DEL ROSARIO PANDIPHIL Inc.

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Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., August 29, 2014 (Issue 2014/14)

Supreme Court rules complaint premature as seafarer did not continue his treatment with company-designated doctor; findings of seafarer's doctor not credible as not based on medical examination

After being declared fit to work in his pre-employment medical examination (PEME), the seafarer was engaged to work on-board the vessel as 3rd Engineer. Just two days after boarding the vessel, seafarer was found unconscious inside the engine room of the vessel. Upon docking of the vessel at the nearest port, seafarer was admitted at the hospital where he was diagnosed to be suffering from *cervical spondylosis* and *heat exhaustion*. He was thereafter repatriated and was referred to the company-designated doctors on 30 July 2008 where he was diagnosed to be suffering from *cervical and lumbar spondylosis*, *chronic L5 spondylosis and Grade 1 spondylolisthesis*. As a result, he was prescribed several medicines and was advised to continue his rehabilitation on an out-patient basis. Following orders from the company-designated physician, seafarer continued his treatment and rehabilitation and had regular check-ups. While his back improved, he continued to suffer from on and off bouts of pain on his neck.

On 6 November 2008, the company-designated physician conducted a repeat EMG-NCV study on the seafarer and found that he was suffering from "*L5 radiculopathy.*" As a result, seafarer was advised to continue the rehabilitation and to return after three (3) weeks, ***suggesting*** at the same time the following disability grading: (a) Grade 12 (neck) – slight stiffness of the neck and (b) Grade 11 (chest-trunk-spine) – slight rigidity or 1/3 loss of motion or lifting power of the trunk.

Nevertheless, the company-designated doctors suggested for the seafarer to continue his medical treatment and return for follow up examinations. Thereafter, the seafarer reported for his medical consultations but no longer returned to the doctor on the scheduled 3 February 2009 examination. Instead, he sought the opinion of his own physician who declared him permanently disabled and unfit to be a seaman in whatever capacity.

On the basis of the opinion of his own doctor, seafarer claimed disability compensation from the company. The company offered to compensate the seafarer based on the disability gradings (grades "11" and "12") assessed by the company-designated doctor. Seafarer rejected said offer as he insisted on payment of full disability benefits.

A formal claim was filed before the Labor Arbiter who awarded the seafarer with full disability benefits of US$60,000 considering that the seafarer was now permanently and totally disabled considering that he can no longer return to his former job.

Upon appeal of the company with the NLRC, the award was modified and reduced to US$7,465 which is the equivalent of a grade "11" disability. The NLRC held that the findings of the company-designated physician were more credible than that of the seaman's personal doctor. The NLRC limited the award to grade "11" which is the higher of the two gradings issued by the company-designated physician.

Upon petition by the seafarer to the Court of Appeals, the NLRC decision was affirmed. The Court of Appeals further noted that from the time seafarer suffered his injury on 19 July 2008, until the time he was given a disability grading

by the company-designated physicians on 6 November 2008, only 110 days had lapsed. Then, when seafarer instituted his labor complaint, only 196 days had lapsed from the time he sustained his injury. Consequently, the Court of Appeals ruled that the required 240-day period under current regulations had not yet expired.

Upon petition, the Supreme Court affirmed the award of disability benefits based on the disability gradings issued by the company-designated physicians.

The complaint is premature

The Supreme Court held that the seafarer was still under treatment and examination, he stopped reporting the company-designated doctor for which reason, no final and definitive medical assessment was issued. While the company-designated physician suggested a disability grading of "Grade 12 (neck) – slight stiffness of the neck and Grade 11 (chest-trunk-spine) – slight rigidity or 1/3 loss of motion or lifting power of the trunk," for seafarer's condition, this was only tentatively given and **only as a suggestion**, from the results of the various examinations conducted on him as of that time.

Noteworthy that from the time seafarer sustained his injury until a disability grading was issued, only 110 days had lapsed. At the time he instituted his labor complaint on 11 February 2009, only 196 days had lapsed. Clearly, the company was deprived of the opportunity to determine whether his claim for permanent total disability benefits had any merit.

The findings of seafarer's doctor are not credible.

A reading of the medical report of seafarer's doctor shows that it was not supported by any diagnostic tests and/or procedures sufficient to refute the results of those administered to seafarer by the company-designated physicians. Seaman's doctor's assessment of "permanent disability" merely hinged on physical examination. Moreover, said doctor's conclusion that seafarer suffered from "permanent disability" and that he was unfit to serve as a seaman in any capacity was anchored primarily on seafarer's own narration of the results of his previous examination with the company-designated doctors, which turned out to be inaccurate. Thus, the bases for seafarer's doctors' conclusion were inexistent.

Causal connection between the injury and employment was not established by substantial evidence

The Supreme Court held that while work-relatedness is indeed presumed, the legal presumption in Section 20(B)(4) of the POEA-SEC (now Section 20 A 4 of the 2010 POEA-SEC) should be read together with the requirements specified by Section 32-A of the same contract, in that Section 20(B)(4) only affords a disputable presumption.

Thus, for disability to be compensable under Section 20 (B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to simply establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a **causal connection** between the seafarer's illness or injury and the work for which he had been contracted.

In this case, there is no evidence to prove satisfaction of the said conditions. Seafarer's claim of permanent total disability as a result of his neck and back condition is anchored solely on his bare and uncorroborated insistence that he was declared fit to work as seaman after his Pre-Employment Medical Examination *(PEME);* that he acquired his illness during the term of his employment with the company; and that his illness was a necessary result of his collapse after being exposed to heat while in the boiler room and because of "the 40 degree Celsius temperatures of the Dubai summertime."

There is even no substantiation at all that his collapse while on board the vessel directly caused, or at least increased the risk of, his neck and back injury. No medical history and/or record prior to his deployment on board the vessel or any evidence as to the nature of his work was ever presented or alluded to in order to demonstrate that the working conditions on board the said vessel increased the risk of contracting his illness.

In the absence of substantial evidence, the Court cannot just presume that his job caused his illness or aggravated any pre-existing condition he might have had. It is of no moment that seafarer passed his PEME.

Alone Amar P. Tagle vs. Anglo-Eastern Crew Management, Phils., Inc., Anglo- Eastern Crew Management (Asia) and Capt. Gregorio B. Sialsa; G.R. No. 209302; Third Division; July 9, 2014 ; Supreme Court Associate Justice Jose Catral Mendoza, Ponente.

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