Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 3, 2014** *which reads as follows:*

"G.R. No. 214734 (Jacinto S. Lao, Jr., petitioner, v. Reinier Pacific International Shipping Inc., Neptune Shipmanagement Services (PTE) Limited/Singapore, Amado L. Castro, *respondents*)

G.R. No. 214709 (Reinier Pacific International Shipping Inc., Neptune Shipmanagement Services (PTE) Limited/Singapore, Amado L. Castro, *petitioners*, *v.* Jacinto S. Lao, Jr., *respondent.*)

Before us are separate petitions for review on *certiorari* assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 133980 which reinstated the Decision of the National Labor Relations Commission (NLRC) through Labor Arbiter, Arden S. Anni, in NLRC NCR OFW CASE NO. (M)05-06963-12 granting the complaint of Jacinto S. Lao, Jr. (Lao) for payment of total and permanent disability benefit of US$60,000.00 as provided in Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) plus 10% thereof as attorney's fees.[2]

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1 *Rollo* in G.R. No. 214709, pp. 59-80.
2 Id. at 367-375.

In G.R. No. 214709, petitioners Reinier Pacific International Shipping, Inc. (Reinier Shipping), Neptune Shipmanagement Services (PTE) Limited/Singapore (Neptune Services), and Amado L. Castro assail the appellate court's affirmation of the labor tribunals' uniform rulings of Lao's entitlement to permanent and total disability benefits plus 10% thereof as attorney's fees.

Lao, in G.R. No. 214734, on the other hand, take exception to the appellate court's ruling that his entitlement to permanent and total disability benefit fell under the POEA-SEC instead of the Collective Bargaining Agreement (CBA) which provided for a higher amount of US$100,000.00.[3]

Before anything else, we consolidate these petitions as they arise out of the same set of facts and which both assail the Decision of the Court of Appeals in CA-G.R. SP No. 133980, albeit raising different issues.

The facts:

Since 2008, Lao was consistently and continuously employed by Reinier Shipping. For his last employment contract, Lao was rehired as Oiler for a period of nine (9) months for and on behalf of Reinier Shipping's principal, Neptune Singapore, on board the vessel *APL Holland* to commence on 25 June 2014.

Prior to his deployment, Lao underwent an extensive Pre-Employment Medical Examination (PEME) and was declared fit for sea service. As an Oiler, Lao's duties included: (1) performing maintenance work on the vessel's engine room; (2) assisting the duty engineer at watch; and (3) assisting the engineers in overhauling, cleaning and painting the vessel's machinery.[4]

Sometime in the second week of December 2011, while overhauling the piston crown in the vessel's machinery, Lao exerted tremendous effort in removing the piston crown and immediately thereafter, felt severe pain on his right shoulder. Due to extreme debilitating pain, Lao was no longer able to continue his tasks on board the vessel. Lao was referred to the Pacific Hospital of Long Beach in California where he was treated. Lao was allowed to return to the vessel with doctor's orders to rest for three (3) days and to continue work, performing light duties only.

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3 *Rollo* in G.R. No. 214734, p. 18.
4 Id. at 9-10.

Despite obeying doctor's specific orders, Lao's medical condition did not improve as the pain on his right shoulder persisted, affecting his job as an Oiler. Since his condition eventually deteriorated and he was no longer fit to continue his work on board, Lao was repatriated to Manila on 7 January 2012.[5] Upon his arrival, Lao reported to his local agency which referred him to the company-designated physician at the Metropolitan Medical Center (MMC) where he was continuously treated as an outpatient.

Lao underwent several medical tests which results revealed that he had a "mild AC joint arthrosis, mild tendinosis involving the distal supraspinatus tendon, mild thickening and increased T2 signal involving the subacromial-subdeltoid bursa, consistent with inflammation, and findings suggestive of a small SLAP 1-2 tear." Lao also consulted with an independent medical specialist and practitioner, Dr. Manuel C. Jacinto, Jr., who assessed Lao's disability as total and permanent and that its cause was work-related or work-aggravated.

Consequently, Lao filed a complaint[6] dated 7 May 2012 before the NLRC against Reinier Shipping, Neptune Services and Amado Castro for payment of the unexpired portion of the contract, permanent disability compensation in accordance with the CBA, moral and exemplary damages, and attorney's fees.

Reinier Shipping, Neptune Services and Amado Castro refuted Lao's claims of a work-related or work-aggravated ailment. They argued that the right inferior scapular mass of Lao was already noted in the PEME and company-designated physicians, including the referred orthopedic surgeon, who examined and treated Lao, opined that the lipoma is neither work-related nor related to his right shoulder condition. On the whole, based on the medical opinions of the company-designated physician and orthopedic surgeon, petitioners in G.R. No. 214709 averred that Lao cannot claim permanent and total disability based on the incidental finding of lipoma which is not work-related. Petitioners in G.R. No. 214709 pointed out that the lipoma was a pre-existing condition and its subsequent excision negated a finding of permanent and total disability. Petitioners in G.R. No. 214709 further argued that the governing CBA does not allow compensation to any injury not arising from an accident, contrary to the factual circumstances in this case.

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5 Id. at 12.

6 *Rollo* in G.R. No. 214709, pp. 145-148.

The Labor Arbiter granted the complaint of Lao, ruled that Lao fell under the category of permanent and total disability equivalent to Grade 1 under the POEA-SEC, and awarded Lao US$60,000.00 as permanent disability compensation thereunder, and 10% thereof as attorney's fees.[7]

On appeal by both parties, the NLRC affirmed the Labor Arbiter's findings that Lao is entitled to total and permanent disability benefits. However, the NLRC applied the CBA between the parties instead of the POEA-SEC, awarding Lao US$100,000.00 as total and permanent disability benefits instead of the US$60,000.00 under the POEA-SEC. The NLRC found that the injury on Lao's right shoulder, the dislocation or complete tear-off of glenoid (SLAP 1-2 tear), was the result of an accident, albeit not categorically termed as such.[8]

Petitioners in G.R. No. 214709 filed a petition for *certiorari* before the Court of Appeals asserting grave abuse of discretion in the NLRC's ruling that Lao was entitled to permanent and total disability benefits and the consequent award of US$100,000.00 pursuant to the CBA.

The appellate court partly granted the petition for *certiorari* and reinstated the ruling of the Labor Arbiter on the application of the POEA-SEC entitling Lao to an award of US$60,000.00 instead of US$100,000.00 as per the CBA. The Court of Appeals found that the injury of Lao was work-related and resulted in his permanent and total disability which was not, however, caused by an accident.

Hence, these consolidated petitions for review on *certiorari* separately filed by both parties.

Whether the Court of Appeals erred in affirming Lao's entitlement to permanent and total disability benefits under the POEA-SEC.

On the first issue of whether Lao's injury was work-related, thus entitling him to permanent and total disability benefits, we do not find reversible error and adhere to the 1-2-3 rule in Labor Cases.

We are hard pressed to reverse the factual findings of the labor tribunals, as affirmed by the appellate court, that the injury on Lao's right shoulder was work-related or work-aggravated entitling him to permanent

7 Id. at 367-375.
8 Id. at 454-470.

and total disability benefit. Thus, we quote with favor the disquisition of the appellate court:

> Even granting *arguendo* that [Lao's] lipoma (right inferior scapular mass) pre-existed before his last contract, petitioners [in G.R. No. 214709], fully aware of the same, still rehired him. The said condition was obviously aggravated in the performance of [Lao's] heavy work as an Oiler, as he had been continuously rehired by petitioners [in G.R. No. 214709] from 2008 up to 2011. The fact that the same was excised on 13 March 2012 does not alter the fact that it physically affected the medical condition of [Lao's] right shoulder which has been subjected to strenuous physical work on board Neptune's vessel. It is well-settled that for a disability to be compensable, the seafarer must establish that there exists a "reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment, or at the very least, aggravation of any pre-existing condition he might have had." Thus, the strenuous activities performed by [Lao] on board the vessel contributed to the deterioration of his right shoulder condition.[9]

We likewise do not find reversible error on the Court of Appeals' finding that the injury on Lao's right shoulder cannot be characterized as an accident such that the CBA between the parties was inapplicable.

Paragraph 26 (1), Part VI of the Memorandum of the Collective Agreement Between Neptune and Singapore Organization of Seamen specifically provides that "(t)he Company shall pay compensation to a seaman for any injury or death arising from an accident while in the employment of the company."

It is undisputed that Lao felt sudden pain on his right shoulder as he was overhauling the vessel's machinery and he exerted tremendous effort to remove the piston crown. There was no external circumstance, apart from Lao's regular performance of his duties, which occurred causing Lao to experience sudden paid on his right shoulder. Plainly, the injury to Lao was not the result of an accident.

As aptly ruled by the appellate court:

> "Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as: [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if

[9] Id. at 73.

happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the p[e]rson to whom it happens. x x x The word may be employed as denoting a calamity, a casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of event."

Here, as related by [Lao] himself, while he was overhauling the piston crown of APL Holland's machinery sometime in the second week of December 2011, he exerted tremendous force in removing the piston crown, as a consequence of which he suddenly felt severe and extreme pain in his right shoulder. To Our mind, the injury to his right shoulder cannot be considered as an accident, that is an unlook for mishap, occurrence or fortuitous event, because the injury resulted from the performance of a duty. Hence, the injury cannot be viewed as unusual under the circumstances, and it is not synonymous with the term "accident" as defined above. It is common knowledge that [Lao's] strenuous physical work as an Oiler on board the vessel can cause injury on his shoulder. Thus, [the NLRC's] finding that the incident is an accident and consequently awarding him US$100,000.00 under the CBA, have no factual and legal bases.[10]

WHEREFORE, the petitions in G.R. Nos. 214709 and 214734 are **DENIED** for no reversible error in the Court of Appeals' Decision in CA-G.R. SP No. 133980.

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court

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[10] Id. at 76.

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