Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 18, 2020** *which reads as follows:*

"G.R. No. 235977 - (EVIC HUMAN RESOURCE MANAGEMENT, INC. and/or MA. VICTORIA C. NICOLAS, *petitioners* v. JOCEL B. CECILIO, *respondent*). – This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, as amended, assailing the Decision[2] dated August 17, 2017 and Resolution[3] dated November 28, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145677. The assailed issuances affirmed the December 2, 2015 Decision and April 13, 2016 Resolution of the National Conciliation and Mediation Board (NCMB) Panel of Voluntary Arbitrators (PVA) in MVA-092-RCMB-NCR-075-05-07-2015 (RCMB-NCR-MNL-NTA 05-0048-2015).

Antecedents

On August 27, 2014, Jocel B. Cecilio (respondent) entered into a Contract of Employment[4] with petitioner Evic Human Resource Management, Inc. (Evic) in behalf of its principal, Athenian Shipmanagement Inc. (Athenian), for respondent to serve as Able Seaman on board the vessel M/V Sea Rose for a period of seven months. Notwithstanding the date indicated in the contract, respondent had actually commenced his duties on August 20, 2014.

On September 21, 2014, at around 6:30 in the morning, while respondent was lifting one of the ropes on M/V Sea Rose, he suddenly felt pain on his back. After reporting this incident to the Second Officer,

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1 *Rollo*, pp. 3-35.
2 Id. at 45-53; penned by Associate Justice Ricardo R. Rosario (now a Member of this Court) and concurred in by Associate Justices Ramon A. Cruz and Pablito A. Perez.
3 Id. at 55.
4 Id. at 108.

the Captain of the vessel immediately prepared an Accident Report.[5] The medical officer of M/V Sea Rose then issued a Medical Report[6] recommending respondent's treatment onshore. Thereafter, on September 23, 2014, respondent was brought to the Cho Ray Hospital in Ho Chi Minh City, Vietnam, which, in turn, issued a Medical Report[7] recommending respondent to "avoid strong activities, rest on the bed" and that he be examined by an orthopedist or neurosurgical doctor. On November 19, 2014, respondent was brought to the Nouvelle Clinique Farah in Abidjan, Côte d'Ivoire, where he underwent a Lumbar Magnetic Resonance Imaging (MRI) scan, finding respondent to have a "hernia disc L4-L5 hyperalgic."[8] Consequently, respondent was repatriated to the Philippines on November 28, 2014.

Upon his arrival, Evic referred respondent to its company-designated physicians at Sachly International Help Partners Clinic and, subsequently, to Dr. Raymund Barba of the University of Sto. Tomas Hospital. On December 17, 2014, respondent had another MRI of the lumbar spine, which yielded the following result:

> Mild diffuse bulge with dessication changes (relatively same degree) and suggestive focal linear annular tear at L4-5 level.[9]

On December 20, 2014, respondent was referred to Dr. Ma. Luisa S. Carpio of the Davao Doctors Hospital for rehabilitation.[10] Respondent then underwent an Electromyography - Nerve Conduction Velocity study which "showed electrophysiologic evidence consistent with chronic, bilateral L5 radiculopath without signs of acute exacerbation."[11]

On March 20, 2015, following months of rehabilitation, respondent was verbally informed by the company-designated physician that he would be declared fit to work and his physical therapy be stopped. This prompted respondent to write a letter[12] dated March 25, 2015, to petitioner Ma. Victoria C. Nicolas (Nicolas), President of Evic, asking that his treatment be continued because he was still suffering from back pains. His letter was, however, not acted upon by petitioners.

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5 Id. at 109.
6 Id. at 110.
7 Id. at 111.
8 Id. at 112-113.
9 Id. at 114.
10 Id. at 115.
11 Id. at 116.
12 Id. at 124.

Having been constrained to seek an independent physician, respondent was examined by Dr. Manuel Fidel M. Magtira (Dr. Magtira), an orthopedic specialist at the Armed Forces of the Philippines Medical Center. In his Medical Report dated May 15, 2015, Dr. Magtira wrote:

> Mr. Cecilio sustained back injury aboard the M/V Sea Rose, while employed as an able bodied seaman. He presented with symptoms of nerves compression that has severely affected his capacity to perform activities that he used to do. These radical signs and symptoms are often associated with disc herniation or spinal stenosis. Patients with radiculopathy have well described pain, the distribution of which depends on the particular nerve root involved. The herniated disc [itself] generally does not cause pain. The pain is usually caused when the disc presses against a nerve, and the nerve becomes inflamed and swollen.
>
> Because of the chronicity of the patient's symptoms, it is best to consider him ***partially and permanently disabled with Grade 8 impediment*** based on the POEA contract. Prolonged relief is less likely if no permanent modification in the patient's activities is made. He should therefore refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. He is now therefore ***UNFIT TO WORK*** at his previous occupation. Having him resume his regular duties will only lead to frequent absences from illness, underperformance, and lost time at work. It is also necessary that in order to avoid the risk of a more serious disability, Mr. Cecilio should permanently modify his activities and lifestyle.[13]

Thereafter, respondent sent Nicolas a follow-up letter[14] dated April 28, 2015, asking for the resumption of his treatment by Evic's company-designated physicians. Said letter was also ignored by petitioners.

Respondent thus sought payment of disability benefits, to no avail. Accordingly, respondent filed a complaint against petitioners.

In a Decision dated December 2, 2015, the PVA granted respondent's claims ordering petitioners, jointly and severally, to pay respondent the amount of US$95,949.00 as disability benefits, or its peso equivalent at the time of payment, plus attorney's fees equivalent to 10% of the judgment award. Petitioners sought a reconsideration of the said Decision, but the same was denied by the PVA in its Resolution dated April 13, 2016.

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13 Id. at 129.
14 Id. at 126.

Aggrieved, petitioners sought recourse from the CA through a petition for review under Rule 43.

On August 17, 2017, the CA rendered the herein assailed Decision denying the petition. The appellate court held that respondent's ailment is work-related, and that he is indeed entitled to permanent and total disability benefits because petitioners had never issued any actual certification that he was fit to work.

Ultimately, the CA decreed:

> WHEREFORE, the assailed Decision dated 2 December 2015 and Resolution dated 13 April 2016, both issued by the Office of the Panel of Voluntary Arbitrators in MVA-092-RCMB-NCR-075-05-07-2015 (RCMB-NCR-MNL-NTA 05-0048-2015) are hereby AFFIRMED and the instant petition is hereby DENIED.
>
> SO ORDERED.[15]

Hence, the present recourse.

The Issue

Succinctly, the Court is tasked to resolve whether or not the CA erred in affirming the findings and conclusions of the PVA.

The Ruling of the Court

The petition is bereft of merit.

A cursory perusal of the instant petition readily reveals that it raises questions of fact which are beyond the ambit of a Rule 45 Petition. It bears stressing that only questions of law may be raised in a petition for review on certiorari,[16] not questions of facts,[17] as the Court is not a trier of facts.[18] The Court will not entertain questions of fact as the factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this Court when supported by substantial evidence.[19] For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented

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15 Id. at 53.
16 *Burgos v. Pascual, et al.*, 776 Phil. 167, 182 (2016).
17 *Chu, Jr., et al. v. Caparas, et al.*, 709 Phil. 319, 328-329 (2013).
18 *Gatan, et al. v. Vinarao, et al.*, 820 Phil. 257, 265-266 (2017).
19 *Cu v. Ventura*, G.R. No. 224567, September 26, 2018.

by any of the litigants. The resolution of the issue must solely depend on what the law provides on the given set of circumstances. Once it is obvious that the issue invites a review of the evidence presented, the question posed is one of fact.[20] In *Cheesman v. Intermediate Appellate Court*,[21] We distinguished questions of fact and questions of law in the following manner:

> As distinguished from a question of law—which exists "when the doubt or difference arises as to what the law is on a certain state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[22]

On this score alone, the petition must necessarily fail.

Nevertheless, even if the Court were to consider the arguments raised by petitioners, Our position remains unswayed. We find no reversible error on the part of the CA when it rendered the herein assailed issuances.

Respondent's injury is the result of a work accident

Jurisprudence holds that the compensability of an ailment does not depend on whether the injury or disease was pre-existing at the time of the employment but rather if the disease or injury was work-related or aggravated his condition.[23]

The most common test for determination of work-relatedness is the reasonable linkage test. Under this standard, a seafarer only needs to show that his or her work and contracted illness have a reasonable linkage that must lead a rational mind to conclude that the seafarer's occupation may have contributed or aggravated the disease.[24] Stated alternatively, for an illness or ailment to be compensable, it is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work

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20 *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, et al.*, 810 Phil. 172, 178 (2017).
21 271 Phil. 89 (1991).
22 Id. at 97-98.
23 *Austria v. Crystal Shipping, Inc., et al.*, 781 Phil. 674, 685 (2016).
24 *Grieg Philippines, Inc., et al. v. Gonzales*, 814 Phil. 965, 966 (2017).

may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[25]

In *Dohle-Pilman Manning Agency, Inc., et al. v. Heirs of Andres G. Gazzingan*,[26] the Court, applying the reasonable linkage test, granted full disability benefits to a seaman who proved that the conditions on board the vessel aggravated his illness.[27] We ruled that illnesses which are either: (1) acquired by the seafarer on board the vessel; or (2) resulting from a pre-existing condition of the seafarer which is aggravated by the conditions on board the vessel are compensable work-related diseases.[28] Thus:

> Gazzingan's work as a messman is not confined mainly to serving food and beverages to all officers and crew; he was likewise tasked to assist the chief cook/chef steward, and thus performed most if not all the duties in the ship's steward department. In the performance of his duties, he is bound to suffer chest and back pains, which could have caused or aggravated his illness. As aptly observed by the CA, Gazzingan's strenuous duties caused him to suffer physical stress which exposed him to injuries. It is therefore reasonable to conclude that Gazzingan's employment has contributed to some degree to the development of his disease.
>
> It must also be pointed out that Gazzingan was in good health and fit to work when he was engaged by petitioners to work on board the vessel *M/V Gloria*. His PEME showed essentially normal findings with no hypertension and without any heart problems. It was only while rendering duty that he experienced symptoms. This is supported by a medical report issued by Cartagena de Indias Hospital in Colombia stating that Gazzingan suffered intense chest and back pains, shortness of breath and a slightly elevated blood pressure while performing his duties. Therefore, even assuming that Gazzingan had a pre-existing condition, as alleged by petitioners, this does not totally negate the probability and the possibility that his aortic dissection was aggravated by his work conditions. The stress caused by his job actively contributed to the progression and aggravation of his illness. In compensation cases, "[i]t is sufficient that there is 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."[29]

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25 *Ilustricimo v. NYK-FIL Ship Management, Inc., et al.*, G.R. No. 237487, June 27, 2018.
26 760 Phil. 861 (2015).
27 *Jebsens Maritime, Inc., et al. v. Alcibar*, G.R. No. 221117, February 20, 2019.
28 Id.
29 *Dohle-Pilman Manning Agency, Inc., et al. v. Heirs of Andres G. Gazzingan*, supra note 26 at 877-878.

Another standard of work-relatedness was laid down by the Court in *Ventis Maritime Corporation v. Salenga.*[30] In this case, We ruled that if a seafarer boards a vessel and is found to be working under normal conditions, his or her illnesses cannot be considered as illnesses that arose during the term of his or her contract. Thus:

> In instances where the illness manifests itself or is discovered after the term of the seafarer's contract, the illness may either be (1) an occupational illness listed under Section 32-A of the POEA-SEC, in which case, it is categorized as a work-related illness if it complies with the conditions stated in Section 32-A, or (2) an illness not listed as an occupational illness under Section 32-A but is reasonably linked to the work of the seafarer.
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> For the first type, the POEA-SEC has clearly defined a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." What this means is that to be entitled to disability benefits, a seafarer must show compliance with the conditions under Section 32-A, as follows:
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> 1. The seafarer's work must involve the risks described therein;
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> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
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> 3. The disease was contracted 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.
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> As to the second type of illness — one that is **not listed as an occupational disease in Section 32-A** — *Magsaysay Maritime Services v. Laurel*, instructs that the seafarer may still claim provided that he suffered a disability occasioned by a disease contracted on account of or aggravated by working conditions. For this illness, "[i]t is sufficient that there is 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"*. Operationalizing this, to prove this reasonable linkage, it is imperative that the seafarer must prove the requirements under Section 32-A: the risks involved in his work; his illness was contracted as a result of his exposure to the risks; the disease was contracted within a period of exposure and under such other factors necessary to contract it; and he was not notoriously negligent.

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30 G.R. No. 238578, June 8, 2020.

The foregoing standards notwithstanding, the Court finds that the reasonable linkage test is not applicable in the instant case. Respondent's injury is not the result of an illness. It was sustained by virtue of an accident.

The term "accident" was explored by the Court in *NFD Int'l Manning Agents, Inc./Barber Ship Mgmt. Ltd. v. Illescas*,[31] *viz.*:

> Black's Law Dictionary defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."
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> The Philippine Law Dictionary defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."
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> "Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:
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> [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.
>
> The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal 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 events.[32]

In the case at bar, it is undisputed that respondent suffered back pain while lifting one of the heavy ropes of M/V Sea Rose. This led to his immediate medical treatment, repatriation and eventual diagnosis of having suffered a herniated disc, a degenerative condition. Clearly, respondent's injury was not caused by an illness but, rather, an accident sustained in the course of performing his duties.

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31 646 Phil. 244 (2010).
32 Id. at 260.

At any rate, the circumstances extant in this case readily lead the Court to the conclusion that respondent's entitlement to permanent disability benefits is already mandated by law.

Respondent's entitlement to disability benefits had already lapsed by operation of law

The determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law.[33] In *Elburg Shipmanagement Phils., Inc. v. Ouiogue, Jr.*,[34] the Court laid down the following guidelines that shall govern the claims for total and permanent disability benefits by a seafarer:

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.

Indeed, the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days, which was further extended to 240 days.[35]

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33 *Carcedo v. Maine Marine Philippines, Inc., et al.*, 758 Phil. 166, 187 (2015).
34 765 Phil. 341 (2015).
35 *Centennial Transmarine, Inc., et al. v. Quiambao*, 763 Phil. 411, 426 (2015).

Applying the foregoing standards to the case at bar, it may be recalled that respondent was repatriated to the Philippines on November 28, 2014. Nowhere in the records is it indicated that he was given any final assessment by Evic's company-designated physicians despite the lapse of the periods provided above. No final or categorical finding of respondent's condition was ever adduced by petitioners. Considering the absence of a definitive disability assessment made by the company-designated physicians, it was by operation of law that respondent became permanently disabled.[36]

As to the other monetary awards

The Court upholds the award of attorney's fees, the same being consistent with Article 2208(8)[37] of the Civil Code. Respondent was forced to litigate and incur expenses to protect his rights and interests.[38]

Consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,[39] interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary award. In line with the declaration in *Guagua National Colleges v. Court of Appeals*,[40] that decisions of the PVA are immediately final and executory albeit subject to judicial review, interest shall be reckoned from the finality of the Decision and Resolution of the PVA until the full satisfaction of all monetary awards.

All told, the Court finds no reversible error on the part of the CA when it rendered the assailed Decision and Resolution.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 17, 2017 and Resolution dated November 28, 2017 of the Court of Appeals in CA-G.R. SP No. 145677 are hereby **AFFIRMED** with **MODIFICATION** in that interest at the rate of six percent (6%) *per annum* is imposed on the total monetary award, reckoned from the date of finality of the December 2, 2015 Decision and April 13, 2016 Resolution of the National Conciliation and Mediation Board Panel of Voluntary Arbitrators in MVA-092-RCMB-NCR-075-

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36 *Abundo v. Magsaysay Maritime Corporation*, G.R. No. 222348, November 20, 2019.

37 ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x
(8) In actions for indemnity under workmen's compensation and employer's liability laws; x x x.

38 *RTC Construction, Inc., et al. v. Facto*, 623 Phil. 511, 522 (2009).

39 716 Phil. 267 (2013)

40 G.R. No. 188492, August 28, 2018.

05-07-2015 (RCMB-NCR-MNL-NTA 05-0048-2015), until its full satisfaction.

SO ORDERED." *(Carandang, J., on official leave)*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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