Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 27, 2020** *which reads as follows:*

"G.R. No. 249047 – Scanmar Maritime Agency, Inc. and/or SAB-Crewchart Shipmanagement, Limited v. Ever M. Garcia

The petition assails the Court of Appeals' Decision dated December 12, 2018 and Resolution dated August 20, 2019 in CA-G.R. SP No. 156493. The appellate court upheld the award of permanent and total disability benefits, sickness allowance, and attorney's fees to respondent.

Antecedents

On January 20, 2016, respondent was hired by petitioners as an able seaman for a period of six (6) months on board the vessel Mergus. While working on board, respondent complained of pain in his abdominal area which radiated to his back. He also suffered fever which hampered his mobility. He was taken to a hospital in Poland but was eventually repatriated for medical reasons on March 23, 2016. When he arrived, he was referred to the company-designated physician who diagnosed him with "*colonic diverticulosis, descending and rectosigmoid colon; diverticulosis, descending colon.*" On April 5, 2016, the company-designated physician issued a medical report that respondent's condition was not work-related as *diverticulosis* was usually associated with deficient fiber intake, hereditary predisposition, and inherent weakness of the colonic wall. Petitioners, nonetheless, continued to help with respondent's treatment. Respondent was given antibiotics and was advised to increase oral fluid intake and maintain a high fiber diet.

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Subsequently, on July 25, 2016, the company-designated physician issued an opinion stating respondent's condition was not work-related; respondent had reached maximum medical improvement; and respondent's disability was rated Grade 12.

Dissatisfied, respondent sought the medical opinion of an independent physician. Based on the result of said independent physician's examination, respondent was still suffering from episodic pain and cramps. More, due to the "complexities of the treatment and the dietary requirement," respondent was no longer fit to be employed as a seaman. When petitioners ignored respondent's request for a meeting, he brought the matter to the Panel of Voluntary Arbitrators (PVA) of the National Conciliation and Mediation Board (NCMB).

The PVA-NCMB Ruling: By Decision dated January 5, 2018, the PVA-NCMB ordered petitioners to pay USD60,000.00 as full and permanent disability benefits, USD859.00 as unpaid sickness allowance, and 10% of the total monetary award as attorney's fees.

The Court of Appeals' Ruling: On petitioners' appeal, the Court of Appeals, through its Decision dated December 12, 2018, affirmed. It found that (a) the company-designated physician failed to issue a final assessment within 120 days and (b) his assessment did not categorically state whether respondent was still fit to work. The appellate court denied petitioners' motion for reconsideration by Resolution dated August 20, 2019.

The Present Petition

Petitioners now seek to reverse and set aside the issuances of the appellate court, on the grounds: (a) respondent failed to show that his condition was work-related and compensable; (b) the company-designated physician had 240 days to evaluate respondent's medical condition and duly issued his final assessment within that period; (c) the company-designated physician's assessment that respondent only had partial Grade 12 disability was binding on respondent; and (d) respondent was not entitled to sickness allowance as his condition was not work-related nor to the award of attorney's fees considering that petitioners were not shown to have acted in bad faith.

The Court's Ruling

As a general rule, only questions of law raised *via* Rule 45 of the Rules of Court are reviewable by this Court. The test of whether a

question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[1]

Petitioners entreat the Court to pass upon the following issues: (a) whether respondent proved that his medical condition was work-related; (b) whether the company-designated physician had 120 days or 240 days to assess respondent; (c) whether the assessment issued by the company-designated physician was a final, definitive assessment given within the relevant period as to be binding on respondent; and (d) whether there were valid bases for the awards of sickness allowance and attorney's fees in favor of respondent. These are clearly factual issues that require the Court to weigh and evaluate anew the evidence of the parties; this the Court cannot do.

To begin with, factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[2] This is true as well when factual findings of the Panel of Voluntary Arbitrators are affirmed by the Court of Appeals; they are binding on this Court and will not be disturbed on appeal.[3] While there are jurisprudentially recognized exceptions to this rule,[4] none of them exists here.

In any event, petitioners failed to show that the Court of Appeals committed any reversible error in affirming the monetary awards in favor of respondent. Petitioners do not even attempt to present any basis for their assertion that the lower tribunals were guilty of a misapprehension of facts. They did not attach to the petition copies of the PVA-NCMB Decision, the alleged assessments/reports done by the company-designated physician, or such material portions of the record that will support their claims as required by Section 4, Rule 45 of the Rules of Court. This deficiency in the petition is by itself sufficient ground for its dismissal.[5]

By petitioners' own omission, there is no reason for this Court to overturn the rulings of the PVA-NCMB, as affirmed by the Court

1 *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 586 (2013).
2 *Skippers United Pacific, Inc. v. Lagne*, G.R. No. 217036, August 20, 2018.
3 *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018.
4 *See, Aldaba v. Career Philippines Shipmanagement, Inc.*, 811 Phil. 486 (2017).
5 *See,* Section 5, Rule 45 of the Rules of Court.

of Appeals, including the work-relatedness of respondent's medical condition. Further, jurisprudence requires that for the period of assessment to be extended to 240 days the following rules must be observed:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[6]

Under these rules, the company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days.[7] We have no basis to overturn the Court of Appeals' finding that petitioners did not adequately justify the extension of the period of assessment to 240 days.

Even assuming that the assessment period had been validly extended to 240 days, there was still no final, definitive assessment of respondent's fitness or unfitness to work as required by jurisprudence.[8] The petition itself alleges that the company-designated physician equivocally opined that "*if* entitled to

[6] *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362-363 (2015).
[7] *Marlow Navigation Philippines, Inc. v. Osias,* 773 Phil. 428, 442 (2015).
[8] See, for example, *Orient Hope Agencies, Inc. v. Jara,* G.R. No. 204307, June 6, 2018.

disability" respondent's disability rating is Grade 12. The Court of Appeals also noted that although the company-designated physician's final assessment stated that respondent had reached "maximum medical improvement" the latter was nonetheless required to come back for re-evaluation.

Finally, we uphold the award of sickness allowance and attorney's fees. Petitioners' claim that respondent's illness is not work-related will not exempt it from payment of sickness allowance. As held in ***Transocean Ship Management (Phils.), Inc. v. Vedad,***[9] a seafarer is entitled to sickness allowance pending assessment and declaration by the company-designated physician on the work-relatedness of his ailment as such allowance is meant to cover his needs since he is unable to work while undergoing medical treatment. On the other hand, the existence of bad faith is not the only instance when attorney's fees may be awarded. Article 2208 of the Civil Code expressly authorizes the payment of attorney's fees when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest and in actions for indemnity under workmen's compensation and employer's liability laws.[10]

WHEREFORE, the petition is **DENIED** and the Court of Appeals' Decision dated December 12, 2018 and Resolution dated August 20, 2019 in CA-G.R. SP No. 156493 **AFFIRMED**.

SO ORDERED." ***Lopez, J.,*** took no part; ***Zalameda, J.,*** designated Additional Member per Raffle dated January 20, 2020.

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court
1/27/19
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9 707 Phil. 194, 204-205 (2013).
10 *See Jebsen Maritime, Inc. v. Gavina*, G.R. No. 199052, June 26, 2019.