



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., January 29, 2015 (Issue 2015/04)

“Del Rosario offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market.” Chambers Asia Pacific, 2014 p. 949

Supreme Court upholds seafarer’s claim as company designated physician’s report was “uncertain” and extent of examination for medical diagnosis “incomplete”

Seafarer (Cook) experienced numbness on the left side of his face, difficulty in hearing from his left ear, blurred vision of his left eye and speech problem during employment. He reported this to the vessel’s chief mate, who relayed the complaint to the ship captain. On 31 March 2003, he obtained medical attention in a foreign hospital where he was found to be suffering from high blood pressure at 180/110 mmHg. He also had high blood sugar, with normal hepatic and cardiac enzymes. He was repatriated and was placed under the care of the company-designated physician who diagnosed him with hypertension, diabetes mellitus type 2 and small pontine infarct. The company-designated physician issued a medical certificate which stated:

“Based on his pre-employment medical examination, patient denied having high blood pressure and his blood pressure during that time is at a borderline level of 130/70 mmHg.

*However, in history taking during his initial examination here at the Hospital, patient claimed he had been hypertensive for about 3 years already with irregular intake of unrecalled medications so his hypertension **could be pre-existing.***

With [regard] to his diabetes mellitus and small pontine infarct, no fasting blood sugar result is noted (to determine presence of any brain abnormality) so it is difficult to say whether both are pre-existing or not.”

As the company-designated physician allegedly failed to assess the health status of the seafarer, he sought medical attention and assessment from a private doctor who diagnosed him with hypertensive cardiovascular disease, diabetes mellitus, S/P cerebrovascular accident, left hemiparesis, secondary, Impediment Grade VI (50%). On this basis, seafarer filed a complaint for payment of disability benefits.

The Labor Arbiter awarded to the seafarer US\$25,000.00 based on the grade 6 disability assessment issued by his personal doctor. Said award was affirmed by the NLRC as they found that there is a reasonable connection between the nature of seafarer’s work as a cook and the development of his illness.

The Court of Appeals set aside the decision of the NLRC and held that the claim is without merit. The appellate court held that the lone assessment made by seafarer’s private doctor could not have justified the finding of a Grade 6 disability. It ruled that the POEA-SEC requires the company-designated physician to be the one to issue the disability assessment. Furthermore, the court said that for hypertension to be compensable, it must be shown to cause impairment of function of body organs, as substantiated by documents such as chest x-ray report, ECG report, blood chemistry report, funduscopy report and CT scan, pursuant to Section 32-A (20) of

the POEA-SEC which was not done here.

Upon petition, the Supreme Court reinstated the decision of the NLRC.

It was erroneous for the Court of Appeals to reject the NLRC's decision upon finding that seafarer's disability was based solely on a medical certificate issued by seafarer's private doctor. The Court noted that there was no dispute that seafarer suffered from hypertension, diabetes mellitus type 2 and small pontine infarct, as this was indicated in the medical certificates that were issued by the company-designated physician. In other words, it is not only the seafarer's personal doctor who diagnosed the seafarer with hypertension but also the company-designated physician. As such, the findings of the seafarer's personal doctor should have been given credence by the Court of Appeals.

Moreover, the company-designated physician failed to fully evaluate the medical condition of the seafarer by determining fitness to work or issuing a degree of disability. Rather than making a full assessment of seafarer's health condition, disability or fitness, the company-designated physician only reasoned in his medical certificate that seafarer's hypertension could be pre-existing and that it was difficult to say whether his diabetes mellitus and small pontine infarct are pre-existing or not. His assessment was evidently uncertain and the extent of his examination for a proper medical diagnosis was incomplete.

Clearly, there was a breach by the company-designated physician of his obligation under the POEA Contract. The seafarer has repeatedly argued that the company-designated physician failed to give an assessment of his illness but the latter failed to explain and justify such failure. The Court has emphasized that the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness or permanent disability within the 120 or 240 days, as the case may be; otherwise, he shall be deemed totally and permanently disabled.

Given the failure of the company-designated physician to fully evaluate seafarer's illness, disability or fitness to work, the seafarer was justified in seeking the medical expertise of his physician of choice. Thus, the NLRC did not commit grave abuse of discretion in considering the assessment of seafarer's private doctor whose findings on degree of disability was complete and which did not contradict the findings issued by the company-designated doctor.

Author's Note: The Court noted the fact that the medical opinion of the company-designated physician was inconclusive as the words "could be" was used to describe whether the illness of the seafarer was pre-existing. This underscores the need for company-designated doctors to be more precise, as much as practicable, in their opinions.

Pedro Libang, Jr. vs. Indochina Shipmanagement Inc., Mr. Miguel Santos and Majestic Carriers, Inc.; G.R. No. 189863, October 7, 2014; Third Division; Associate Justice Bienvenido Reyes, Ponente.

.

"Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines" from Asia-Pacific, The Legal 500, 2014, p. 497

"Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners." Asia-Pacific, The Legal 500, 2014, p. 494

"Offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market." Chambers Asia Pacific, 2014 p. 949

Social Networking Sites



Twitter ID: delrosariopandi



Facebook Page: DelRosarioLaw

This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com.

This publication is sent from time to time to clients and friends. To unsubscribe, reply to this email and put "[unsubscribe](#)" in the subject.

Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario

Office Address: DelRosarioLaw Centre, 21st Drive corner 20th Drive, Bonifacio Global City, Taguig, Metro Manila, Philippines

Telephone: 63 2 810 1791 * **Fax:** 63 2 817 1740

24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com

