



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 27, 2014 (Issue 2014/09)

### **Supreme Court disallows knee injury claim of seafarer as he was declared fit and was re-employed; allows permanent and total disability benefits for hand injury claim suffered in subsequent employment as degree of disability was issued after 240 days**

Seafarer was hired as waste handler on-board a cruise ship. Sometime 5 August 2005, seafarer fell from a ladder while working and injured his knee. He was repatriated and had anterior cruciate ligament (ACL) reconstruction surgery under the medical supervision of the company-designated-doctors. On 19 January 2006, he was declared fit to return to work from an orthopaedic point of view. Seafarer sought reemployment with the company, passed the pre-employment medical examination, and was re-hired in the same capacity for another cruise vessel.

On board, seafarer met another accident while driving a forklift and injured his right hand and wrist. He was repatriated and arrived in the Philippines on 15 January 2007 and had surgery for his injury. On 7 September 2007, the company-designated doctor issued a medical report that the seafarer has a permanent but incomplete disability. The company-designated doctor likewise issued a medical opinion on 25 September 2007 that seafarer's disability may be classified as a grade 10 disability.

The seafarer filed two complaints for disability benefits, illness allowance, damages and attorney's fees against the company which was anchored on his knee injury and hand injury arising from his two employments with the company. The seafarer argues that since both treating periods for his injuries lasted for more than 120 days, then he should be entitled to US\$60,000 each for his knee and hand injury.

The Labor Arbiter dismissed the claim due to the knee injury on the ground that the seafarer was already declared fit to work after his ACL reconstruction surgery. He also passed the pre-employment medical examination when he sought reemployment, was reemployed and was able to work again. As regards the hand injury, the Labor Arbiter awarded to the seafarer US\$10,075 which is the equivalent award for the grade 10 assessment issued by the company-designated doctor.

The NLRC reversed the Labor Arbiter's Decision. It ruled that seafarer is entitled to permanent and total disability benefit of US\$60,000 for his knee injury and another US\$60,000 for his hand injury.

On reconsideration, the NLRC issued a Decision which set aside its earlier Decision and reinstated the Labor Arbiter's Decision

On further petition to the Court of Appeals, it was held that since the seafarer was unable to perform his customary work for more than 120 days on account of his knee injury and hand injury, he is entitled to permanent and total disability benefit for both injuries, and the total amount of US\$120,000

The Supreme Court modified the ruling of the Court of Appeals.

### **On the knee injury, seafarer is not entitled to disability benefits**

Seafarer is not entitled to permanent and total disability benefit for his knee injury since he became already fit to

work again as a seaman. He even admitted in his position paper that he was declared fit to work. He was also declared fit for sea service after his pre-employment medical examination when he sought reemployment with petitioners. The medical certificate declaring seafarer fit for sea service even bears his signature. And he was able to work again in the same capacity as waste handler in another vessel. This position is amply supported by substantial evidence.

### **On the hand injury, seafarer is considered permanently and totally disabled**

The Supreme Court noted that the company-designated doctor failed to issue a degree of disability to the seafarer's injury within 240 days which by law makes the disability permanent and total. Thus, while the company-designated doctor issued an opinion within 240 days that seafarer's disability is permanent but incomplete, the degree of disability was issued on the 256<sup>th</sup> day and after the lapse of the 240 days period stated under law. According to the Supreme Court, the degree of disability must be the one established prior to the 240 days period.

*United Philippine Lines, Inc. et.al., vs. Generoso Sibug; G.R. No. 201072, April 2, 2014; First Division; Associate Justice Martin Villarama, Jr., Ponente (Attys. Lovereal Ocampo-Carullo and Florencio Aquino handled for vessel interests).*

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***“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***

***“Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners.” Asia-Pacific, the Legal 500, 2014, p. 494***

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