



# ***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., June 2, 2014 (Issue 2014/10)

### **Supreme Court defines accident as an “unforeseen event”; awards CBA benefits to seafarer injured due to accident**

Seafarer alleged that while carrying a 200 kg globe valve together with two other crewmembers, one crew lost his grip which caused the weight of the globe valves to shift to him. He then felt a snapping sensation on his back and from thereon, he was at pain and was not able to freely move. The seafarer requested for repatriation and thereafter was referred to the company-designated doctor for examination and treatment. After treatment, the company-designated doctor assessed the seafarer with a grade “8” disability equivalent to US\$16,795 under the POEA Contract. The company offered to compensate the seafarer based on the POEA Contract. However, the seafarer refused the offer as his employment is also covered by a Collective Bargaining Agreement (CBA). The CBA states that **“a seafarer who suffers a permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while traveling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to wilful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this agreement.”**

The company denied liability under the CBA considering that the alleged accident was not proven with substantial evidence.

The Labor Arbiter and the NLRC awarded to the seafarer full disability benefits based on the CBA as they found that his injury was a result of an accident.

The Court of Appeals reduced the award of disability benefits to US\$16,795 based on the POEA Contract as the injury of the seafarer was not considered as arising from an accident for the CBA to be applicable. The appellate court reasoned that it is common knowledge that carrying heavy objects can cause injury and that lifting and carrying heavy objects are part of seafarer’s duties as fitter. Thus, a back injury is reasonably anticipated. It cannot serve as basis to be entitled to disability benefits. There was no mishap, occurrence, or fortuitous event when the injury was incurred.

The Supreme Court held that seaman is entitled to benefits under the CBA.

**The Court again defined the term “accident” as an unforeseen event in which no fault or negligence attaches to the person injured. It is a fortuitous circumstance, event, or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected on the person to whom it happens.**

The Court held that the injury did not occur while the seafarer was solely performing his regular duties; an intervening event transpired which brought upon the injury. There were two other oilers who were supposed to help the seafarer carry the weight of the 200-kilogram globe valve. One of the oiler slipped and lost his grip and as a result, seafarer’s back snapped when the entire weight of the item fell upon him. The sheer weight of the item is designed not to be carried by just one person. Notably, this incident cannot be considered as foreseeable, nor can it be reasonably

anticipated. Seafarer's duty as a fitter involved changing the valve, not to routinely carry a 200-kilogram globe valve singlehandedly. The loss of his fellow workers' grip was also unforeseen in so far as the seafarer was concerned.

*Carlo Sunga vs. Virjen Shipping Corporation, Nissho Odyssey Ship Management, Pte, Ltd., and/or Capt. Angel Zambrano; G.R. No. 198640; Second Division; April 23, 2014 ; Supreme Court Associate Justice Arturo Brion, Ponente (Attys. Pamela Portia Coseip-Abarico and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).*

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