



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 27, 2009

This issue contains the following:

Supreme Court upholds seafarer's doctors as opposed to company physician

Supreme Court denies compensation as death ruled to be a suicide

Supreme Court upholds seafarer's doctors as opposed to company physician

Seafarer was repatriated due to major depression and gastric ulcer. He was treated and the company physician declared him fit to work. The seafarer presented his own doctors' certificates which showed him unfit to work. At issue before the Court is which physician should be upheld. The Court held that it should adopt the findings of the seafarer's physicians due to "social justice".

In the words of the Court:

"The law looks tenderly on the labourer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favourable to him, the evidence must be tilted in his favour consistent with the principle of social justice."

(Author's Note:

1. While in this case the Court upheld the findings of seafarers' physicians, there are a number of Supreme Court decisions upholding the findings of the company doctor. The Montoya case, (G.R. S.P. No. 183329, decided at a later date of August 27, 2009, and reported in Philippine Shipping Update, October 6, 2009), upheld the findings of the company doctor. The Supreme Court, in several decisions, has upheld the findings of the company doctor for two reasons: first, the company doctor is the person designated in the POEA contract to determine the disability grading and second, the company doctor is the one that treated the seafarer thus, he is the most qualified to determine his fitness or disability grading. Unfortunately, this particular case saw fit to apply "social justice" as a reason for siding with the seafarers' physicians.
2. The Court was not fully convinced as to the disability grading given by the doctors as the case is now being re-heard before the panel of voluntary arbitrators to determine the proper disability grading.
3. On another issue in the case, the Court sided with vessel interests in ruling that the POEA contract applies and not the CBA as the illness was not due to accident.)

HFS Philippines, Inc., Ruben T. Del Rosario and IUM ShipManagement AS vs. Ronaldo Pilar, G.R. No. 168716, First Division, April 16, 2009, Supreme Court Associate Justice Renato Corona, Ponente. (Attys. Catherine Mangahas and Charles de la Cruz handled for vessel interests).

Supreme Court denies compensation as death ruled to be suicide

An employer is exempted from liability if he can successfully prove that the seafarer's death was caused by an injury directly attributable to his deliberate or wilful act. In this case, the Supreme Court ruled a seafarer's death as suicide and therefore not compensable.

The Labor Arbiter and the Court of Appeals had ruled the death not to be suicide as seafarer was found dead on the floor of the bathroom with a belt tied around his neck. with a shower head broken. The implication was that seafarer could not have died due to hanging. The Supreme Court in reversing the decision of the Court of Appeals held:

"The post-mortem examination conclusively established that the true cause of death was asphyxia or suffocation...the bathroom door was locked or bolted from the inside and could not be opened from the outside...the post-mortem examination, the Certification of Dr. Raju and the police inquest report, all stated that Salvador's cause of death was asphyxia due to hanging, and not due to any other injury, which lead(s) to a fair and just conclusion that Salvador was already dead before the showerhead broke."

Great Southern Maritime Services Corp. and IMC Shipping Co., Pte., Ltd. vs. Leonila Surigao for herself and In behalf of her minor children, namely Kaye Angeli and Miriam, both surnamed Surigao; G.R. No. 183646; Third Division; September 18, 2009, Supreme Court Associate Justice Consuelo Ynares-Santiago, Ponente. (Attys. Agnes Lucero and Herbert 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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