DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 22, 2015 (Issue 2015/15)

"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

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Supreme Court upholds fit to work declaration of company-designated physician in the absence of a third doctor's opinion

The seafarer allegedly suffered eye problems when he accidentally splashed chemicals to his eyes while cleaning the cooler of the vessel's engine. He was eventually repatriated and underwent treatment with the company-designated physician for more or less five months. Thereafter, the company-designated physician declared the seafarer fit to work and in affirming this, the seaman executed a document denominated as "***Certificate of Fitness for Work***".

Some four months after, the seafarer sought consultation with another doctor who assessed him to be permanently unfit to work. On this basis, the seafarer filed a claim for disability benefits before the NLRC.

The Supreme Court noted that in a maritime disability claim, the issue that often arises is the conflicting findings between the company-designated physician and the seafarer's chosen physician.

The POEA-SEC provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the employer and the seafarer, and the third doctor's decision shall be final and binding on both parties. In several cases, the Court had already upheld the findings of the company-designated physician due to the non-referral by the seafarer to a third doctor.

Here, the fit-to-work order issued by the company-designated physician should be upheld. It should be noted that seafarer did not even bother to seek the opinion of a third doctor as mandated by the POEA-SEC.

Further, ***the seafarer's doctor had only conducted one examination while the company designated physician had monitored seafarer's medical condition for several months. The company-designated physician acquired a more detailed knowledge and familiarity of seafarer's injury and could very well accurately evaluate the latter's degree of disability***. The evaluations made by the company-designated

physician were never disputed. Even their competence has not been challenged. Besides, as between the company-designated doctor who has all the medical records of the seafarer during the duration of his treatment and as against the latter's personal doctor who examined him for a day as an outpatient, the former's finding must prevail.

Julius Tagalog v. Crossworld Marine Services, Inc., Capt. Eleasar Diaz and/or Chios Maritime Ltd. acting in behalf of Ocean Liberty Ltd., G.R. No. 191899, June 22, 2015, First Division, Associate Justice Jose Portugal Perez, Ponente (Attys. Pedrito Faytaren, Jr. and Florencio Aquino handled for vessel interests)

Supreme Court denies claim for death benefits as seafarer died outside the term of employment

Seafarer was engaged as Master and during his employment, did not report any medical problems. He was then able to finish his employment contract without event. Seafarer's wife alleged that after repatriation, the seafarer was diagnosed in a local hospital with adecarcinoma for which he was treated. Thereafter, he reported to the manning agent for re-engagement but failed his PEME due to the same ailment. Subsequently, the seafarer was hospitalized twice because of his illness and died a year after his last employment contract was terminated. Due to this, seafarer's wife filed a claim for death benefits with the NLRC.

The Supreme Court held that the heirs of the seafarer are not entitled to death benefits. The Court noted that the records are bereft of showing that seafarer's illness was contracted during the term of his last employment contract. It was noted that seafarer was declared fit to work when he was subjected to the mandatory pre-employment medical examination prior to his deployment. There was, likewise, no showing that he complained of any illness while on board the vessel nor was it established that seafarer was repatriated due to an illness.

Thus, denial of benefits is proper as the provisions of the POEA Contract are explicit that for a seafarer's death to be compensable, the death must be shown to have occurred during the term of the employment contract. The determination of whether or not the death was the result of a work-related illness becomes necessary only when the above condition has been satisfied because of the rule that "the mere death of a seaman during the term of his employment is not sufficient to give rise to compensation."

To summarize, ***the death of a seaman to be compensable should occur during the term of his employment contract and must be the result of a work-related illness or injury***. In the present case, it is not disputed that seafarer died almost a year after the termination of his last employment contract. It must be remembered that seafarer was repatriated not because of any illness but because his contract of employment expired. There is no proof that he contracted his illness during the term of his employment nor that his working conditions increased the risk of contracting the illness which caused his death.

Ma. Susana Awatin, and on behalf of the heirs/beneficiaries of deceased Alberto Awatin v. Avantgarde Shipping Corporation and Mrs. Dora Pascual, Offshore Maritime Management Int'l., Inc. (Switzerland), Seabulk treasure Island, G.R. No. 179226, June 29, 2015, Third Division, Associate Justice Diosdado Peralta, Ponente.

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This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com .

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