DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., February 20, 2015 (Issue 2015/06)

"Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines" from Asia-Pacific, The Legal 500, 2014, p. 497

Supreme Court: Heart illnesses are work-related and compensable; but, Court disallowed claim for CBA benefits as there was no accident

Seafarer was hired as third mate and this was his 22nd contract with the company. During employment, he suddenly experienced difficulty in breathing and numbness on half of his body prompting him to ask for assistance. Seafarer was brought to a hospital where he was confined for three days. While in the hospital, seafarer had partial paralysis of the right hand and a minor partial paralysis of the right leg. His CT Scan of the head showed a *"small hematoma in the left part of the crane".* Thereafter, seafarer's immediate repatriation was arranged.

Upon seafarer's arrival in the Philippines, he was immediately brought to the hospital under the supervision of company-designated-physician. Medical examination revealed that he had, among other things, stroke, hypertension, carotid bruit, Transient Ischemic Attack, Hemiplegia, and Amaurosis Fugax. His Plaque Morphology Type I reveals a *"uniformly echolucent with thin echogenic cap (homogenous hypoechoic) or a high risk for plaque rupture and embolism regardless of % of stenosis".* Upon seafarer's discharge the Discharge Summary showed that he had a stroke. The company-designated doctor opined that the illness of *"hematoma in the cranium"* was not work-related. Thus, no further disability assessment was issued.

Seafarer, on the other hand, continuously took medications and was unable to return to his work as a seaman due to the severity of his disability and filed a claim for disability compensation.

The Labor Arbiter ruled in favor of the seafarer and awarded $137,500 representing 100% compensation benefits under CBA. The Labor Arbiter declared that seafarer's hematoma in the left part of his cranium is related to his work as Third Mate, and the strenuous nature of his work and the conditions he was subjected to while working on board company's vessel caused his illness. The Labor Arbiter also added that the company-designated doctor's opinion that seafarer's illness is not work-related cannot be given credence, as it has been shown that prior to boarding he was declared "fit to work" by the company's own physicians, and if he contracted heart disease while on board the ship, it can only be caused by his work and the conditions he was subjected to during his employment.

The NLRC reversed the decision of the Labor Arbiter and held that the CBA is relevant only in cases of permanent disability arising from accident – which is not the case for the seafarer, who contracted illness; thus, the provisions of the POEA-SEC will apply instead. It added that under the POEA-SEC, hematoma is not included in the list of compensable illnesses. Seafarer should have proved that such illness was work-related and compensable, and it is not enough for him to claim or show that it was contracted during his employment with the company. Having failed to do so, the company-designated doctor's findings that his illness is not work-related should prevail. It held further that since seafarer's illness is not work-related, his inability to work for

more than 120 days is therefore irrelevant and does not entitle him to permanent total disability benefits.

The Court of Appeals reinstated the decision of the Labor Arbiter with modification. The court awarded $60,000.00 (instead of $137,000) representing full disability benefits under POEA-SEC. The appellate court held that seafarer's exposure to different hazards on the company's vessel, the performance of his functions as third mate, and the extraordinary physical and mental strain required by his position caused him to suffer his present illness. The appellate court also added that in the course of performing his duties, he suffered a stroke or cerebro-vascular accident (CVA), which means that a blood vessel within or about his brain burst which caused cerebral or intracranial hemorrhage; that such illness is an occupational disease under Section 32-A (12) of the POEA-SEC; that according to the company-designated physician's Cerebrovascular Investigation Form, the seafarer suffered from stroke, hypertension, carotid bruit, Transient Ischemic Attack, Hemiplegia, and Amaurosis Fugax; that the disease being work-related, The company-designated physician should have made a declaration either of fitness or disability, which he failed to do; that the failure to make a declaration entitles seafarer to permanent total disability benefits in the amount of US$60,000.00 in accordance with the POEA-SEC. However, the Court of Appeals disallowed the benefits claimed under the CBA of $137,000 stating that the disability did not arise from an accident. The Court only awarded $60,000.

The Supreme Court affirmed the decision of the Court of Appeals.

The issue presented is whether seafarer's illness - which was considered to be hypertensive cardio-vascular disease - is an occupational disease.

In many cases decided in the past, the Court has held that cardiovascular disease, coronary artery disease, and other heart ailments are compensable.

In the present case, the company flatly claims that seafarer hypertensive cardio-vascular disease is not compensable on the sole basis of its company-designated physician's declaration that such illness is not work-related.

However, the Court found that seafarer's illness is work-related. The undisputed facts indicate that seafarer has been working for petitioners as third mate for twelve years; and that as third mate, he was saddled with heavy responsibilities relative to navigation of the vessel, ship safety and management of emergencies.

It is beyond doubt that seafarer was subjected to physical and mental stress and strain: as third mate, he is the ship's fourth in command, and he is the ship's safety officer; these responsibilities have been heavy burdens on respondent's shoulders all these years, and certainly contributed to the development of his illness. Besides, it is already recognized that any kind of work or labor produces stress and strain normally resulting in wear and tear of the human body. 'Notably, it is a matter of judicial notice that an overseas worker, having to ward off homesickness by reason of being physically separated from his family for the entire duration of his contract, bears a great degree of emotional strain while making an effort to perform his work well. The strain is even greater in the case of a seaman who is constantly subjected to the perils of the sea while at work abroad and away from his family.

Having worked for the company under several employment contracts that were continuously renewed, it can be said that respondent spent much of his productive years with the company; his years of service certainly took a toll on his body, and he could not have contracted his illness elsewhere except while working for the company.

The Court ruled that the list of illnesses/diseases in the POEA-SEC does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible illnesses / injuries that render a seafarer unfit for further sea duties. And equally significant, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. Respondent's illness, which has likewise been diagnosed as intracerebral hemorrhage or hemorrhagic stroke, is a serious condition and could be deadly.

In one case the Court held that an employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240-day treatment period.

The company-designated doctor did not make a definite assessment of seafarer's fitness or disability, even up to this day and the latter's medical condition remains unresolved. In the meantime, seafarer's medical condition persists, and the company did not renew or continue with respondent's employment; nor was he able to work

for other employers. Quite understandably, seafarer's condition remains delicate given that his illness is serious and could be fatal. Thus, as seafarer is deemed totally and permanently disabled, he is entitled to the corresponding benefit under the POEA-SEC in the peso equivalent of US$60,000.00. Benefits under the CBA of US$137,000 was not awarded as there was no accident.

Author's Note: *This decision appears in contrast to previous rulings of the Supreme Court. In Quizora vs. Denholm Crew Management Phils., Inc. (2011), the Supreme Court held that continuous rehiring does not automatically mean that the seafarer suffered his illness during employment. In the same case, the Court likewise noted that non-rehiring is not indicative of disability. This was also the ruling of the Court in Magsaysay Maritime Corp. v. Simbajon (2014).*

Magsaysay Mitsui OSK Marine, Inc. and/or Mol Tankship Management (Asia) Pte, Ltd. vs. Juanito Bengson; G.R. No. 198528, October 13, 2014; Second Division; Associate Justice Mariano Del Castillo, Ponente (Attys. Maricris Ferrer and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests)

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