



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 6, 2009

Supreme Court rules incidental finding of tuberculosis is not compensable as seafarer was actually repatriated due to abdominal injury

Author's Note: This is a case where the incidental finding of a company physician was held not compensable as it had no relation with the reason for repatriation. Seafarer was repatriated due to abdominal injury but claimed for tuberculosis which was an incidental finding of the company physician. The Court rejected the claim of tuberculosis as it had no relation to the abdominal injury. The decision was penned by Justice Brion who was former Secretary of Labor.

Able Seaman (AB) was hit by a pipe in the abdomen resulting in contusion which rendered him unfit for sea duty. He was treated for his abdominal injury and was deemed cured. However, there were findings of tuberculosis ileitis with incidental finding of HIV for which he was prescribed anti-tuberculosis medicine. He did not return for his further scheduled check-ups but instead sought the medical advice of his own private physician who found him to be Grade 1 disabled with tuberculosis ileitis and HIV positive.

The Labor Arbiter awarded full disability benefits but this decision was reversed by the NLRC. The Court of Appeals sustained the NLRC Commission ruling thus:

1. *AB failed to follow the procedure for contesting a finding of the company physician which required the joint agreement of the parties on the assessment by a third doctor. (Section 20(B), Nos. 2 and 3, par. 2 and 3 of the Standard Employment Contract);*
2. *AB failed to prove by evidence that the claimed illness of tuberculosis was work-related. The AB failed to show the relation between the abdominal injury he suffered while working on board the vessel and the tuberculosis which was allegedly aggravated by inhaling and contact with harmful chemicals on board the vessel.*
3. *There was no evidence to show that AB ever complained of any illness while on board the vessel or that he was repatriated due to tuberculosis. The Court noted that his abdominal injury was treated and was healed. The accident he suffered and the resulting trauma were too remote to cause the illness of tuberculosis being claimed for compensation.*

The Supreme Court sustained the decision of the Court of Appeals. The Supreme Court reiterated the ruling of the Court of Appeals and added thus:

“While pulmonary tuberculosis appears in the list of occupational diseases in the contract of employment, the inclusion is conditional; a claimant has to show actual work-relatedness if the condition does not apply. Montoya (the AB) was not engaged in one of the occupations where tuberculosis is a listed illness; thus, Montoya carried the burden of showing by substantial evidence that his tuberculosis ileitis was due to the abdominal injury he sustained on board the MV Papa or to his exposure to toxic chemicals and substances and to harsh weather conditions. As the Court of Appeals found, he had nothing to support his claim other than the cryptic comment of his physician, Dr. Vicaldo, that “his illness is considered work-related and work-aggravated,” without elaborating on how the doctor arrived at this finding.”

Rufino Montoya vs. Transmed Manila Corporation / Mr. Edilberto Ellena and Great Lake Navigation Co., Ltd.,; G.R. S.P. No. 183329; Second Division; August 27, 2009, Supreme Court Associate Justice Arturo Brion, Ponente.

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.

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