DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 26, 2015 (Issue 2015/20)

"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 denies claim for total disability benefits based on 120/240 days; findings of doctors are incomparable as issued several months apart

Seafarer, after passing his pre-employment medical examination, was engaged as Able Bodied Seaman by the company.

During employment, and while discharging his duties, seafarer met an accident which injured his left leg. He was brought to a shore hospital and was given first aid treatment. Thereafter, he was repatriated for further medical management sometime May 2000.

The company referred the seafarer to its designated physician who recommended that his knee should be operated on. Seafarer underwent surgery known as Open Reduction and Fixation with Intramedullary Nails. After a series of evaluations, on 21 September 2000, the attending physician issued a final evaluation certificate wherein she categorically cleared respondent from his injury and allowed him to resume his work even with implants, which can be removed after a year and a half.

On 2 May 2001, seafarer, through counsel, wrote the company, claiming for full disability benefits amounting to US$60,000.00. He claimed that the injury suffered while working for the company "will not permit him to work again" as a seaman which rendered him totally and permanently disabled.

After his demand went unheeded, the seafarer filed a complaint for disability benefits, damages plus attorney's fees alleging that: (1) he continues to suffer from the injury which caused his repatriation (2) an independent physician had suggested a disability grade of 13 for his injury, and, (3) he is suffering from permanent medical unfitness which entitles him to at least US$3,360 up to a maximum ofUS$60,000. The seafarer further alleged that although he was pronounced fit to work, he can never be considered fit for employment if he still has

implants on his leg since he can no longer carry heavy objects while on board a vessel.

On the other hand, the company averred that seafarer is not entitled to any disability benefit as he was declared fit to work by the company designated physician and that under the provisions of POEA Contract, seafarer's disability can only be assessed by the company designated physician and such declaration binds him as said doctor is the most qualified to determine the precise condition of seafarer's health for having monitored and medically managed the condition.

Both the Labor Arbiter and the NLRC found in favor of the company and dismissed the claim. However, the Court of Appeals granted the seafarer US$60,000 disability benefits on the ground that seafarer was unable to work for more than 120 days and is thus considered as permanently and totally disabled based on law.

When the case reached the Supreme Court, the company's position was upheld although the Court awarded partial disability benefits equivalent to grade "13" under the POEA Contract.

120/240 days

The Court set aside the conclusion of the Court of Appeals which entitled the seafarer to maximum disability benefits on the basis of his inability to work after 120 days. The Court again reminded that the 120 days rule is not a magic wand that once waved will automatically entitle the seafarer to maximum disability benefits. The rule is if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days. From May 2000 to September 21, 2000, 144 days had lapsed before seafarer was declared fit to work. Concededly, said periods have already exceeded the 120-day period. However, records show that seafarer underwent a series of evaluations which implied requirement of further medical treatment, thus, justifying the extension of the 120-day period. The company-designated doctor had a period of 240 days within which to make a finding on his fitness for further sea duties or degree of disability.

No sense in comparing the medical assessment of the company-designated doctor and seafarer's personal doctor

The Court noted that while the POEA Contract mandates the company-designated doctor to determine and assess the medical condition of the seafarer, the latter does not automatically bind himself to the medical report issued by said doctor and neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. The claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.

In this case, seafarer failed to dispute the declaration of fit to work by the company-designated physician by not timely consulting another physician. The seafarer took roughly eight months before disputing the finding of the company-designated doctor by writing the company his claim for disability benefits. Then, after his demand went unheeded, he challenged the doctor's competency and the correctness of the findings on the basis of an evaluation made 10 months after he was certified fit to work by the company-designated physician.

The Court stated that it makes no sense to compare the certification of a company-designated physician with that of an employee appointed physician if the former is dated seven to eight months earlier than the latter - there would be no basis for comparison at all. In this case, the certification of the company-designated physician was ten months earlier than that of the appointed physician of the seafarer. Thus, there would be no basis for comparison.

Court awarded partial disability benefits

In a very short discussion, the Court awarded the seafarer with US$3,360 disability benefits based on disability grade "13" under the POEA Contract. The Court held that both the company-designated physician and seafarer's own physician concluded that seafarer's left tibia was fractured and that it was healed after the surgery. Under the Schedule of Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted in Section 30 of 1996 POEA SEC, the "slight atrophy of calf of leg muscles without apparent shortening or joint lesion or disturbance of weight-bearing line" suffered by seafarer has a corresponding Impediment Grade of 13.

Thus, seafarer is entitled to US$3,360 or its equivalent in Philippine currency at the exchange rate prevailing

during the time of payment.

***Author's Note**: There appears to be some inconsistency in the manner that the Court decided this case.*

On one hand, the Court ruled that the seafarer is not entitled to permanent and total disability benefits because the company-designated doctor declared him fit to work within 240 days. The Court likewise held that there is no sense in comparing the findings of the company-designated doctor and seafarer's personal doctor.

On the other hand, the Court, in apparently sustaining the grade "13" assessment issued by seafarer's personal doctor, awarded disability benefits of US$3,360., despite the fact that seafarer was declared fit to work by the company-designated doctor.

Unfortunately, the Court did not expound on their decision to award partial disability benefits aside from the fact that both company-designated doctor and seafarer's doctor gave an assessment that seafarer's left tibia was fractured and that it was healed after the surgery.

Acomarit Phils., and/or Acomarit Hong Kong Limited v. Gomer Dotimas, G.R. No. 190984, August 19, 2015, Third Division, Associate Justice Diosdado Peralta, Ponente. (Attys. Aldrich Del Rosario and Charles Jay Dela Cruz of Del Rosario & Del Rosario handled for vessel interests).

Supreme Court affirms opinion of company-designated physician; did not apply CBA's permanent unfitness clause

Seafarer was hired by the company as Chief Steward/Cook after being declared fit in the required pre-employment medical examination (PEME for short). However, it was noted in the PEME that he was a case of class "B" diabetes mellitus which is controlled with medications. His employment was governed by the terms of the POEA Standard Employment Contract with an overriding AMOSUP CBA.
During employment, seafarer suffered severe headache accompanied by fever and dizziness. He was treated in a foreign port and was diagnosed with hypertension and diabetes mellitus. Seafarer was eventually repatriated for further treatment by the company-designated doctor. After three months of treatment, seafarer was declared fit to work.

However, seafarer, through counsel, requested the company that he be referred to another doctor for medical opinion. The company obliged and referred seafarer to another doctor. Said doctor opined that seafarer is still suffering from hypertension and diabetes mellitus and had poor compliance with intake of medications. A grade "12" partial disability was issued to the seafarer. In line with the disability assessment of the doctor, the company offered to compensate the seafarer with US$5,225.

It appears however that prior to the assessment, the seafarer already consulted his personal doctor who assessed him with a grade "5" disability. As such, the seafarer claims full disability benefits of US$60,000 under the CBA as he considers himself permanently unfit to work already.

The Labor Arbiter granted the claim of the seafarer and upheld the findings of seafarer's personal doctor as unbiased. The award of US$60,000 was issued based on the permanent unfitness clause in the CBA. Said decision was further upheld by the NLRC.

With the Court of Appeals, the award was limited to US$5,225 which is the equivalent of the company-designated doctor's grade "12" assessment. This was affirmed by the Supreme Court.

Findings of company-designated physician deserves more credence and weight

In adopting the findings of the Court of Appeals, the Supreme Court held that the determination of whose medical findings, including disability assessment, should be given more weight would depend on the length of time the patient was under treatment and supervision, results of laboratory procedures used as basis for diagnosis and recommendation, and detailed knowledge of the patient's case reflected in the medical certificate itself.

A comparison of the medical certificates issued by the company-designated doctor and seafarer's personal doctor reveals that the former's findings were based on results of certain laboratory procedures such as urinalysis and chest x-ray, while that of the latter merely stated the usual expected long term complications associated with diabetes mellitus.

The present target organ in seafarer's case was determined by the company-designated doctor to be the heart and eyes (hypertensive retinopathy), while the seafarer's personal doctor plainly indicated the lifelong medications are necessitated by his "HPN and DM" and that long term complications involve the heart, brain and kidneys. Further, while seafarer's doctor's diagnosis of uncontrolled diabetes mellitus and essential hypertension was based only on the patient's age belonging to high risk group, the company-designated doctor attributed the patient's poorly-controlled diabetes mellitus and essential hypertension to "non-compliance with the intake of medicines" considering his earlier medication and treatment under the first company-designated doctor where he was declared "fit to work."

The Court found the generalized statements of seafarer's personal doctor not sufficient compared to a more detailed medical assessment of the company-designated doctor based on actual laboratory results and recent medical history of the seafarer.

Inapplicability of the CBA

The CBA covering the employment of the seafarer states:

Permanent Medical Unfitness

A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph as regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e., US$80,000.00 for officers and US$60,000.00 for ratings.

Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation

The Court held that said provision will not benefit the seafarer considering that he was only assessed with a grade "12" disability – which is less than 50% - by the company-designated doctor and there was no finding that he is permanently unfit. In fact, the company-designated doctor was of the opinion that with proper compliance with medications and lifestyle changes, is illnesses will be brought under control at the appropriate time.

Author's Note: While other Supreme Court decisions had considered diabetes mellitus as an illness which is not work-related, such issue was not discussed here as this involved the 1996 POEA Contract where work-relation was not considered as a requirement for compensability.

Prudencio Caranto v. Bergesen D.Y. Phils. and/or Bergesen D.Y. A.S.A., G.R. No. 170706, August 26, 2015, Third Division, Associate Justice Diosdado Peralta, Ponente.

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Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario
Office Address: DelRosarioLaw Centre, 21st Drive corner 20th Drive, Bonifacio Global City, Taguig, Metro Manila, Philippines
Telephone: 63 2 810 1791 / 63 2 317 7888 **Fax:** 63 2 817 1740 / 63 2 317 7890
24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com;