THIRD DIVISION

G.R. No. 252347 – RUDY T. AMPOLITOD, Petitioner, **v. TOP EVER MARINE MANAGEMENT PHILS. INC., TEMM MARITIME CO., LTD., and CAPT. OSCAR D. ORBETA,** Respondents.

Promulgated:

May 22, 2024

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* resolves to grant the Petition for Review on *Certiorari* (Petition) filed by Rudy T. Ampolitod (petitioner) and reverse the Decision dated November 28, 2019 and Resolution dated March 12, 2020 of the Court of Appeals (CA) which denied petitioner's claim for total and permanent disability benefits.

As narrated in the *ponencia*, petitioner was engaged as an Able-bodied Seaman by Top Ever Marine Management Phils. Inc., for and on behalf of its principal TEMM Maritime Company Ltd., (collectively, respondents) to work onboard the vessel "M/V" Coral Opal for a period of nine (9) months. After undergoing pre-employment medical examination, petitioner was issued a clean bill of health by the company-designated physician and was deployed on August 25, 2015.[1]

Almost two (2) months from his deployment and while on board the vessel, petitioner began to feel dizziness, weakness, and fatigue. He got a medical check-up in a clinic in Louisiana, USA and had a complete blood count (CBC) test where it was discovered that he had a platelet count of 51 L, lower than the normal count of 150-400 L. His symptoms worsened when bruises start to appear on his arms, legs, and other body parts. He continued to feel dizzy and started to have blurry vision. He was brought to another medical center where he was diagnosed with Thrombocytopenia. He was advised to see a hematologist and declared unfit to work. He was medically repatriated on October 29, 2015, and arrived in the Philippines the next day.[2]

On October 31, 2015, petitioner was admitted at the Manila Doctors Hospital where he was monitored and treated by the hematology team under the supervision of the company-designated physician. He was diagnosed with Pancytopenia Secondary to Idiopathic Thrombocytopenia Purpura, which is

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1 *Ponencia*, p. 2.
2 *Id.*

compatible with Myelodysplastic Syndrome (MDS). He underwent diagnostic tests and medical treatment from October 31, 2015 until May 2016 when his treatment was discontinued after his CBC showed normal results and he was declared fit to work. Despite this declaration, the company-designated physician recommended that petitioner continue monitoring his CBC, which petitioner followed. He monitored his blood count by undergoing regular CBC testing with the results of such tests furnished to the company-designated physician until August 5, 2017. Consequently, petitioner consulted with a physician of his choice who declared him unfit to work and permanently disabled. Thereafter, petitioner filed a claim for disability benefits against respondents.[3]

The *ponencia* grants the Petition and awards total and permanent disability benefits in favor of petitioner on the following grounds: 1) the causal relation between the nature of petitioner's illness and his working conditions establishes the compensability of his illness; and 2) the failure of the company-designated physician to issue a final and valid medical assessment, and to inform petitioner of such assessment within the period prescribed by law entitles petitioner to permanent and total disability benefits by operation of law.

The inconclusive assessment and lack of notice to petitioner entitle him to permanent total disability benefits by operation of law

I concur with the *ponencia* that the company-designated physician failed to issue a final, conclusive, and valid assessment within the period prescribed under the laws.

Respondents claim that the company-designated physician issued a final assessment on January 20, 2016 that declared petitioner fit to work. However, as the *ponencia* found, petitioner was still required to monitor his CBC results and report the same to the company-designated physician even after the issuance of the supposed final assessment.[4] He was still undergoing treatment until May 2016 when the respondents discontinued his treatment upon report from the company-designated physician that petitioner already had normal CBC results and was fit to work.[5]

In *Jebsens Maritime, Inc. v. Mirasol*,[6] the Court ruled that "[a] final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and **without any further condition or treatment. It should no longer require any further action on the part of the company-designated**

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3 *Id.* at 2–3.
4 *Id.* at 13.
5 *Id.*
6 854 Phil. 241 (2019) [J. Caguioa, Second Division].

physician, and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law." Applying the same, the January 20, 2016 Final Disability Assessment cannot be deemed to be final and conclusive. It is inconsistent that petitioner was declared fit to work, but he was still required to undergo treatment and was advised to continue monitoring his blood count, even after the issuance of the company-designated physician's final medical report.

Further, as duly found by the *ponencia*, the said assessment was not furnished to petitioner as he was only apprised of the same during the Single-Entry Approach mandatory conference.[7] The lack of notice to petitioner violates the provisions of Section 20(A) of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) and petitioner's right to due process of law. There being no proper notice within the 120/240-day period, the disability of petitioner became permanent and total by operation of law.

On this ground alone, the award of disability benefits may already be granted. However, the *ponencia* proceeded to discuss the compensability of petitioner's illness applying the "reasonable linkage" standard. The *ponencia* ruled that the working conditions of petitioner—tasked to overhaul/maintain gears or equipment, to chip rust, and to paint the deck of the ship which exposed him to various industrial solvents, cleaning agents and chemicals, including Benzene—caused or at the very least contributed to the development or aggravation of petitioner's MDS.

I respectfully disagree for two (2) reasons: a) the "reasonable linkage" standard does not apply in the instant case because the company-designated physician failed to overcome the presumption of work-relatedness of petitioner's illness which consequently entitles him to compensation; and b) there is no factual basis for the *ponencia* to conclude that petitioner was exposed to Benzene and such exposure contributed to the development of his illness.

The "reasonable linkage" standard does not apply to petitioner because his illness manifested during the term of his contract

With respect to the applicability of the "reasonable linkage" standard, the Court's ruling in *Ventis Maritime Corp. v. Salenga*[8] (*Ventis*) is instructive on this matter. In *Ventis*, the Court had the opportunity to discuss the rules governing complaints for disability benefits filed by seafarers, to wit:

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7 *Ponencia*, p. 13.

8 873 Phil. 567 (2020) [Per J. Caguioa, First Division]

The seafarer's complaints for disability benefits arise from (1) injury or illness that manifests or is discovered **during** the term of the seafarer's contract, which is usually while the seafarer is on board the vessel or (2) illness that manifests or is discovered **after** the contract, which is usually after the seafarer has disembarked from the vessel. As further explained below, it is only in the first scenario that Section 20(A) of the POEA-SEC applies.

. . . .

Based on the foregoing, **if the seafarer suffers from an illness or injury during the term of the contract, the process in Section 20(A) applies**. The employer is obliged to continue to pay the seafarer's wages, and to cover the cost of treatment and medical repatriation, if needed. After medical repatriation, the seafarer has the duty to report to the company-designated physician within three days upon his [or her] return. The employer shall then pay sickness allowance while the seafarer is being treated. And thereafter, the dispute resolution mechanism with regard to the medical assessments of the company-designated, seafarer-appointed, and independent and third doctor, shall apply.

The disputable presumption of work-relatedness provided in paragraph 4 above arises only if or when the seafarer suffers from an illness or injury **during the term of the contract** and the resulting disability is not listed in Section 32 of the POEA-SEC. That paragraph 4 above provides for a disputable presumption is because the injury or illness is suffered while working at the vessel. Thus, or stated differently, it is only when the illness or injury manifests itself during the voyage and the resulting disability is not listed in Section 32 of the POEA-SEC will the disputable presumption kick in. This is a reasonable reading inasmuch as, at the time the illness or injury manifests itself, the seafarer is in the vessel, that is, under the direct supervision and control of the employer, through the ship captain.

. . . .

In instances **where the illness manifests itself or is discovered after the term of the seafarer's contract, the illness may either be (1) an occupational illness listed under Section 32-A of the POEA-SEC, in which case, it is categorized as a work-related illness if it complies with the conditions stated in Section 32-A, or (2) an illness not listed as an occupational illness under Section 32-A but is reasonably linked to the work of the seafarer**.

For the first type, the POEA-SEC has clearly defined a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." What this means is that to be entitled to disability benefits, a seafarer must show compliance with the conditions under Section 32-A, as follows:

1. The seafarer's work must involve the risks described therein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
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> 4. There was no notorious negligence on the part of the seafarer.
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> As to the second type of illness—one that is not listed as an occupational disease in Section 32-A—*Magsaysay Maritime Services v. Laurel* instructs that the seafarer may still claim provided that he [or she] suffered a disability occasioned by a disease contracted on account of or aggravated by working conditions. For this illness, "[i]t is sufficient that there is a reasonable linkage between the disease suffered by the employee and his [or her] work to lead a rational mind to conclude that his [or her] work may have contributed to the establishment or, *at the very least, aggravation of any pre-existing condition he [or she] might have had.*" Operationalizing this, to prove this reasonable linkage, it is imperative that the seafarer must prove the requirements under Section 32-A: the risks involved in his [or her] work; his [or her] illness was contracted as a result of his [or her] exposure to the risks; the disease was contracted within a period of exposure and under such other factors necessary to contract it; and he [or she] was not notoriously negligent.
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> In effect, the table of illnesses and the corresponding nature of employment in Section 32-A only provide the list of occupational illnesses. It does not exempt a seafarer from providing proof of the conditions under the first paragraph of Section 32-A in order for the occupational illness/es complained of to be considered as work-related and, therefore, compensable.
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> Further, in both types, to determine the amount of compensation, the seafarer must show the resulting disability following as guide the schedule listed in Section 32.[9] (Emphasis supplied, citations omitted)

From the foregoing, the governing rule for petitioner's complaint is Section 20(A) of the POEA-SEC since his non-listed illness occurred during the term of his contract. Generally, to be compensable, it is incumbent upon petitioner to prove that (1) his injury or illness is work-related and (2) his injury or illness existed during the term of his employment contract. But since petitioner's illness is not listed under Section 32, it is disputably presumed to be work-related. The burden is then with the company-designated physician to prove that petitioner's illness is not work-related guided by the conditions set forth under Section 32-A.

This is the tenor of the Court's ruling in *Hernandez v. Sealion Maritime Services, Corp.*[10] (*Hernandez*) where it was held that the disputable presumption of work-relatedness automatically includes a corollary disputable presumption of compensability, revisiting the ruling in *Romana v. Magsaysay Maritime Corp.*[11] to wit:

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9 *Id.* at 576–585.

10 G.R. No. 248416, July 14, 2021 [Per J. Carandang, First Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

11 816 Phil. 194 (2017) [Per J. Perlas-Bernabe, First Division].

> The **disputable presumption of work-relatedness should automatically include a corollary disputable presumption of compensability**. Otherwise, the presumption of work-relatedness would serve no purpose if the seafarer were still required to submit further proof of entitlement to disability compensation. Therefore, **the conditions listed under Section 32-A of the 2010 POEA-SEC are presumed to be satisfied given that the injury or illness occurred during the seafarer's term of employment**. This is in keeping with the principal/employer/master/company's "duty to take all necessary precautions to prevent or avoid accident, injury or illness to the crew and to observe the Code of Ethics for Seafarers, and to provide a workplace conducive for the promotion and protection of the health of the seafarers." If at all, the **conditions under Section 32-A can be used by the principal/employer/master/company to disprove the presumption in favor of the seafarer**.[12] (Emphasis supplied, citation omitted)

As applied in this case, the mere failure of respondents to refute the disputable presumption of work-relatedness is construed in petitioner's favor. Petitioner is no longer required to prove that the nature of his work caused or aggravated the risk of his illness for the presumption to apply. In essence, the disputable presumption of work-relatedness holds as the company-designated physician failed to rebut it. Further, the presumption of work-relatedness includes the presumption of compensability, unless the company-designated physician was able to establish that the illness is not work-related, which such physician failed to do in this case. Thus, the discussion on the "reasonable linkage" standard is no longer necessary.

This ruling has also been applied in the case of *Petipit, Jr. v. Crossworld Marine Services, Inc.*[13] (*Petipit*) where the Court reiterated that Section 20(A) of the POEA-SEC applies to a seafarer who suffers an injury or illness during the term of his or her contract. When such injury or illness is not listed under Section 32, it gives rise to the disputable presumption that the injury or illness is work-related. The seafarer need not further prove that his or her work conditions caused or at least increased the risk of the illness or injury for the presumption to apply. The statutory presumption stands unless refuted by the employer company. It must be emphasized that the *ponente* concurred in the Court's decisions in both *Hernandez* and *Petipit*.

To reiterate, when a seafarer incurs an injury or illness during the term of his or her employment contract, the provisions of Section 20(A) of the POEA-SEC shall apply.[14] The employer is obligated to comply with the payment of sickness allowance, transportation and lodging expenses, medical and hospitalization fees of the seafarer until such time that the seafarer is declared fit or the degree of his or her disability has been established by the company-designated physician. Likewise, the seafarer is obligated to comply with his or her duty to submit himself or herself for post-employment medical

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12 *Hernandez v. Sealion Maritime Services, Corp., supra* note 10.

13 G.R. No. 247970, July 14, 2021 [Per J. Carandang, First Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

14 *See Ventis Maritime Corp. v. Salenga, supra* note 8.

examination within three (3) days from repatriation, to report regularly to the company-designated physician, and to follow his or her treatment plan, otherwise he or she forfeits his or her right to claim benefits.[15] Meanwhile, the company-designated physician is duty-bound to issue a final, conclusive, and valid medical assessment of the seafarer's injury or illness within 120 days, or if further treatments are needed, it may be extended up to 240 days.[16] The medical assessment must have a declaration of work-relatedness of the injury or illness and of the seafarer's fitness to work or disability grading.[17] Further, the company-designated physician shall furnish the seafarer of his or her medical assessments and records.[18] Upon the issuance of the final and definitive medical assessment and notice to the seafarer, the latter may consult with the physician of his or her choice for a second-opinion. In case of conflicting findings, the parties may refer the matter to a third doctor whose findings shall be binding. This initiates the dispute resolution mechanism.[19]

However, when a seafarer acquires or discovers an illness after the term of his or her employment contract, the governing rule shall depend on the type of illness: (1) if it is an occupational disease listed under Section 32-A, it will be considered work-related if it complies with the conditions set forth therein; or (2) if it is not an occupational disease listed under Section 32-A, it may be considered work-related upon substantial proof by the seafarer that his or her illness is "reasonably linked" to the kind of work he or she did while onboard the vessel.[20]

Thus, I submit that the discussion on the "reasonable linkage" between petitioner's illness and his work conditions is no longer necessary.

Court's findings of work-relatedness must rely on substantial evidence presented by the parties

Further, the *ponencia*'s conclusion that petitioner was exposed to Benzene which caused or at the very least contributed to the development of his MDS[21] is not supported by the evidence on record. The *ponencia* relied on medical articles or clinical studies from medical websites to support its finding that petitioner's MDS is reasonably linked to the conditions of his work as an Able-bodied Seaman. However, such reliance is contrary to the norm that decisions of the Court must be based on established facts, applicable law, and

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15 *See Crown Shipping Services v. Cervas*, G.R. No. 214290, July 6, 2021 [Per J. Gaerlan, First Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

16 *See Elburg Shipmanagement Phils. Inc. v. Quioge*, 765 Phil. 341 (2015) [Per J. Mendoza, Second Division].

17 *See Carcedo v. Maine Marine Phils. Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division].

18 *See Gere v. Anglo-Eastern Crew Management Phils. Inc.*, 830 Phil. 695 (2018) [Per J. Reyes, Jr., Second Division].

19 *See Bunayog v. Foscon Shipmanagement, Inc.*, G.R. No. 253480, April 25, 2023 [Per J. Gaerlan, *En Banc*]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

20 *See Ventis Maritime Corp. v. Salenga*, *supra* note 8 at 584.

21 *Ponencia*, pp. 10–11.

existing jurisprudence.[22] While there may be scientific basis to the conclusions made in these medical articles, the Court cannot simply take judicial notice of them, without presentation of evidence to prove their probative value and applicability to petitioner's specific medical condition. Thus, the Court must be mindful in citing medical articles as basis for its determination of the work-relatedness of a seafarer's injury or illness. Instead, the Court must rely on the medical findings of the company-designated physician or of the seafarer's independent physician who have personally examined and assessed the actual condition of the seafarer.

In this case, there was no substantial evidence to support the finding that petitioner was exposed to Benzene while he was working onboard the vessel. Further, it was not indicated in the findings of the company-designated physician nor of the seafarer's independent physician that petitioner's MDS could have been caused by exposure to such chemical.

ACCORDINGLY, I vote to **GRANT** the Petition on the sole ground that petitioner is entitled to total and permanent disability benefits by operation of law due to the failure of the company-designated physician to issue a final and definitive assessment and to notify the seafarer of such assessment within the period prescribed by the law.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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22 *See Raza v. Daikoku Electronics Phils., Inc.*, 765 Phil. 61 (2015) [Per J. Peralta, Third Division].