

THIRD DIVISION

[G.R. No. 239190, February 10, 2021]

RAUL D. BITCO, PETITIONER, VS. CROSS WORLD MARINE SERVICES, INC., KAPAL (CYPRUS) LTD. AND/OR ELEAZAR G. DIAZ, RESPONDENTS. D E C I S I O N

DELOS SANTOS, J.:

It is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.^[1]

This is to resolve the Petition for Review on *Certiorari*^[2] under Rule 45 of the Rules of Court of petitioner Raul D. Bitco (Bitco) seeking to reverse and set aside the Decision^[3] dated November 29, 2017 and the Resolution^[4] dated May 3, 2018, both of the Court of Appeals (CA) in CA-G.R. SP No. 151891.

The factual antecedents are as follows: Bitco was hired as Ordinary Seaman by respondent Crossworld Marine Services, Inc. (Crossworld) for and in behalf of its foreign principal Kapal (Cyprus) Ltd. after having passed his Pre-Employment Medical Examination and certified fit to work. The employment contract stipulated an eight-month duration plus one month upon mutual consent of both parties for a basic monthly salary of US\$406.39 plus other benefits. Complainant left the Philippines on November 6, 2014 to board his vessel "M/V Eurocargo Bari." Sometime in February 2015, while on duty, Bitco suddenly felt a snap at his lower back while lifting supplies during provisions in Italy that resulted in acute moderate pain. He ignored the pain and continued with his work.^[5]

On June 25, 2015, after performing another heavy work, Bitco's lower back pain recurred. He was then brought to a medical facility in Valencia, Spain for check-up. Bitco was diagnosed to be suffering from Post Effort Acute Lumbociatalgia. He was given medication and was advised to rest for three days. Due to persistent pain, however, Bitco was declared unfit for sea duties and was ordered for repatriation to seek further evaluation and management in the Philippines.^[6]

Upon arrival in the Philippines on July 22, 2015, Bitco immediately reported to Crossworld for post-employment medical examination. He was referred to Ship-to-Shore Medical Assist in Makati City for medical treatment. Thereafter, Bitco was referred to St. Luke's Medical Center, Global City, Taguig City (St. Luke's Medical Center) for further treatment. He underwent eight sessions of physical therapy.^[7]

However, as no significant improvement was noted, Bitco underwent epidural steroid injection on September 12, 2015 and given another set of physiotherapy. On October 16, 2015, he underwent Magnetic Resonance Imaging Examination of the Lumbosacral Spine at St. Luke's Medical Center. Results revealed the following: Straightened Lumbar Curvature maybe due to muscle spasm; Dessicated disks and

Spondylosis at L4-L5 and L5-S1 resulting in severe bilateral neural canal narrowing and mild spinal canal narrowing at L4-L5 and mild narrowing of the spinal and both neural canals at L5-S1; small center annular tear L5-S1; mild levoscoliosis; incidental note of small cyst in the right kidney.^[8]

Despite physical therapy, Bitco noted very minimal improvement. Bitco was treated by the company-designated physician until December 15, 2015. Thereafter, the company-designated physician assessed Bitco with a partial disability Grade 8 pursuant to the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).^[9]

On January 26, 2016, as Bitco was still experiencing severe pains in his lower back and numbness on his left leg, he consulted Dr. Renato P. Runas (Dr. Runas), an Orthopedic Surgeon. Said doctor issued a Medical Report stating that Bitco is unfit for duty as a seafarer in whatever capacity with a total permanent disability since he can no longer perform his work which he is previously engaged. Dr. Runas further noted that Bitco remains incapacitated and is "saddled with the impediment of being unable to carry and lift heavy objects due to back stiffness which make it difficult for him to bend, pick-up and carry objects from the floor. Prolonged [sitting] and standing worsen the discomfort."^[10]

As parties could not agree and settle the disability benefits claimed by Bitco, this case was filed.^[11]

In their defense, respondents argued that Bitco could not claim total and permanent disability because he did not present a second doctor's opinion and referral to a third doctor. He is only entitled to receive partial disability benefits because that was what was assessed by the company-designated physician (Grade 8 disability). Moreover, they reminded the Labor Arbiter (LA) that the POEA-SEC states that disability compensation shall be complied with in accordance with the schedule of benefits. Likewise, the claim under the Collective Bargaining Agreement should also fail because the ailment did not result from an accident.^[12]

In response, Bitco insisted that the referral to a third doctor is merely permissive, not mandatory. While non-referral to a third doctor will render the doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases. Courts and tribunals remain duty-bound to evaluate and examine the contents of the medical evaluations submitted in evidence. In Bitco's case, there was no definite declaration within the 120/240-day period on whether or not he can still resume his post as an Ordinary Seaman. Remarkably, the final medical report stated that his trunk motion remained limited despite extensive treatment, thus, indicating that despite treatment, he remains incapacitated to perform his duties.^[13]

Labor Arbiter's Ruling

On January 23, 2017, LA Irene Castro-De Quiroz rendered a Decision^[14] finding merit in the complaint for total and permanent disability. The LA found that Bitco's disability became total and permanent because he failed to return to work after 120 days or even 240 days. Moreover, the LA found that the company-designated physician's disability grading of 8 doubtful, given that there was no guarantee that

physical therapy and/or surgery can restore Bitco's capability to assume sea duties. Thus, while Bitco's own physician assessed him to be permanently incapacitated, the non-referral to a third doctor did not negate Bitco's cause of action. The dispositive portion of the Decision reads as follows:

WHEREFORE, premises considered, this Labor Arbitration Branch finds merit in the complaint for total and permanent disability. The respondent companies Crossworld Marine Services Inc. and Kapal (Cyprus), are held jointly and severally liable to pay the complainant his disability benefit of USD 60,000.00 and 10% Attorney's fees.^[15]

Aggrieved by the LA's Decision, respondents elevated the case to the National Labor Relations Commission (NLRC) for review.

NLRC Ruling

On May 9, 2017, the NLRC issued a Decision^[16] dismissing respondents' appeal and affirming *in toto* the Decision of the LA.

The NLRC adopted the finding of the LA that Bitco was already declared partially and permanently disabled within the 120-day or 240-day period, but he remained incapacitated to perform his usual sea duties after the lapse of said period.^[17] The NLRC also ruled that the lack of opinion by a third doctor did not defeat Bitco's cause of action. It noted the permissiveness of Section 20(A)(3) of the POEA-SEC, which should be invoked for the protection and benefit of the seafarer. The provision used the phrase "may be agreed jointly" when pertaining to the referral to a third doctor. Hence, the said referral is not mandatory.^[18]

The respondents filed a Motion for Reconsideration. On May 31, 2017, the NLRC issued a Resolution^[19] denying respondents' Motion for Reconsideration. Thus, respondents elevated the matter to the CA via a Petition for *Certiorari* under Rule 65 of the Rules of Court. In their petition, respondents argued that Bitco had no cause of action at the time the complaint was filed. There was no evidence that he was incapacitated for work except for the opinion of the company-designated physician. In fact, the company-designated physician gave him a Grade 8 partial disability rating. As regards the allegations that the 240-day period had already lapsed, respondents argue that the number of days alone does not determine the entitlement to disability benefits. Rather, it is the disability ratings that determine the basis for such entitlement.^[20] They also claimed that the NLRC gravely erred in stating that the referral to a third doctor is not mandatory and absent the third doctor's opinion, a complaint shall be dismissed for lack of cause of action.^[21] As regards the award of attorney's fees, they asserted that Bitco is not entitled to the same since the respondents acted within their rights when they denied his demands for total and permanent disability benefits.^[22] Moreover, they also argued that Bitco is not entitled to moral damages, as he failed to allege and prove any of the situations provided in the said provision.^[23]

On the other hand, Bitco averred that the grounds raised by respondents which question the labor tribunal's ascribing of liability upon them is not a proper subject of a *certiorari* petition under Rule 65 of the Rules of Court. Only errors of

jurisdiction, not errors of judgment, may be dealt with in a petition for *certiorari*.^[24] Bitco also reiterated that the Medical Report dated December 17, 2015 clearly failed to make a definite declaration from the company-designated physician within the period of 120 or 240 days that he can still resume his customary duties as an Ordinary Seaman.^[25] Anent attorney's fees, Bitco argued that the award is proper because he was constrained to secure the services of a counsel to pursue his claims against the respondents.^[26] Thus, there was no grave abuse of discretion amounting to lack or excess of jurisdiction when the NLRC affirmed the award of attorney's fees.^[27]

CA Ruling

In a Decision^[28] dated November 29, 2017, the CA granted the petition, the dispositive portion of which reads:

WHEREFORE, the instant petition for *certiorari* is GRANTED. The Decision dated May 9, 2017 and Resolution dated May 31, 2017 of the NLRC are hereby ANNULLED and SET ASIDE. SO ORDERED.^[29]

The CA reiterated that it is a settled rule that referral to a third doctor is a mandatory procedure. The NLRC is incorrect in automatically concluding that the opinion of the third doctor is no longer binding because the same would have been issued after the lapse of the 240-day period. The rule is that the findings of the company-designated physician shall prevail in cases where the seafarer did not observe the third doctor referral provision in the POEA-SEC.^[30] The CA ruled that the findings of the company-designated physician have sufficient basis in light of the fact that Bitco has been under her treatment and management for several months. The company-designated physician was likely to have more credible assessment of Bitco's medical condition since she was able to closely monitor his ailment ever since his repatriation.^[31] On December 22, 2017, petitioner filed a Motion for Reconsideration assailing the November 29, 2017 Decision of the CA. On May 3, 2018, the CA denied, in a Resolution,^[32] the Motion for Reconsideration. Hence, this Petition raising the following errors:

I.

THE HONORABLE [CA] GRAVELY ERRED IN ANNULING AND SETTING ASIDE THE DECISION OF THE NLRC AWARDING PERMANENT AND TOTAL DISABILITY BENEFITS TO HEREIN PETITIONER.

II.

THE HONORABLE [CA] ERRED IN NOT AWARDING ATTORNEY'S FEES TO HEREIN PETITIONER.^[33]

The Court's Ruling

The fundamental issue that the Court must resolve is whether Bitco is entitled to total and permanent disability benefits.

At the outset, it must be emphasized that this Court is not a trier of facts and as general rule, only questions of law raised *via* a Petition for Review under Rule 45 of the Rules of Court are reviewable by this Court.^[34] The function of the Court in

petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.^[35]

Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.^[36] The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency, as in this case.^[37] Thus, the Court is constrained to review and resolve the factual issue in order to settle the controversy. The present case before us involves the claim for permanent and total disability benefits of a seafarer, Bitco. In his Petition, Bitco argues that he is entitled to permanent and total disability benefits because it is undeniable that his injury remained unresolved. The recommended treatment and therapy accorded to Bitco by respondents' medical team, did not restore his pre-injury capacity. Bitco's tasks as Ordinary Seaman were predominantly manual in nature involving a lot of lifting and carrying heavy objects. Thus, while the company-designated physician assessed Bitco of a partial disability of Grade 8, the latter has remained incapacitated to work for more than 240 days owing to the injury he sustained on board respondents' vessel "M/V Eurocargo Bari." As such, he is already considered to be permanently and totally disabled. Bitco avers that it is the inability of a seafarer to work within the period prescribed by law that determines his entitlement to permanent total disability compensation and not merely on the disability gradings provided under the POEA-SEC. Moreover, Bitco also maintains that there was no definite declaration from the company-designated physician with the period of 120 or 240 days whether he can still resume his customary duties as Ordinary Seaman. In the absence of such declaration, Bitco is still deemed to be permanently and totally disabled. Lastly, since Bitco was constrained to secure the services of a counsel to pursue his claims, he is also entitled to attorney's fees.

In their Comment,^[38] respondents posit that the lone Medical Report presented by Bitco can be hardly considered to be sufficient under the provisions of the POEA-SEC. First, there was no declaration of how work-related illness applies, as it only provides for generic allegations; second, there was no proper degree of disability assessment; third, it was a product of a single consultation; and fourth, it was obviously issued by mere accommodation. Therefore, it cannot be gainsaid that no physician credibly declared Bitco as permanently and totally disabled, in fact the assessment was not a work-related condition. Respondents also argue that the provisions under the POEA-SEC and not the number of days of disability determine whether or not Bitco is permanently and totally disabled. The Petition is meritorious.

Without a valid, final, and definitive assessment, the seafarer's disability becomes permanent and total.

The entitlement of an overseas seafarer to disability benefits is governed by law, the employment contract, and the medical findings.^[39] By law, the seafarer's disability benefits claim is governed by Articles 197 to 199 (formerly Articles 191-193), under Chapter VI (Disability Benefits), Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.^[40] By contract, it is governed by the employment contract which the seafarer and his employer/local