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Supreme Court upholds POEA contract's Schedule of Disability Allowances; treatment beyond 120/240 days does not automatically mandate Grade 1 disability; the disability grading and not the number of days must be observed

* ***120-day/240-day rule was not applied; the company and the seafarer agreed to an extension of the period of treatment***

* ***Lack of final assessment from company-designated doctor is due to seafarer's fault as he failed to continue his treatment***

**** Schedule of Disability Compensation in the POEA-SEC must be seriously observed; the fact of unfitness for 120 / 240 days does not mean an award of permanent total disability; the disability grading must be observed***

****CBA was not properly submitted in evidence as only a one-page unsigned copy was submitted***

On 21 December 2005, seafarer finished his contract and was repatriated. As he was diagnosed for a kidney ailment while on board the vessel, he was treated by the company designated physician. While undergoing treatment, he filed a complaint on 26 May 2006 alleging maximum disability benefits based on an alleged CBA as he was unable to work for more than 120 days and no disability assessment was issued by the company physician.

Despite the filed complaint, the company-designated physician recommended that seafarer undergo *extracorporeal shockwave lithotripsy (ESWL).* Seaman was initially reluctant to submit to the procedure, but he finally agreed and underwent ESWL on 19 January 2007, again at the company's expense. He reported to the company doctor for a follow-up on 5 February 2007, but failed to go back for a further ESWL which the urologist believed was necessary as "there is possibility of declaring the patient fit to work after treatment."

On May 7, 2007, without informing the company-designated physician or the company, seaman consulted his own doctor who diagnosed him to be suffering from *bilateral nephrolithiasis* and *essential hypertension*. Said doctor gave him a grade "7" disability. Seaman claimed that he did not report to the company doctor after 5 February 2007 because he was advised by the company-designated doctor that he would already be forwarding his assessment to the company.

The Labor Arbiter and the NLRC denied compensation to the seaman considering that no final medical assessment was issued by the company-designated physician which was due to the non-reporting of the seaman. It was held that the seafarer's treatment or the period he is incapacitated to work has no bearing in the determination of whether he should be entitled to disability benefits. Lastly, the claim based on the CBA was denied. The one page document submitted as evidence of the CBA was insufficient to prove its existence.

The Court of Appeals reversed the NLRC and awarded disability benefits to the seaman based on the alleged CBA. The appellate court held that the CBA applies and believed the allegation of the seaman that he was told by the

company that he was being assigned to a vessel with a CBA as a reward for his good work. Disability benefits was awarded because the seaman was unable to work for more than 120 days because of his ailment.

The Supreme Court reversed the Court of Appeals and held that seaman is not entitled to disability benefits.

120-day/240-day rule was not applied; the company and the seafarer agreed to an extension of the period of treatment

Except for the much belaboured 120 day argument, the Court did not find basis for the award of permanent total disability benefits to the seaman. Nevertheless, the 120 day rule had already been modified pursuant to the Court's previous pronouncement in *Vergara.* It cannot simply "be applied as a general rule for all cases and in all contexts." In short, it cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.

Significantly, seaman himself recognized the relevance of the POEA SEC in his case when he acknowledged that under the contract, "a medically repatriated seafarer is subject for examination and treatment by the company designated physician for a period not exceeding 120 days. After which the company designated physician will make an assessment whether the seafarer had already become fit for work or not." Seaman, however, was not medically repatriated; he went home for a finished contract. In any event, as we said in *Vergara: "a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period" without a declaration of either fitness to 'work or the existence of a permanent disability."*

Although the 240-day maximum treatment period under the rules had already expired, counted from his repatriation on 21 December 2005, it can be said that the seaman and the company agreed to have the treatment period extended as it was obvious that he still needed treatment. In fact, he agreed, after some trepidation, to be subjected to an ultrasound procedure (ESWL) in the effort of the company to improve his condition; he was expected to return after 5 February 2007 to the company-designated physician for a repeat ESWL, but he failed to do so. Clearly, under the circumstances, the 120-day rule had lost its relevance.

Lack of final assessment from company-designated doctor is due to seafarer's fault as he failed to continue his treatment

Under the POEA-SEC, the employer is liable for a seafarer's disability, resulting from a work-connected injury or illness, only after the degree of disability has been established by the company- designated physician and, if the seafarer consulted with a physician of his choice whose assessment disagrees with that of the company-designated physician, the disagreement must be referred to a third doctor for a final assessment.

In the present dispute, no showing exists that the relevant POEA-SEC provisions had been observed or complied with. While the seaman reported to the company-designated physician upon his repatriation for examination and treatment, he cut short his sessions with the doctor and missed an important medical procedure (ESWL) which could have improved his health condition and his capability to work. Seaman's explanation that he did not return for further ESWL because the company-designated physician told him that he would already be forwarding his assessment to the company is belied by the doctor's report to the agency dated 19 March 2007, stating that he did not return for further ESWL. The reason for seaman's failure to return and continue his treatment with the company-designated physician was his awareness of the possibility that he could be declared fit to work after treatment.

Thus, the facts of the case show that the absence of a disability assessment by the company-designated physician was not of the doctor's making, but was due to seaman's refusal to undergo further treatment. In the absence of any disability assessment from the company-designated doctor, seaman's claim for disability benefits must fail for his obvious failure to comply with the procedure under the POEA-SEC which he was duty bound to follow.

Seafarer's non-compliance with his obligation under the POEA-SEC is aggravated by the fact that while he was still undergoing treatment under the care of the company-designated physician, he filed the present complaint on 26 May 2006. Moreover, after he failed to return for further ESWL and without informing the agency or the company-designated physician, he consulted his personal doctor who examined him only for a day or on 7 May 2007, certified him unfit to work, and gave him a disability rating of grade "7". This aspect of the case bolsters the conclusion that

seaman was merely making excuses for his failure to report to the company-designated doctor and had become indifferent to treatment as he was determined to claim and obtain disability benefits from the company. It also lends credence to the company's submission that he abandoned his treatment under the company-designated doctor. Worse, it validates the position that his inability to work and the persistence of his kidney ailment could be attributed to his own wilful refusal to undergo treatment. Under the POEA-SEC, such a refusal negates the payment of disability benefits.

Schedule of Disability Compensation in the POEA-SEC must be seriously observed; the fact of unfitness for 120 / 240 days does not mean an award of permanent total disability; the disability grading must be observed

Often ignored or overlooked in maritime compensation cases is the compensation system provided by the POEA-SEC which is found in Section 32 thereof and provides for a schedule of disability compensation, in conjunction with Section 20(B) 6. To the mind of the Court, the reason why this compensation system is often ignored or disregarded is the fixation on the 120-day rule and the notion that an "unfit-to-work" or "inability-to-work" assessment should be awarded permanent total disability compensation even when the seafarer is given a disability grading in accordance with Section 32 of the POEA-SEC. In this case for instance, seaman was assessed by his personal physician with a grade "7" disability, yet he was awarded by the Court of Appeals full disability compensation of US$100,000.00 under a CBA whose existence is under serious question. A NOTE in Section 32 of the POEA-SEC declares that *"any item in the schedule classified under Grade* 1 *shall be considered or shall constitute total and permanent disability."* Any other grading, therefore, constitutes only as temporary total disability.

Considering that the POEA-SEC embodies the terms and conditions governing the employment of Filipino seafarers on-board ocean-going vessels, it is about time that the schedule of disability compensation under Section 32 is seriously observed. A step towards this direction had already been taken by way of the Court's clarificatory Resolution dated 12 February 2007 in *Crystal Shipping* where it was declared that admittedly, the POEA SEC *does not measure disability in terms of number of days but by gradings only.* Be this as it may, seaman would not still be entitled to the compensation corresponding to the grading given to him by his personal doctor because he abandoned his treatment with the company-designated doctor who, for his failure to return for further treatment, was not given the opportunity to issue a disability assessment, a mandatory requirement under the POEA-SEC or even under the supposed CBA.

CBA was not properly submitted in evidence as only a one-page unsigned copy was submitted

The Court held that the alleged CBA presented by the seaman will not be considered. The Court noted that the seaman alleged that he obtained a copy of the alleged CBA during his employment with the company. However, what he submitted to the Labor Arbiter was merely a one-page unsigned copy of the CBA. If the seaman obtained a copy of the CBA while still in employment with the company, how could he have submitted in evidence a one-page copy of the document? Further, while the seaman later submitted a copy of the purported CBA, it bore no indication of who his employer was as the space reserved for the employer was blank. Still further, the copy seaman submitted was for 2004; it already expired when he signed his POEA contract with the petitioners on 4 February 2005. As such, there was insufficient evidence to prove the existence of the purported CBA. More importantly, even if the CBA existed, it cannot be the basis of an award of disability benefits to the seaman for reasons already mentioned.

Author's Note*: This decision has several positive legal impacts on the way compensation cases will be argued.*

1. Previously, the Supreme Court uniformly followed the 120/240 day rule that if the seaman's treatment exceeded 120/240 days without a final medical assessment being issued, then the seaman will be considered as permanently and totally disabled that will entitle him to full disability benefits under the employment contract.

In this case, the Supreme Court made it clear that the 120 days argument cannot be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as what must be done in the application or all rulings and even of the law and or the implementing regulations. The Court likewise noted that the 120 days rule was already clarified/modified by later decisions which extend the same to 240 days.

Nevertheless, while the Court acknowledged the fact that seaman had been under treatment for more than 240 days, said rule was not applied. According to the Court, the 240 days maximum treatment period was extended when both

the company and the seaman agreed to have treatment extended.

With the above statement from the Court, it would now appear that an exception has been created in the 240 days rule and that is when both the company and the seaman agreed to extend the treatment period beyond 240 days.

2. The Court has once again upheld the defense of medical abandonment. In this case, the Court noted that under the POEA-SEC, it is the company-designated physician who is primarily tasked to determine the degree of disability or fitness to work of the seafarer. If the seaman does not agree with the findings, he can obtain a second opinion from his own doctor. In the event of contradictory findings by the doctors, a third doctor may be mutually appointed by the parties whose findings shall be binding on them. When the seaman no longer reported to the company-designated doctor for further treatment, he prevented said doctor from issuing a final medical assessment which in turn resulted to the non-observance of the relevant POEA SEC provision. Since the failure to comply with the POEA-SEC requirement (that a final medical assessment be issued by the company-designated doctor) was due to the fault of the seaman, he should not be entitled to disability benefits. The refusal of the seaman to undergo further treatment is consistent with medical abandonment. This is the essence of the 2nd sentence of paragraph 3 of Section 20.A (3) of the present POEA SEC.

3. In past decisions, the Supreme Court had considered inability/incapacity to work synonymous with permanent and total disability. Thus, notwithstanding the presence of a partial disability assessment, the Court would grant full disability benefits to the seaman if it can be shown that he has lost his earning capacity.

The Court has now taken note of the fact that the Schedule ~~s of Disability and~~ Disability Allowances under Section 32 ~~in~~ of the POEA SEC is a very important provision which contains the compensation scheme applicable to seafarer's cases. Apparently, the Court has now made it clear that such compensation system must be seriously observed in determining the correct entitlement of a seafarer's benefits. The Court further held that in the POEA SEC, any item classified as grade "1" constitutes as permanent and total disability. In the reverse, any other grading constitute only as temporary total disability.

It should be noted that in the present POEA SEC (2010), there is now a provision which states that the disability shall be based solely on the disability gradings provided under Section 32 thereof and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days he is entitled to sick wages. [Please see paragraph 2 Sec. 20.A (6)]. The present decision only works to solidify the mentioned provision in the 2010 POEA-SEC.

Splash Philippines, Inc., Lorenzo Estrada, Taiyo Sangyo Trading and Marine Service, Ltd. (TST Panama S.A. and M/V Harutamou vs. Ronulfo G. Ruizo; G.R. No. 193628; Second Division; March 19, 2014 ; Supreme Court Associate Justice Arturo Brion, Ponente. (Attys. Saben Loyola and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests).

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