# SECOND DIVISION

# [ G.R. No. 232905, August 20, 2018 ]

## OSCAR D. GAMBOA, PETITIONER, VS. MAUNLAD TRANS, INC. AND/OR RAINBOW MARITIME CO., LTD. AND CAPT. SILVINO FAJARDO, RESPONDENTS.

## D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 24, 2017 and the Resolution[3] dated July 5, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 141109 which annulled and set aside the Decision[4] dated March 18, 2015 and the Resolution[5] dated April 29, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (M) 02-000112-15, and instead, dismissed petitioner Oscar D. Gamboa's (petitioner) complaint for disability benefits, damages, and attorney's fees.

### The Facts

On January 17, 2014, petitioner entered into a nine (9)-month contract of employment[6] as Bosun with respondent Maunlad Trans, Inc. (MTI), for its principal, Rainbow Maritime Co., Ltd. (RMCL), on board the vessel, MV Oriente Shine, a cargo vessel transporting logs from Westminster, Canada to several Asian countries.[7] Prior thereto, or in 2013, petitioner was likewise hired by MTI on board *MN* Global Mermaid, also a cargo vessel.[8]

After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty,[9] petitioner disembarked and joined the vessel on January 24, 2014 that was then docked at Tokushima, Japan.[10] The following day, or on January 25, 2014, petitioner assisted in the unloading of raw logs from the vessel, as well as in the clean-up thereafter of the debris and log residue that were meter-deep. As petitioner could not withstand the strong odor of the logs and was gasping for breath, the latter asked for leave which was granted, and as such, was excused from the activity.[11] However, the incident already triggered an asthma attack on petitioner which initially started as a cough that was later accompanied by wheezing breath.[12]

On February 4, 2014, during the voyage back to Westminster, Canada, petitioner claimed that he slipped and lost his footing while going down the ship's galley, which caused a writhing pain on the upper left side of his back.[13] The ship master, Captain Julius B. Cloa (Captain Cloa), gave him Salonpas for his back, as well as medicine for his persistent cough.[14] On February 12, 2014, during the rigging operation, petitioner experienced back pain and difficulty in breathing that prompted

Captain Cloa to disembark him for medical consultation at the Mariner's Clinic, Ltd., in Canada.[15] While the foreign port doctor, Dr. Stanley F. Karon, took note of petitioner's back pain, it was his diagnosed asthma that prompted the said doctor to declare him unfit for duty.[16]

Thus, on February 15, 2014, petitioner was medically repatriated[17] and brought to Marine Medical Services where he was seen by a company-designated physician, Dr. Mylene Cruz-Balbon, who confirmed his bronchial asthma.[18] Subsequent check-ups further disclosed that petitioner was suffering from "Degenerative Changes, Thoracolumbar Spine" and was found to have a "metallic foreign body on the anterior cervical area noted on x-ray,"[19] which, as pointed out by the company-designated physician, was not related to the cause of petitioner's repatriation.[20] Petitioner was thereafter referred to orthopedic doctors, Dr. Pollyana Gumba Escano (Dr. Escano),[21] for rehabilitation and therapy, and Dr. William Chuasuan, Jr. (Dr. Chuasuan),[22] for expert evaluation and management.[23]

On May 14, 2014, the company-designated physician, Dr. Karen Frances Hao-Quan, issued a medical report[24] to respondent Captain Silvino Fajardo (Captain Fajardo) stating that petitioner still has occasional asthma attacks that have not been totally controlled despite three (3) months of maintenance medication. She also noted that petitioner still has tenderness and muscle spasm on his left paraspinal muscle. As such, the company-designated physician gave an interim assessment of "Grade 8 (orthopedic) - 2/3 loss of lifting power and Grade 12 - (pulmonary) slight residual or disorder."[25]

Likewise, the orthopedic specialist, Dr. Escano, consistently reported that petitioner has not been relieved of his back pain despite rehabilitation, and further recommended that the latter undergo MRI (Magnetic Resonance Imaging) of the spine,[26] which she pointed out could be done only after the removal of the foreign bodies embedded in petitioner's neck area.[27] She added that there was a need to control petitioner's blood pressure and asthma which prevented them from doing spiral stabilization exercises on him.[28]

Since MTI refused to shoulder the extraction procedure as it was not part of the cause for petitioner's repatriation, the latter had the procedure done at his expense.[29] However, MTI still denied petitioner's request for MRI, and instead, issued medical certificates indicating petitioner's illness as "Bronchial Asthma; Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain."[30]

Thus, on June 4, 2014, petitioner filed a complaint[31] for non-payment of his sickness allowance, medical expenses, and rehabilitation fees, against MTI, before the NLRC, docketed as NLRC Case No. SUB-RAB I (OFW) 7-06-0106-14. The complaint was subsequently amended[32] on June 18, 2014 to include a claim for permanent total disability benefits pursuant to the IBF JSU/AMOSUP (IMMAJ) Collective Bargaining Agreement (CBA)[33] for failure of the company-designated physician to make a final assessment within the mandated 120-day period, and further impleaded RMCL and Captain Fajardo (respondents) as parties thereto.

On June 20, 2014, petitioner's pu1mono1ogist, Dr. Edgardo O. Tanquieng, issued a note to the company-designated physician suggesting petitioner's disability to be "Grade 12 - slight residual or disorder."[34] On the other hand, petitioner's orthopedic specialist, Dr. Chuasuan, in his letter[35] dated July 10, 2014, explicated that petitioner's degenerative changes may have occurred overtime and could not have developed during his 22-day stay on board the vessel, hence, was a pre-existing condition.

Meanwhile, petitioner claimed that he still suffered from severe back pain and asthma attacks, which prompted him to consult on June 27, 2014, an independent physician, Dr. Sonny Edward Urbano of the Eastern Pangasinan District Hospital, who declared him unfit for work or maritime voyage given that he was found to be suffering from "Hypertension stage II, Hypertensive cardiovascular disease, Bronchial asthma, Community acquired pneumonia."[36]

In their defense, respondents denied liability contending, among others, that the complaint was prematurely filed given that the 120-day period had not yet expired at the time petitioner filed his complaint on June 4, 2014, and that the latter even returned for a follow-up check-up with his attending specialist on June 20, 2014.[37] They further contended that petitioner was not entitled to disability benefits under the CBA as his condition was not due to an accident,[38] and that his illnesses were not compensable, considering that his degenerative changes (back condition) was declared by the specialist to be a pre-existing condition, while his bronchial asthma was not work-related since he already manifested its symptoms at the time he joined the vessel on January 24, 2014.[39] They likewise averred that petitioner failed to follow the procedure in contesting the findings of the company-designated physician.[40] Lastly, they asserted that the claims for sickness allowance and reimbursement for medical and transportation expenses had already been paid,[41] while the damages and attorney's fees sought were without factual and legal bases.[42]

**The Labor Arbiter's Ruling**

In a Decision[43] dated October 25, 2014, the Labor Arbiter (LA) ruled in favor of petitioner, and accordingly ordered respondents to jointly and severally pay him permanent total disability benefits pursuant to the CBA in the amount of US$127,932.00, P100,000.00 moral damages, P50,000.00 exemplary damages, and ten percent (10%) of the total judgment award as attorney's fees.[44]

In so ruling, the LA held that the complaint was not prematurely filed given that it was initially for non-payment of sickness allowance and reimbursement of medical expenses, and that even if it subsequently sought payment of disability benefits, there was already an interim assessment made by the company-designated physician on May 14, 2014 equivalent to Grade 8 (orthopedic) - 2/3 loss of lifting power, and Grade 12 (pulmonary) - slight residual or disorder, notwithstanding that petitioner was still continuously suffering from back pain.[45] Moreover, the LA has observed that petitioner cannot be faulted in not observing the procedure for contesting the assessment since the company-designated physicians themselves

were in disagreement as to the management of his condition.[46] Finally, the LA did not give credence to respondents' claim that petitioner was not involved in any accident on board MV Oriente Shine, noting that the Ship Master's "Report of Medical Treatment"[47] dated February 12, 2014 showed that he had prescribed "Salonpas" and "paracetamol" for petitioner's back pain.[48] Considering that petitioner has not recovered from his spinal injury that rendered him incapable to resume work, and his bronchial asthma, being a listed illness under Item Number 20 of Section 32-A of the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the LA declared his entitlement to permanent total disability benefits under the CBA.[49] The LA also awarded moral and exemplary damages as petitioner was subjected to unfair treatments from respondents, as well as attorney's fees for having been compelled to litigate to protect his rights and interests.[50]

Aggrieved, respondents appealed[51] the LA Decision to the NLRC.

**The NLRC Ruling**

In a Decision[52] dated March 18, 2015, the NLRC affirmed with modification the LA Decision by deleting the award of moral and exemplary damages.[53] It ruled that petitioner's illnesses, *i.e.,* bronchial asthma and degenerative changes or osteoarthritis, were work-related diseases arising out of and in the course of petitioner's employment. They are listed as occupational diseases under the 2010 POEA-SEC.[54] It held that since the company-designated physicians failed to controvert the foreign doctor's declaration that petitioner was unfit for duty at the time the latter was repatriated, and considering further that petitioner remained incapacitated to resume his duties despite a partial permanent disability assessment on May 14, 2014, the finding of unfitness to work remained, warranting petitioner's entitlement to permanent total disability benefits.[55] It likewise sustained the applicability of the CBA, holding that while Article 28.1[56] thereof speaks of disability as a result of an accident, paragraphs 28.2 to 28.4,[57] on the other hand, merely referred to the general term "disability" which may result from accident, injury, disease, and illness.[58]

On the contrary, the NLRC disagreed with the findings of the LA that the company-designated physician refused to provide medical care and attention after the May 14, 2014 check-up session, noting that the medical reports showed that petitioner was subsequently attended to by respondents' specialists on various occasions; hence, there was no bad faith on the latter's part to warrant the award of moral and exemplary damages.[59]

Respondents moved for partial reconsideration[60] which was denied in a Resolution[61] dated April 29, 2015, prompting them to elevate the matter to the CA on *certiorari*.[62]

**The CA Ruling**

In a Decision[63] dated January 24, 2017, the CA annulled and set aside the NLRC Decision, and instead, dismissed the complaint.[64] It ruled that petitioner had no cause of action at the time he filed his complaint given that the May 14, 2014 assessment was not final, and that he was still undergoing treatment well within the allowable 240-day treatment period.[65] It likewise found no basis to support petitioner's claim that he is entitled to permanent total disability benefits, holding that the latter's independent physician examined him only once[66] and that the lapse of the 120-day period did not automatically entitle him thereto.[67]

Petitioner's motion for reconsideration[68] was denied in a Resolution[69] dated July 5, 2017; hence, the petition.

**The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA erred in finding that petitioner is not entitled to permanent total disability benefits.

**The Court's Ruling**

The petition is meritorious.

**I.**

The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty bound to reexamine and calibrate the evidence on record.[70] Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[71] There are, however, recognized exceptions to this general rule, such as the instant case, where the judgment is based on a misapprehension of facts and the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.[72]

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199[73] (formerly Articles 191 to 193) of the Labor Code[74] in relation to Section 2 (a), Rule X[75] of the Amended Rules on Employee Compensation. By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer.

Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case since petitioner was employed in 2014, governs the procedure for compensation and