

FIRST DIVISION

[G.R. No. 249358, April 28, 2021]

**GREGORIO F. ABELLA, PETITIONER, VS. ABOSTA
SHIPMANAGEMENT CORPORATION, PANSTAR SHIPPING CO.,
LTD., AND ALEX S. ESTABILLO, RESPONDENTS.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision^[2] dated May 22, 2019 and Resolution^[3] dated August 28, 2019 of the Court of Appeals^[4] (CA), in CA-G.R. SP No. 157277, which affirmed the findings of the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC) that petitioner Gregorio F. Abella (Abella) is only entitled to Grade 8 disability benefits.

The Facts of the Case

Abella worked as an oiler for respondent Abosta Shipmanagement Corporation (Abosta), on behalf of its foreign principal, respondent Panstar Shipping Co., Ltd. (Panstar) (collectively, respondents), on board M/V Sino Trader under a 10-month employment contract.^[5] He was deployed on March 20, 2016.^[6]

On June 23, 2016, Abella and his crewmates were ordered to carry the ship's supplies and food provisions. While carrying a sack of rice, Abella allegedly felt a sudden snap on his left lower back with a sharp pain radiating down to his thigh/leg. The incident was immediately reported to his superiors, and Abella was given pain relievers and a waist protector.^[7] Because his condition did not improve, he was brought to the Maritime Medical Centre Pte., Ltd. in Singapore where he was diagnosed with "Lumbar spondylosis with discopathy at L4L5L5S1" and prescribed medication.^[8] Due to persistent pain, he was again brought to a hospital in Brazil.^[9] On August 6, 2016, Abella was repatriated to the Philippines for further medical treatment.^[10]

When Abella arrived in the Philippines, he immediately reported to the company-designated physician at NGC Medical Specialist Clinic on August 8, 2016.^[11] After running a series of laboratory tests on Abella, the company-designated physician diagnosed him with "Herniated Nucleus Pulposus L3-L4, Disc Protrusion L5-S1 and L-4 Radiculopathy," and recommended that he undergo physical therapy.^[12] Abella claimed, however, that respondents ceased his treatment and rehabilitation on February 16, 2017.^[13]

During a conference held on February 20, 2017, respondents informed Abella that he is suffering from Grade 8 disability and offered him the corresponding disability

benefits in the amount of US\$16,795.00.^[14] Abella allegedly requested for further treatment or an improved monetary offer, but his requests were denied.^[15]

On April 25, 2017, Abella consulted an orthopedic surgeon, Dr. Cesar H. Garcia (Dr. Garcia), who diagnosed him with "Disc Protrusion L5S1 & Radiculopathy" and declared him permanently unfit for sea duty in any capacity.^[16] The Medical Assessment dated April 25, 2017 issued by Dr. Garcia (April 25, 2017 Medical Assessment) states:

x x x x

Present PE Findings:

- (+) SLRT (L) RT 25

- (+) Spasm Lumbosacral paraspinal muscles

Final Dx: Disc Protrusion L5S1 & Radiculopathy

Recommendation:

Patient is permanently unfit for sea duty in whatever capacity.^[17]

Abella instituted a complaint for payment of total and permanent disability benefits, medical expenses, damages, and attorney's fees on May 24, 2017 following respondents' alleged refusal to pay him total and permanent disability benefits.^[18]

In his Position Paper^[19] dated September 6, 2017, Abella argued, among others, that he should be deemed totally and permanently disabled because his condition has rendered him incapacitated to work as a seafarer for more than 240 days, and the company-designated physician failed to timely issue a final medical assessment.

^[20] He emphasized that respondents were not able to present any piece of evidence of a final medical assessment even during the mandatory conferences before the LA.

^[21]

On the other hand, respondents, in their Position Paper^[22] dated September 4, 2017, outlined the timeline of Abella's treatment and attached the corresponding medical reports. This included the alleged final disability assessment issued by the company-designated physician on November 22, 2016 (November 22, 2016 Medical Assessment) stating that Abella is suffering from Grade 8 disability, which is equivalent to moderate rigidity or 2/3 loss of motion or lifting power of the trunk.

^[23] They contended that said November 22, 2016 Medical Assessment should prevail and stressed that Abella failed to provide them a copy of the medical assessment of his doctor of choice prior to his filing of complaint.^[24]

Meanwhile, the parties also agreed to refer the conflicting medical findings to a third doctor.^[25] The appointed third doctor, Dr. Reneil Jay Peña (Dr. Peña), recommended Abella to undergo Magnetic Resonance Imaging (MRI) scan and Electromyography (EMG) test.^[26] Despite the release of the MRI scan and EMG test results, the medical assessment of Dr. Peña was not secured.^[27] Abella alleged that the non-completion of the conflict-resolution procedure was due to respondents' fault.^[28] Respondents claimed otherwise.^[29]

LA Decision

In a Decision^[30] dated January 25, 2018 (LA Decision), the LA dismissed Abella's complaint and ordered respondents to pay Abella disability benefits corresponding to Grade 8 rating under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) amounting to US\$16,795.00.

The dispositive portion of the LA Decision reads as follows:

WHEREFORE, premises considered, the above entitled complaint for total permanent disability is DISMISSED for lack of merit.

Respondents are ordered to pay the complainant USD16,795.00 representing Grade 8 partial disability benefits under the POEA-SEC.

All other claims are denied.

SO ORDERED.^[31]

The LA held that the absence of a third doctor opinion does not preclude it from deciding the case based on the pieces of evidence on record.^[32] The LA gave more weight and credence to the medical reports issued by the company-designated physician which were detailed, supported by objective procedures, and demonstrated an outline of medical treatment.^[33] In contrast, the April 25, 2017 Medical Assessment of Dr. Garcia was issued only on the basis of his physical examination of Abella, and without any tests and previous reports to support it.^[34] The LA also found Abella's bare allegation that his condition rendered him incapacitated to work and earn for more than 240 days was insufficient to substantiate his claim for total and permanent disability benefits especially since the company-designated physician timely issued a final medical assessment.^[35] The LA also denied the rest of Abella's claims for lack of basis.^[36] Lastly, the LA held respondent Alex S. Estabillo (Estabillo), the Vice-President and Managing Director of Abosta, jointly and severally liable with other respondents in accordance with Section 10^[37] of Republic Act No. (R.A.) 10022, or the Migrant Workers' Act of 1995, as amended.^[38]

Aggrieved with the LA Decision, Abella filed an appeal with the NLRC.^[39]

NLRC Decision

In a Decision^[40] dated May 24, 2018 (NLRC Decision), the NLRC denied Abella's appeal, viz.:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit. The Labor Arbiter's Decision dated January 25, 2018 is **AFFIRMED**.

SO ORDERED.^[41]

The NLRC acknowledged that the company-designated physician arrived at a final medical assessment of Abella's condition on November 22, 2016, or 108 days from his repatriation. Thus, Abella's insistence that there was no such assessment and that he should be deemed totally and permanently disabled cannot be sustained.^[42]

The NLRC likewise held that the November 22, 2016 Medical Assessment of the company-designated physician should prevail over the April 25, 2017 Medical Assessment of Dr. Garcia. The NLRC noted that the April 25, 2017 Medical Assessment was issued only after a single consultation on a mere physical examination of Abella, and did not contain an assessment or rating of Abella's disability.^[43] Finally, the NLRC held that the results of the medical tests ordered by the third doctor which shows that Abella is suffering from "chronic L4 radiculopathy, left," by itself and without any third doctor assessment, will not warrant the conclusion that he is suffering from total and permanent disability.^[44]

Abella sought reconsideration of the NLRC Decision, but was denied in a Resolution dated June 18, 2018.^[45] Thus, he filed a petition for certiorari with the CA.^[46]

CA Decision

In the assailed Decision, the CA denied Abella's petition for *certiorari*. The dispositive portion of the assailed CA Decision reads:

WHEREFORE, the petition is DENIED.

The [Decision dated May 24, 2018] of the National Labor Relations Commission (5th Division) in NLRC NCR-OFW-M-05-07303-17/NLRC LAC No. 04-000226-18-OFW is hereby AFFIRMED.

SO ORDERED.^[47]

The CA held that Abella failed to establish his claim by substantial evidence. In the absence of a medical assessment from a third doctor, it is more logical to give credence to the medical assessment issued by the company-designated physician. The CA explained that the company-designated physician had familiarity of Abella's medical status considering that he attended to and monitored his condition from the time he was repatriated.^[48] On the other hand, Dr. Garcia issued a medical assessment of Abella only after seeing him once, and by merely relying on the existing medical examination results.^[49] In addition, the CA emphasized that a seafarer's inability to work after the lapse of 120/240 days will not automatically warrant the award of total and permanent disability benefits. The CA also found that, apart from his allegation that he remains incapacitated to work as a seafarer, Abella failed to present any evidence to prove that he sought re-employment with other manning agencies but was refused by reason of his injury.^[50] Hence, the CA concluded that the NLRC committed no grave abuse of discretion amounting to lack or excess of jurisdiction in denying Abella's appeal.^[51]

Abella filed a motion for reconsideration with the CA, but the same was denied in the assailed Resolution.^[52] Hence, this Petition.

Abella insists that he is entitled to total and permanent disability benefits. He faults respondents for suddenly refusing to continue with the conflict-resolution procedure after they learned of the alleged unfavorable MRI scan and EMG test results. The non-completion of the conflict-resolution procedure also casts serious doubt on his condition, and such doubt should be resolved in his favor.^[53] Abella also postulates that affirming the CA Decision will, in effect, reward respondents for their bad faith and set a precedent for employers.^[54] Furthermore, Abella claims that the MRI scan

and EMG test results, among others, constitute proof that his disability had incapacitated him to work as a seafarer for more than 240 days. Abella also argues that the company-designated physician failed to issue a conclusive and definite medical assessment.^[55] While the November 22, 2016 Medical Assessment states that he is suffering from Grade 8 disability, it failed to mention whether his condition will improve or whether he can still continue to work as a seafarer.^[56] Abella also prayed once again for damages and attorney's fees without discussing said claims.^[57]

In their Comment^[58] dated December 1, 2020, respondents countered that it was Abella who insisted on filing pleadings before the LA instead of completing the conflict-resolution procedure by securing the assessment of the third doctor.^[59] This is fatal to his claim, and thus, Abella should only be entitled to Grade 8 disability benefits as stated in the November 22, 2016 Medical Assessment.^[60] Respondents further argue that the only reasonable measure to determine Abella's disability is the November 22, 2016 Medical Assessment, which respondents duly presented and furnished Abella's counsel during one of the mandatory conferences held before the LA. The CA therefore did not err, according to respondents, in giving more weight to the medical assessment issued by the company-designated physician.^[61] Respondents once again deny liability for damages and award of attorney's fees for lack of bad faith on their part.^[62]

Issues

The following issues are for resolution of the Court:

1. Whether Abella is entitled to total and permanent disability benefits under the POEA-SEC; and
2. Whether Abella is entitled to moral and exemplary damages and attorney's fees.

The Court's Ruling

The Petition is partly meritorious.

It is settled that in labor cases, a petition for review on *certiorari* under Rule 45 is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.^[63] Relevantly, the Court, generally, may only entertain questions of law. This rule, however, admits of exceptions, such as when there is misapprehension of facts or grave abuse of discretion,^[64] as in this case.

Claims for disability benefits for injuries suffered by seafarers on board or during the term of their employment contract are governed by the provisions of the POEA-SEC, particularly Section 20(A) thereof, which provides that:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: