



## Shipping and the Law

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, November 17, 2006

### Supreme Court rules that PEME is not measure of seafarer's true state of health

**Synopsis:** Seafarer argued that his illness is compensable as it was contracted during his employment. He presented as proof his PEME which showed him "fit to work". The Labor Arbiter awarded Grade 9 or US\$6,530 as disability benefits. On appeal, the NLRC increased the disability benefits to Grade 1 or \$60,000. The Supreme Court disagreed and dismissed the complaint. The Court ruled: **A seafarer cannot rely on his PEME to prove that he acquired his illness during employment. While a PEME may reveal enough for vessel interests to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform vessel interests of seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.** It was only after respondent seafarer was subjected to extensive medical procedures including MRI of the thoracic and lumbosacral spine that seafarer's illness was finally diagnosed as a case of avascular necrosis of the hip with septic arthritis. Seafarer had revealed that his illness antedated his employment by nine days. **Disability arising from a pre-existing illness is not compensable.**

**FACTS:** Seafarer was employed as a boatswain under the old POEA Standard Employment Contract. On February 22, 1999, he requested for medical attention due to high fever and pains at his left hip bone socket. The company doctor diagnosed him to have septic arthritis and avascular necrosis of the left hip and gave him a disability grading of half of Grade 9. Seafarer filed a claim for permanent total disability benefits of US\$60,000.

The Labor Arbiter directed him for medical evaluation to any government hospital, in order to determine the extent of his disability. Seafarer complied and was advised by the government doctor not to engage in manual work that would entail prolonged standing, running and carrying heavy objects.

The Labor Arbiter awarded disability benefits of US\$6,530.00, equivalent to impediment grade of half of Grade 9 and attorney's fees.

The NLRC modified the decision and awarded total disability benefits of US\$60,000.00 and ruled that petitioners' negligence, coupled with the fact that the nature of the illness of respondent seafarer renders him incapable of pursuing his profession as a seafarer, sufficed to categorize respondent's disability as permanent total disability. The Court of Appeals affirmed the NLRC ruling. Petitioner vessel brought the case to the Supreme Court and argued that the appeals court failed to consider that the condition of respondent pre-existed his employment, thereby limiting, if not negating their liability.

**RULING:** The Supreme Court, through Justice Morales, reversed the decision and dismissed the claim:

**The Court said that: "in order to hold petitioners (vessel) liable to respondent (seafarer) for disability benefits, respondent (seafarer) must present concrete proof that he acquired or contracted the injury or illness, which resulted to his disability, during the term of his contract."**

As gleaned from the records, seafarer disclosed that as early as January 19, 1999, or nine (9) days prior to his deployment, he had been experiencing fever, moderate to high grade, intermittent, associated with chills, body malaise and pain on the lumbosacral area radiating to left lower extremity. This clearly shows that his ailment **antedated** his employment and that he did not contract it while working on board the

vessel for more than three (3) weeks. **"Disability arising from a pre-existing illness is not compensable."**

Seafarer argues that prior to his employment, he underwent a thorough PEME conducted by the company-designated physician and was pronounced "fit to work." This means that his illness was acquired during employment.

On this issue, the court ruled:

"While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, **it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.** It was only after respondent seafarer was subjected to extensive medical procedures including MRI of the thoracic and lumbosacral spine that respondent's illness was finally diagnosed as a case of avascular necrosis of the hip with septic arthritis."

The court further held:

"It having been satisfactorily shown that respondent was really not fit to work as a boatswain due to his pre-existing illness and, therefore, he is not entitled to disability compensation, necessarily, he is not entitled to attorney's fees."

**NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro Hernandez, G.R. No. 161104, September 27, 2006, Third Division, Justice Conchita Carpio-Morales, Ponente**

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