated above, the LA found merit in Quong's claims and ordered EMS to pay the \$118,800.00 disability benefits, damages and attorney's fees. Although the LA concluded that Quong's illness was work-related, there was neither any finding as to the cause of his illness nor any determination of which collective bargaining agreement would apply.⁹

On appeal, the NLRC *modified* the decision of the LA reducing the award of permanent disability benefits to \$60,000.00. Although the NLRC agreed with Quong that the cause of his condition was work-related, it stated that Quong's injuries were not the result of an accident. The NLRC was of the view that Quong should be compensated in accordance with the Philippine Overseas Employment Agency Standard Employment Contract (*POEA-SEC*) and not the provisions of any collective bargaining agreement.¹⁰

Both Quong and EMS sought reconsideration of the NLRC decision. Quong prayed that the \$118,800.00 disability benefits awarded by the LA should be maintained.¹¹ On the other hand, EMS reiterated its claim that the complaint should be dismissed for lack of merit.¹²

On November 22, 2011 the NLRC resolved to deny the two motions for reconsideration.¹³

EMS questioned the ruling of the NLRC by filing a petition for *certiorari*¹⁴ with the CA. When asked to file his comment, Quong, although positing that the NLRC erred in not affirming the decision of the LA awarding him the \$118,800.00, nevertheless, prayed that the CA simply dismiss the petition filed by EMS for lack of merit.¹⁵

On July 3, 2012, the CA rendered its decision dismissing the petition for *certiorari* filed by EMS and affirmed the decision and the resolution of the NLRC.¹⁶ Although the CA was of the considered view that Quong's disability was a result of a work-related accident, nonetheless, it affirmed the ruling of the NLRC that Quong was only entitled to the \$60,000.00 permanent disability benefits stipulated in the POEA-SEC.

⁹ *Rollo*, pp. 322-336.

¹⁰ *Id.* at 235-246.

¹¹ *Id.* at 217-234.

¹² *Id.* at 247-263.

¹³ *Id.* at 215-216.

¹⁴ *Id.* at 146-177.

¹⁵ *Id.* at 117-145.

¹⁶ *Id.* at 89-98.

Again, both Quong and EMS sought reconsideration. Quong once more asserted that he was entitled to the amount of \$118,800.00 for his permanent disability.¹⁷ EMS, for its part, reiterated its prayer that the complaint be dismissed for lack of merit.¹⁸

The CA ruled to deny both motions for lack of merit.¹⁹

Not in conformity, Quong filed this petition, arguing that the CA and the NLRC erred in not affirming the \$118,800.00 award of the LA to which he was entitled as his permanent disability was a result of an accident.²⁰ In addition to discussing the work-relatedness of his illness, Quong also claims that because the circumstances of the case would show that EMS had no right to refuse his demands, its refusal to accede to his demand should make it liable for damages also.²¹

EMS also filed a petition, docketed as G.R. No. 203878, once more asserting that Quong's injuries were not work-related. As stated earlier, the Court found no reversible error in the decision and resolution of the CA and denied the petition.

The present petition likewise lacks merit.

At the outset, it should be noted that while Quong sought reconsideration from the NLRC decision to limit the amount of his disability benefits to only \$60,000.00, he no longer questioned its resolution denying his motion for reconsideration on November 22, 2011. It was only EMS who sought to rectify the NLRC's conclusion that it was liable to pay the amount of \$60,000.00 by filing a petition for *certiorari* with the CA, arguing that it should not be held liable at all. Then, when Quong filed his comment²² on EMS' petition before the CA, he no longer prayed to be awarded the amount of \$118,800.00. Instead, he simply asked that the petition be dismissed for lack of merit.²³ Quong only sought for the reinstatement of the LA's award of \$118,800.00 when the CA resolved to affirm the NLRC decision and resolution ordering EMS to pay the amount of \$60,000.00 as permanent total disability benefits.²⁴

¹⁷ Id. at 68-88.

¹⁸ Id. at 99-116.

¹⁹ Id. at 67.

²⁰ Id. at 38-43.

²¹ Id. at 48-51.

²² Id. at 117-145.

²³ Id. at 142.

²⁴ Id. at 99-103.

Consequently, insofar as Quong is concerned, the decision and the resolution of the NLRC ordering EMS to pay the amount of \$60,000.00 as permanent total disability benefits should be considered final. Due to his failure to seek the corrective remedy of *certiorari* with the CA, Quong is deemed to have accepted the adequacy of the \$60,000.00 award of the NLRC and is deemed estopped to question the decision of the CA affirming the same.

At any rate, even if the Court considers Quong's assertion that he should be paid the amount of \$118,800.00 for his permanent total disability, the result is the same.

Upon a perusal of the records of the case, it appears that Quong cannot be awarded the amount of \$118,800.00 for his permanent total disability simply because his claim was based on a collective bargaining agreement that was not applicable to him. From the title alone of the collective bargaining agreement referred to, it is clear that the 2008 BELCHEM-ITF-SMOU/SOS TCC Foreign Flag Vessels Seafarers' Agreement is not the applicable collective bargaining agreement. The said agreement concerns the Total Crew Cost (*TCC*) between Belchem Singapore Pte. Ltd. (*BELCHEM*),²⁵ the International Transport Workers' Federation (*ITF*),²⁶ the Singapore Maritime Officers Union (*SMOU*),²⁷ and the Singapore Organization of Seamen (*SOS*).²⁸

Despite claiming to be a member of the AMOSUP, Quong never even attempted to provide any basis to show that he was indeed a member of any of the above-mentioned organizations or provide any reason to justify the applicability of the said collective bargaining agreement to his case. In short, Quong argued the merits of his claim on the assumption that he was covered by the 2008 BELCHEM-ITF-SMOU/SOS TCC Foreign Flag Vessels Seafarers' Agreement, and hence, entitled to the benefits stated therein. Well-settled is the rule that awards of compensation cannot rest on speculations and presumptions as the claimant must prove a positive proposition.²⁹

At any rate, granting *arguendo* that the 2008 BELCHEM-ITF-SMOU/SOS TCC Foreign Flag Vessels Seafarers' Agreement would apply to Quong, he failed to demonstrate that his illness was a direct result of an accident. The records are bereft of any substantiation that Quong figured in an accident while carrying heavy buckets of combustible chemicals. No

²⁵ See < <http://www.belships.com.sg/singapore>>; last visited October 22, 2014.

²⁶ See < <http://www.smou.org.sg/wps/portal/smou/home>>; last visited October 22, 2014.

²⁷ See < <http://www.itfseafarers.org/about.cfm>>; last visited October 22, 2014.

²⁸ See < <http://www.smou.org.sg/wps/portal/smou/home>>; last visited October 22, 2014.

²⁹ *Orate v. Court of Appeals*, 447 Phil. 654, 660 (2003).

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report, supporting document or testimony was presented to prove such fact. Indeed, the legal dictum “he who asserts, not he who denies, must prove,”³⁰ is applicable.

As to whether the provisions of the 2006 TESMA Maritime Officers’ Agreement should instead prevail, suffice it to say that the issue of whether Quong was entitled to permanent total disability had already been settled in G.R. No. 203878. Considering that the POEA-SEC provides the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels, any stipulation in the 2006 TESMA Maritime Officers’ Agreement cannot operate to defeat any of the benefits that Quong is entitled due to his permanent total disability.

Indeed, while it is well-recognized that a collective bargaining agreement has the force of the law between the parties, it is also recognized that, as in all contracts, the parties in a collective bargaining agreement may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy.³¹

For lack of factual and legal basis to sustain them, the ancillary claims for damages and attorney’s fees are dismissed.

It should be remembered that the Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, the Court should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in light of established facts, the applicable law, and existing jurisprudence.³²

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Very truly yours,


MA. LOURDES Q. PERFECTO
 Division Clerk of Court *My 11/21*

³⁰ *Portuguez v. GSIS Family Bank*, 546 Phil. 140, 157 (2007); and *Kar Asia, Inc. v. Corona*, 480 Phil. 627, 636 (2004).

³¹ *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*, 499 Phil. 174, 179-180 (2005).

³² *Cebu Metal Corporation v. Roberto Saliling*, 532 Phil. 517, 528-529 (2006).

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