



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 12, 2009

This issue contains the following:

Court of Appeals denies compensation to seafarer who died while on shore leave; orders return of funds paid in settlement of claim

Court of Appeals reverses NLRC Commission's ruling based on 120 days and applies the 240 day ruling of the more recent Vergara decision

Court of Appeals denies compensation to seafarer who died while on shore leave; orders return of funds paid in settlement of claim

Author's Note: A seafarer who drowned while on shore leave was denied compensation as his death did not occur at his workplace nor while performing an act within the scope of his employment. The Court ordered seafarer's widow to return the full amount of compensation paid to her after the NLRC Commission decision.

Able Seaman (AB) was on shore leave when he fell into a river while urinating and drowned. The Labor Arbiter and the NLRC Commission awarded death compensation of US\$50,000. The Court of Appeals reversed the decision citing the facts and evidence as follows:

1. That the seafarer at the time of the incident was on shore leave;
2. That he was found dead by the police authorities and after autopsy, the cause of his death was drowning;
3. That he was intoxicated when he died due to traces of alcohol in his urine; and
4. That the Philippine government authorities confirmed that the cause of his death was drowning.

The Court of Appeals cited a Supreme Court decision which held that **“for an injury to be compensable, the standard of “work connection” must be substantially satisfied.”** *“In other words, to be entitled to compensation and benefits under Section 20(A) of POEA Memorandum Circular No. 9, it is not sufficient to establish that seafarer's death has occurred during the term of his employment contract, but that there is a causal connection between his death and the work for which he had been contracted for.”*

The court further said that the deceased seafarer's death *“lacks the requisite element of compensability which is, **that there must be a causal link between the work actually performed by him and his death.** The facts showed that when the seafarer died, he went on shore leave and left the vessel. His death did not occur at his work place nor while performing an act within the scope of his employment. Clearly, the deceased seafarer's activity being performed at the time of his death is not work-related.”*

The Court further ruled that **the widow must return the compensation paid to her.** In the words of the Court:

*The private respondent, Susana R. Sy, is hereby **ordered to return** to the petitioners (vessel interests) the full amount of Two Million Six Hundred Ninety One Thousand One Hundred Seventy Three Pesos and 10/100 (Php2,691,173.10) pursuant to her undertaking in the Conditional Satisfaction of Judgment with Urgent Motion to Cancel Appeal Bond dated March 5, 2009 and Affidavit executed by her also on March 5, 2009.*

Susana Sy ; G.R. S.P. No. 107379; Seventh Division; September 17, 2009, Court of Appeals Associate Justice Bienvenido Reyes, Ponente. (Attys. Catherine Mangahas and Charles de la Cruz of Del Rosario & Del Rosario handled for vessel interests.)

Court of Appeals reverses NLRC Commission's ruling based on 120-days and applies the 240-day ruling of the more recent Vergara decision

Author's Note: The NLRC had ruled that seafarer was entitled to permanent disability of Grade 1 as he was medically treated for more than 120 days. The Court of Appeals reversed the NLRC decision and ruled that said decision is contrary to the Supreme Court's ruling of 240 days in the Vergara case.

Seafarer was repatriated due to back pain. He was treated by the company physician for more than 120 days and was assessed a disability grading of Grade 11 or US\$7,465. Seafarer consulted his private physician who made an assessment of Grade 6 or US\$25,000.

The Labor Arbiter awarded US\$25,000 and on appeal, the NLRC further increased the award to US\$60,000 or Grade 1 disability ruling that seafarer was deemed permanently disabled as he was still undergoing treatment beyond the 120 period of his disembarkation from the vessel.

The Court of Appeals modified the ruling of the NLRC and awarded disability compensation of US\$7,465 based on the company physician's assessment and based on the 240 day Vergara ruling of the Supreme Court.

We cite the Court's decision:

"Based on the (Vergara decision), it would appear that the seafarer must report to the company-designated physician for diagnosis and treatment upon his sign-off from the vessel or from repatriation for medical treatment. For the duration of the treatment, but in no case to exceed 120 days, he is on temporary total disability and is entitled to receive his basic wage during the period until he is declared fit to work or until the company physician declares his disability as permanent, either partially or totally. **If the 120 day initial period is exceeded and no declaration was made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability exists.

"Applying this to the case at bench, the NLRC's finding that private respondent was entitled to permanent total disability benefit because his medical treatment exceeded 120 days is untenable. It appears that the maximum 240-day medical treatment period from the time private respondent signed off from his vessel on May 1, 2005 has not yet expired when he filed the claim for disability benefit on September 9, 2005 that private respondent was entitled to Disability Grade 11. **To reiterate, the mere lapse of the initial 120-day period does not automatically entitle private respondent to permanent total disability benefits especially since his injury requires further medical attention before an accurate evaluation of his disability can be made.** In fact, private respondent has undergone continuous therapy sessions from May 12, 2005 up to October 5, 2005 before the company-designated doctor made an evaluation of his disability.

As between the findings of the company-designated doctor and seafarer's physician, the Court ruled in favour of the company-designated doctor's findings as he was privy to seafarer's case for eight months and he "acquired a more detailed knowledge of (seafarer's) injury and could very well accurately evaluate the latter's degree of disability on the medical records available.

CTI Group Phils., Inc./Ma. Fe Yude & CTI Recruitment & Placement Agency, Inc. vs. National Labor Relations Commission, Second Division, and Ronald Salazar; G.R. S.P. No. 107172; Special Fifth Division; August 13, 2009, Court of Appeals Associate Justice Ramon R. Garcia, Ponente. (Attys. Catherine Mangahas and Herbert A. Tria of Del Rosario & Del Rosario handled for vessel interests.)

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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