



# ***DEL ROSARIO PANDIPHIL Inc.***

***“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***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 3, 2014 (Issue 2014/11)

### **Supreme Court awards full disability benefits for “tuberculosis”**

On 1 December 2005, seafarer was engaged as Able-bodied Seaman. His prime duty, among others, was to paint and chip rust on deck or superstructure of ship and to give directions to the crew engaged in cleaning wheelhouse and quarterdeck on board the vessel.

After one month on board the vessel, seafarer complained of stiff neck, and his right jaw started to swell. His physical condition worsened despite medications given him on board until he signed off on 2 February 2006 at a foreign port where he was diagnosed with a *“firm mass in the left side of neck with severe diffuse infection and pus collection in the neck, gangrene and necrosis in skin and tissues of neck, Uncontrolled D.M., Toxaemia and this condition may be due to chronic disease or malignancy.”* The seafarer underwent medical procedures and was later repatriated on 8 February 2006 for further treatment.

Upon arrival in Manila, the seafarer was examined by the company-designated physician. The diagnosis indicated: Uncontrolled *diabetes mellitus* and *tuberculosis adenitis*. The seafarer was placed under a six-month anti-tuberculosis treatment.

As early as 23 June 2006, the seafarer consulted a private physician who also medically assessed him to be suffering from cervical tuberculosis adenitis as similarly assessed by the company-designated physician. Continuous treatment was recommended and medication for the seafarer until January 2007.

On 6 July 2006, the seafarer filed a complaint for disability benefits against the company. To support his claim, he alleged that his illness was contracted while he was on board the vessel; that he was repatriated for medical reasons and was treated for more than 120 days; and, that he suffered a permanent total disability with Grade 1 impediment. Thus, he should be compensated by the company.

The company denied the claim and averred that a company-designated physician, in fact, issued a handwritten medical evaluation on 17 August 2006 finding his condition well-controlled, asymptomatic, and stable and therefore, physically fit to resume work anytime. On 22 August 2006, the company-designated doctor declared the seafarer fit to work after completion of the anti-Koch’s medication for six months. Such fact was not disputed; hence, there is no disability to speak of.

The Labor Arbiter awarded full disability benefits to the seafarer considering that seaman was unable to work for more than 120 days.

The NLRC denied the claim considering that seafarer’s illness cannot have developed during the two months he was on-board the vessel. Moreover, the seafarer failed to show how his work caused or aggravated his condition. The NLRC also criticized the seafarer for not obtaining a second medical opinion which would contradict the fit to work certification of the company-designated doctor.

Upon further Petition, the Court of Appeals reinstated the decision of the Labor Arbiter and held that when the

seafarer's illness occurred during employment, it is presumed that the employment was the cause thereof. Moreover, the duties of the seafarer exposed him to different types of hazardous chemicals which invariably may have contributed to the aggravation of his illness. Lastly, the Court of Appeals sustained the 120 days reasoning of the Labor Arbiter in awarding permanent and total disability benefits to the seafarer.

The Supreme Court affirmed the award of full disability benefits.

The Court said that the fit to work certificate issued by the company-designated physician was suspicious considering that seafarer was subjected to a long period of treatment and was hastily issued. The Court likewise held that seaman's tuberculosis is considered as an occupational disease which is compensable under the employment contract.

Lastly, the Court held that seafarer is considered permanently and totally disabled because he was unable to perform the work he is accustomed to do for more than 120 days. (Author's Note: Currently, this should be 240 days and not 120 days).

Nevertheless, the Court clarified that they cannot apply the 240 days rule which was indoctrinated in the 2008 case of Vergara v. Hammonia as the same was issued more than two years from the time the complaint was filed. The observance of the principle of prospectivity dictates that Vergara should not operate to strip the seafarer of his cause of action for total and permanent disability that accrued since the time of his inability to perform his customary work.

***Author's Note: Pulmonary tuberculosis (PTB) is a listed occupational disease as long as the conditions set forth by the POEA Contract are met. This illness usually takes a substantial period of time, about 6-8 months, to treat and cure. As such, there is always a risk that treating PTB will exceed 120 days and come dangerously close to the 240 days threshold. In situations such as this, it would be best that continuous monitoring of the seafarer's medical progress is made with close cooperation with the treating doctor bearing in mind the 240 days rule. .***

*Barko International, Inc./Capt. Teodoro B. Quijano and/or Fuyo Kaiun Co., Ltd. vs. Eberly S. Alcayno; G.R. No. 188190; First Division; April 21, 2014 ; Supreme Court Associate Justice Bienvenido Reyes, Ponente*

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