Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ANDRES L. DIZON,
Petitioner,

- *versus* -

NAESS SHIPPING PHILIPPINES, INC. and DOLE UK (Ltd.),
Respondents.

G.R. No. 201834

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
PEREZ,
REYES, and
JARDELEZA,* *JJ.*

Promulgated:

June 1, 2016

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D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* filed by petitioner Andres L. Dizon assailing the Decision[1] dated February 28, 2012 and Resolution[2] dated May 9, 2012 of the Court of Appeals (*CA*) which affirmed the Decision[3] and Resolution dated October 30, 2009 and February 26, 2010, respectively, of the National Labor Relations Commission (*NLRC*) which declared respondents Naess Shipping Phils. Inc. and DOLE UK (Ltd.) not liable to pay petitioner the amount of US$66,000.00 for disability benefits and medical expenses.

The antecedents are:

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* On leave.

1 Penned by Associate Justice Florito S. Macalino, with Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato, Jr., concurring; *rollo*, pp. 25-30.

2 *Id.* at 33-34.

3 Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; CA *rollo*, pp. 32-39.

Since 1976, respondents Naess Shipping Phils. Inc. and DOLE UK (Ltd.) hired petitioner Andres L. Dizon as cook for its various vessels until the termination of his contract in 2007.[4]

On March 6, 2006, Dizon was hired as Chief Cook and boarded DOLE COLOMBIA under the following terms and conditions:[5]

Contract Duration	:	9 months
Position	:	Chief Cook
Basic monthly salary	:	US$670.00
Hours of work	:	44 hours/week
Overtime	:	US$373.00 GOT in excess of 85 hours US$4.38/hour US$5.01/hour in excess of 90 hours
Vacation leave with pay	:	9 days/month
Point of hire	:	Manila

Dizon disembarked after completing his contract on February 14, 2007. He then went on a vacation, and was called for another employment contract after a month.[6]

When he underwent pre-employment medical examination in March 2007, he was declared unfit for sea duties due to uncontrolled hypertension and coronary artery disease as certified by the doctors of the Marine Medical and Laboratory Clinic (*MMLC*).[7] He was referred to undergo stress test and electrocardiogram (*ECG*). He then went to PMP Diagnostic Center Inc. for diagnostic tests.[8] It was also recommended that he undergo Angioplasty.[9] His treadmill stress test showed that he had *Abnormal Stress* Echocardiography.[10] The result of his treadmill stress test stated:

> Abnormal Stress Echocardiography at 10.2 METS with evidence of stress-inducible ischemic myocardium at risk involving the left anterior descending and right coronary artery territories.[11]

Unconvinced with the doctor's declaration of unfitness, Dizon went to the Seamen's Hospital and submitted himself for another examination.[12]

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4 *Rollo*, p 26.
5 *Id.* at 6-7.
6 *Supra* note 4.
7 CA *rollo* at 34.
8 *Id.* at 44.
9 *Id.*
10 *Id.* at 33.
11 *Id.* at 65.
12 *Supra* note 7.

The result indicated that he was fit for sea duty.[13] He returned to MMLC and requested for a re-examination, but the same was denied.[14]

In November 2008, Dizon filed a complaint before the Department of Labor and Employment, but subsequently withdrew the same.[15]

On January 6, 2009, Dizon filed a complaint against respondents for payment of total and permanent disability benefits, sickness allowance, reimbursement of medical, hospital and transportation expenses, moral damages, attorney's fees and interest before the Labor Arbiter (*LA*).[16]

Claiming that he is entitled to permanent total disability benefit, Dizon alleged that he incurred his illness while on board the respondents' vessel.[17] He claimed that his working conditions on board were characterized by stress, heavy work load, and over fatigue.[18] He averred that Dr. Marie T. Magno re-evaluated his actual medical condition on February 16, 2009 and declared him unfit to resume his work as seafarer since his heart condition is unable to tolerate moderate to severe exertions.[19]

Dizon asserted that he disclosed his hypertension prior to his last contract in 2006, but was certified fit for duty for the nine-month employment contract.[20]

For their part, respondents disavowed liability for Dizon's illness maintaining that he finished and completed his contract on board their vessel *Dole Colombia* without any incident, and that his sickness was not work-related.[21] They rejected the redeployment of Dizon since he was declared unfit for sea duty in his pre-employment medical examination. Respondents claimed that they were only exercising their freedom to choose which employees to hire.[22]

In a Decision[23] dated May 29, 2009, the LA ruled that Dizon is entitled to full disability benefits. The LA held that it can be logically concluded that Dizon's illness arose during the period of his employment since less than a month transpired between his repatriation and the pre-

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13 *Id.*
14 *Id.*
15 *Id.* at 35.
16 *Id.* at 111-112.
17 *Supra* note 8.
18 *Id.*
19 *Id.* at 68.
20 *Supra* note 8.
21 *Supra* note 7.
22 *Id.*
23 Penned by Labor Arbiter Veneranda V. Guerrero, *id.* at 43-50.

employment medical examination.[24] This disposition finds support from the undisputed fact that Dizon had been continuously employed by respondents for 30 years while performing similar duties under the same working conditions.[25] The LA found that the respondents failed to adduce evidence to overcome the presumption of compensability in favor of the seafarer. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering Naess Shipping Phils. Inc. and/ or DOLE UK (Ltd.), jointly and severally, to pay complainant Andres L. Dizon the Philippine peso equivalent at the time of actual payment of US DOLLARS SIXTY THOUSAND DOLLARS (US$60,000.00) representing permanent total disability benefits, plus ten percent (10%) thereof as and for attorney's fees or the aggregate amount of US DOLLARS SIXTY SIX THOUSAND (US$66,000.00).
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> All other claims are dismissed for lack of merit.
>
> **SO ORDERED**.[26]

On appeal, the NLRC reversed and set aside the decision of LA for finding that Dizon did not comply with the mandatory post-employment medical examination within three working days upon arrival.[27] The NLRC held that Dizon failed to prove through substantial evidence that his working conditions increased the risk of contracting coronary artery disease. The *fallo* of the decision reads:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision of the Labor Arbiter declaring Naess Shipping Phils. Inc. and/or DOLE UK (Ltd.) jointly and severally liable to pay Andres L. Dizon US Dollars Sixty Six Thousand Pesos (US$66,000.00) is **REVERSED** and **SET ASIDE**. However, for humanitarian considerations, taking into account complainant's unblemished record of thirty (30) years of service to respondents, the latter are hereby directed to pay Fifty Thousand Pesos (₱50,000.00) financial assistance to complainant.
>
> **SO ORDERED**.[28]

Aggrieved, Dizon assailed the NLRC's reversal of the LA's decision before the CA through a petition for *certiorari*. The CA denied the petition and affirmed the decision of the NLRC. The dispositive portion of the decision reads:

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24 *Id.* at 47.
25 *Id.*
26 *Id.* at 59-50.
27 *Id.* at 37.
28 *Supra* note 3, at 39.

> **WHEREFORE**, premises considered, the petition is DENIED. The October 30, 2009 Decision and the February 26, 2010 Resolution of the Public Respondent National Labor Relations Commission are **AFFIRMED**.
>
> **SO ORDERED**.[29]

Upon denial of his motion for reconsideration, Dizon filed before this Court the present petition raising the following issues:

> I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN RULING THAT PETITIONER IS NOT ENTITLED TO DISABILITY BENEFITS FOR FAILURE TO REPORT WITHIN 72 HOURS FROM HIS REPATRIATION.
>
> II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS QUESTION OF LAW IN RULING THAT THE ILLNESS OF THE PETITIONER IS NOT WORK RELATED DESPITE NOT HAVING FACTUAL NOR MEDICAL BASIS.
>
> III. THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AMOUNTING TO GRAVE ABUSE OF DISCRETION IN NOT AWARDING MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.

Simply, the issue to be resolved is whether the petitioner is entitled to disability benefits.

We answer in the negative and deny the instant petition.

Dizon asseverates that his right to claim total and permanent disability benefits is not forfeited when he failed to submit himself to a post-employment medical examination before the company-designated doctor within three working days upon his arrival because such failure to comply would only forfeit his claims for the 120 days sickness allowance.[30]

Settled is the rule that the entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract.[31]

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29 *Supra* note 1, at 30.

30 *Rollo*, p. 11.

31 *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016.

Section 20(B), paragraph 3 of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*) reads:[32]

> Section 20-B. *Compensation and Benefits for Injury or Illness.*—
>
> The liabilities of the employer when the seafarer suffers **work-related** injury or illness during the term of his contract are as follows:
>
> x x x x
>
> 3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days.
>
> For this purpose, the **seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so**, in which case a written notice to the agency with the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.
>
> x x x

The law specifically declares that failure to comply with the mandatory reporting requirement shall result in the seafarer's forfeiture of his right to claim benefits thereunder.[33] In *Coastal Safeway Marine Services, Inc. v. Esguerra*,[34] this Court expounded on the mandatory reporting requirement provided under the POEA-SEC and the consequence for failure of the seaman to comply with the requirement, *viz.*:

> The foregoing provision has been interpreted to mean that it is the **company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.** Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice

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[32] Department Order No. 4, series of 2000, "*Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels.*"

[33] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, April 20, 2015

[34] G.R. No. 185352, August 10, 2011, 671 Phil 56-70.

> regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. **For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.**[35]

Moreover, that the three-day post employment medical examination is mandatory brooks no argument, as held in *Interorient Maritime Enterprises, Inc. v. Creer*:[36]

> The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that **reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult.** To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[37]

In the past, this Court repeatedly denied the payment of disability benefits to seamen who failed to comply with the mandatory reporting and examination requirement.[38] Thus, the three-day period from return of the seafarer or sign-off from the vessel, whether to undergo a post-employment medical examination or report the seafarer's physical incapacity, should always be complied with to determine whether the injury or illness is work-related.[39]

To the mind of this Court, Dizon failed to substantiate his entitlement to disability benefits for a work-related illness under the POEA-SEC. It appears from the records that Dizon did not submit himself to a post employment medical examination within three days from his arrival after completing his last contract with the respondents. Dizon does not proffer an explanation or reason for his failure to comply with the said mandatory requirement given that he claims that his illness purportedly occurred during the term of his contract.

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35 *Id.* (Citation omitted; emphasis supplied)
36 G.R. No. 181921, September 17, 2014.
37 *Id.* (Emphasis supplied)
38 *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 678 Phil 938-951.
39 *Supra* note 33.

Instead, Dizon alleges that the failure to comply with the mandatory reporting and examination requirement merely forfeits his claim for sickness allowance. To substantiate his claim, he invokes the following rules in statutory construction: (a) Courts should not incorporate matters not provided in law by judicial ruling; (b) The court must look into the spirit of the law or the reason for it in construing a statute; (c) When the language admits of more than one interpretation that which tends to give effect to the manifest object of the law should be adopted; and (d) Statutes must be construed to avoid injustice.

We find Dizon's allegation that the terms "above benefits" in Section 20(B), paragraph 3 of POEA-SEC refer only to sickness compensation, thus, the mandatory reporting requirement is applicable only to claim for sickness allowance specious.

In fine, this Court finds Dizon's failure to comply with the three-day post-employment medical examination fatal to his cause. We cannot over-emphasize that failure to comply with the mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC, thus, not confined to claim for sickness compensation mentioned in Section 20(B), paragraph 3 of the 2000 POEA-SEC.

Dizon asserts that his coronary artery disease is work-related given that his pre-employment medical examination was less than a month since his repatriation.[40] He alleges that the medical records that respondents presented did not indicate that his illness has been declared by the company-designated doctor as not work-related.[41] Dizon insists that the working conditions prevailing during his employment on board the vessel are characterized, among others, by stress, heavy workload, over-fatigue.[42]

It is settled that a person who claims entitlement to the benefits provided by law must establish his right thereto by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[43] Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract.[44] Dizon has the burden to prove through substantial evidence that he is entitled to disability benefits, which includes evidence that his illness is work-related and existed during the terms of his contract.

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40 *Rollo*, p. 14.
41 *Id.* at 15.
42 *Id.* at 16.
43 *Transmarine Carriers, Inc. v. Aligway Phil.*, G.R. No. 201793, September 16, 2015.
44 *Id.*

Section 20 (B), paragraph 6 of the 2000 POEA-SEC provides:

> x x x x
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> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted x x x

For disability to be compensable under Section 20 (B) of the 2000 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**.[45] It is not sufficient to 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.[46]

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the describe[d] risks;
3. The disease was contacted within a period of exposure and under such other factors necessary to contract it; [and]
4. There was no notorious negligence on the part of the seafarer.

Work-related illness, as defined in the 2000 POEA-SEC, is any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.[47]

Section 32-A (11) of the 2000 POEA-SEC expressly considers Cardiovascular Disease as an occupational disease if it was contracted under any of the following instances, to wit:

> a. If the heart disease was known to have been present during employment, there must proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

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45 *Supra* note 31. (Emphasis supplied).
46 *Id.*
47 *Id.*

b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.
c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

As can be gleaned from the above provision, it is incumbent upon the seafarer to show that he developed the cardiovascular disease under any of the three conditions to constitute the same as an occupational disease for which a seafarer may claim compensation.[48]

It is stressed that Dizon's repatriation was due to expiration of his employment contract and not because of medical reasons. His coronary artery disease which rendered him unfit for sea duty was diagnosed during a pre-employment medical examination and not in a post-employment medical examination as provided by law.

It is crucial that Dizon present concrete proof showing that he indeed acquired or contracted the illness which resulted in his disability during the term of his employment contract. Other than his uncorroborated and self-serving allegation that his ailment was work-related because his pre-employment medical examination was only less than a month from his last contract, Dizon failed to demonstrate that his illness developed under any of the conditions set forth in the POEA-SEC for the said to be considered as a compensable occupational disease.

Records are bereft of evidence to establish that Dizon, being subjected to strain at work as a Chief Cook, manifested any symptoms or signs of heart illness in the performance of his work during the term of his contract, and that such symptoms persisted. Although his hypertension was known to the respondents, there was no evidence to prove that the strain caused by Dizon's work aggravated his heart condition. There was no proof that he reported his illness while on board and after his repatriation. He did not present any written note, request, or record about any medical check-up, consultation or treatment during the term of his contract.

We note that all that Dizon put forward is a dogged insistence that his working conditions are proof enough that his work as a Chief Cook contributed to his contracting the disease, and that the short period between his repatriation and the pre employment medical examination validates his claim that he contracted his illness during the term of his contract and is work-related.

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48 *Bautista v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206032, August 19, 2015

This Court is well aware of the principle that, consistent with the purposes underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect.[49] However, this catchphrase cannot be taken to sanction the award of disability benefits and sickness allowance based on flimsy evidence and even in the face of an unjustified non-compliance with the three-day mandatory reporting requirement under the POEA-SEC.[50]

While this Court sympathizes with Dizon's predicament, we are, however, constrained to deny the instant petition for failing to establish by substantial evidence his entitlement to disability benefits, having failed to undergo a post-employment medical examination as required under the law without valid or justifiable reason, and to establish that his illness was contracted during the term of his contract and that the same was work-related. Since it is established that Dizon is not entitled to disability benefits, it follows that he is also not entitled to any claim for moral and exemplary damages.

WHEREFORE, the petition for review on *certiorari* dated May 22, 2012 filed by petitioner Andres L. Dizon is hereby **DENIED.** The Decision dated February 28, 2012 and Resolution dated May 9, 2012 of the Court of Appeals in CA-G.R. SP No. 114226 affirming the Decision and Resolution dated October 30, 2009 and February 26, 2010, respectively, of the National Labor Relations Commission in NLRC NCR CASE No. (OFW-M) 01-00038-09 are **SUSTAINED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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49 *Supra* note 32.
50 *Id.*

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

On leave
FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 21 2016