

## SECOND DIVISION

[ G.R. No. 219123, September 11, 2017 ]

**DESIDERIO C. CUTANDA, PETITIONER, V. MARLOW NAVIGATION PHILS., INC., AND/OR MARLOW NAVIGATION CO. LTD. AND/OR ANTONIO GALVEZ, JR., RESPONDENTS. D E C I S I O N**

**PERALTA, J.:**

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated August 26, 2015 of petitioner Desiderio C. Cutanda that seeks to reverse and set aside the Decision<sup>[1]</sup> dated March 19, 2015 and Resolution<sup>[2]</sup> dated July 1, 2015, both of the Court of Appeals (CA), reversing the Decision dated April 16, 2014 and Resolution dated May 23, 2014 of the National Labor Relations Commission (NLRC), 4th Division granting petitioner total and permanent disability benefits in the amount of US\$60,000.00; attorney's fees in the amount of US\$6,000.00; and moral damages in the amount of P50,000.00.

The facts follow.

Petitioner was hired by respondent Marlow Navigation Phils., Inc. (MNPI) to work as a Key Able Seaman on board vessel MV "Malte Rambow" for a period often (10) months and with a basic monthly salary of US\$680.00. Prior to his employment, he underwent a medical examination and was declared "fit to work" by the company-designated physicians. Incidentally, he was previously employed by respondents on different employment contracts for a period of fifteen (15) years.<sup>[3]</sup>

On April 3, 2012, petitioner departed from the Philippines to join the vessel earlier mentioned in which his duties included planning, controlling, executing and reporting all maintenance and repair works on deck, in close coordination and under the supervision of the Chief Officer of the vessel. He was also in charge of supervising the safety of the crew during working hours; taking charge of the tugboat line during mooring and unmooring operation; watching the bow of the vessel to avoid accidents and collisions; supervising the junior ratings; steering the ship manually or automatically or with the use of emergency steering apparatus as directed by the navigating officer, Chief Mate, or the Ship Captain; breaking out rigs; overhauling and stowing of cargo-handling gears, stationary riggings and running gears; overhauling lifeboats, winches and falls; manually greasing the wire of the crane; chipping off rust; and painting the deck and superstructure of the ship, as well as other duties as may be assigned by his superiors.<sup>[4]</sup>

Thereafter, on October 8, 2012, petitioner had an accident aboard the vessel while performing his duties at the Port of Tanjung, Pelepas, Malaysia wherein his left index and middle fingers were severely injured and also suffered laceration wounds, when his left hand was caught and crushed by the tug's line (rope) when the tugboat started pulling the line while the tug's line was not yet free from the ship. After the

accident, he was immediately brought to Puteri Specialist Hospital (*Johor*) SDN BHD in Malaysia for emergency medical treatment.<sup>[5]</sup>

The day after the accident, on October 9, 2012, petitioner was medically repatriated and arrived in the Philippines on that same day. He immediately reported to the respondent MNPI's office and was referred to Notre Dame Medical Clinic where he was diagnosed with "Lacerated Wounds 2<sup>nd</sup>& 3<sup>rd</sup> digits, Left Hand." Petitioner was then treated and later referred for rehabilitation/physical therapy. The said accident was supported by official records of the Social Security System (SSS). Petitioner then underwent continuous physical therapy until April 3, 2013, or for a period of six (6) months from the time of the occurrence of the accident on October 8, 2012 and was still found to be unfit to work, as shown by medical certificates dated January 4, 2013, April 2, 2013, and April 3, 2013, all issued by the Panay Orthopaedic and Rehabilitation Institute (*PORI*) in Iloilo City. However, despite medical intervention and months of therapy, petitioner's condition did not improve and he could not return to his work as Key Able Seaman because of the said injuries.<sup>[6]</sup>

Eventually, petitioner demanded from the respondents that he be paid his disability benefits, but to no avail. Respondents even stopped providing medical attention to petitioner after the lapse of 120 days despite the recommendation of *PORI* that the latter undergo further physical therapy. Respondents also refused to shoulder the expenses incurred for the medicine of petitioner.<sup>[7]</sup>

Aggrieved, petitioner filed a complaint for payment of total disability benefits, reimbursement of medical expenses, sick allowance, moral and exemplary damages and attorney's fees.<sup>[8]</sup>

Petitioner alleged that his injuries are work-related resulting to a loss of his earning capacity, and rendering him unfit to return to work for more than 240 days and that his continuing inability to pursue his usual work and earn therefrom constitutes permanent and total disability. According to him, he is entitled to the maximum or "Grade 1" disability compensation under the *POEA Standard Employment Contract (POEA-SEC)* corresponding to US\$60,000.00 under Sec. 20 (B) (6) thereof, and is also entitled to the payment of his medical expenses and sickness allowance. He also argued that respondents' actions in denying to pay him disability benefits is a gross violation of the *POEA-SEC* and that respondents acted in bad faith and in an oppressive manner and as such, petitioner must be awarded moral damages and attorney's fees.

Respondents, on the other hand, contended, among other things that when petitioner was eventually repatriated in the Philippines, he was referred to Dr. Orino Hosaka, Jr. for medical care and treatment on October 10, 2012 and that the latter referred petitioner to an orthopaedic surgeon and rehabilitation specialist in which the treatment under the company-designated physician and specialist lasted for months. They also claimed that petitioner was regularly examined to check his recovery and that on February 11, 2013, under Dr. Hosaka's medical report, a conclusion was made that petitioner was suffering from a disability "Grade 10" based on *POEA-SEC* Schedule of Disability Gradings where it is specified that the loss of grasping power of small objects between the fold of the finger of one hand corresponds to a Grade 10 disability grading. Thus, according to respondents, since Dr. Hosaka is the company-designated physician, his finding of Grade 10 disability should prevail. They also insisted that they are not guilty of bad faith since

petitioner was immediately given medical attention and care and never faltered in fulfilling their responsibilities.

The Labor Arbiter, on January 14, 2014, decided in favor of petitioner. The dispositive portion of the said Decision reads as follows:

WHEREFORE, respondent Marlow Navigation Phils., Inc. and/or Marlow Navigation Co., Ltd. are hereby ordered to pay the complainant the Philippine peso equivalent at the time of the actual payment of the awards denominated in foreign currency:

1. US\$60,000.00 representing permanent and total disability benefit;
2. US\$6,000.00 representing attorney's fees; and
3. P50,000.00 representing moral damages.

The liability of the respondents for the judgment awards is joint and several.

SO ORDERED.<sup>[9]</sup>

According to the Labor Arbiter, the respondents were mistaken in their notion that in determining the disability benefits due a seafarer, only the POEA SEC, specially its schedule of benefits, must be considered. Such is governed not only by medical findings but by contract and law. The Labor Arbiter found that the conflicting diagnoses were rendered, not by the company physician and the physician chosen by the petitioner, but by the company physician and his "Iloilo coordinating physician and surgeon." It must be noted that the company physician declared that the complainant suffered a Grade 10 disability 126 days after petitioner signed-off from the vessel, while the "Iloilo coordinating physician" declared him to be unfit to work exactly 240 days after sign-off.

Thus, according to the Labor Arbiter, petitioner is entitled to permanent total disability benefits of US\$60,000.00. The Labor Arbiter further ruled that respondents' refusal to pay petitioner's just claim smacks of bad faith and calls for an award of moral damages and attorney's fees.

On appeal, the NLRC, in its Decision dated April 16, 2014 affirmed the decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by respondents is DISMISSED for lack of merit. The Decision of Labor Arbiter Cheryl M. Ampil dated January 14, 2014 is AFFIRMED.

SO ORDERED.<sup>[10]</sup>

After respondents' motion for reconsideration was denied by the NLRC, they elevated the case to the CA and on March 19, 2015, the CA reversed the decision of the NLRC, thus:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The assailed Decision dated April 16, 2014 and the Resolution dated May 23, 2014 of the NLRC, Fourth Division in NLRC LAC OFW Case No. (M) 03-000230-14, NLRC NCR OFW Case No. (M) 02-02505-13 are hereby SET ASIDE.

Petitioners are hereby ORDERED to pay private respondent Cutanda the amount of USD10,075.00 in disability benefits, to be paid in Philippine currency equivalent at the exchange rate during the time of payment. The award of moral damages and attorney's fees are ordered DELETED.

SO ORDERED.<sup>[11]</sup>

The CA ruled that the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period from the time he suffered his injury, thus, such declaration effectively prevented petitioner's temporary disability from becoming permanent. It also held that based on the POEA-SEC, disability payments are compensated in accordance with the schedule of benefits enumerated under Section 32 thereof. Furthermore, the CA ruled that without successfully refuting the medical assessment of Dr. Hosaka by making use of the option provided for under Section 20 (A) (3) of the POEA-SEC, petitioner's claim must necessarily fail. As such, the CA opined that since the POEA-SEC expressly states that any item in the schedule of disabilities under section 32 with a classification Grade 1 shall be considered and shall constitute total and permanent disability, then all other grades, including the diagnosis of Dr. Hosaka that petitioner is suffering from Grade 10 disability cannot be considered total and permanent. It then added that injuries classified under Grade 1 disabilities are more severe and traumatic, and more pervasive in its effects and that needless to state, the severity of the injuries classified under Grade 1 will indubitably and completely render the worker incapable of earning livelihood from a job he is accustomed to is trained to perform, thus, the CA is not prepared to put in equal footing petitioner with those who suffered far worse, and to award him the same amount of benefits intended to those who are clearly and irrefutably, totally and permanently disabled. As to deletion of moral damages and attorney's fees, the CA ruled that there is a lack of factual and legal bases to award such.

Hence, the present petition after the denial petitioner's motion for reconsideration. Petitioner assigns the following grounds/reasons for the allowance of his petition:

(1) THE HONORABLE COURT OF APPEALS ACTED IN A WAY NOT IN ACCORD WITH THE DECISIONS OF THIS HONORABLE SUPREME COURT IN HOLDING THAT SEAMAN CUTANDA DID NOT SUFFER PERMANENT TOTAL DISABILITY DESPITE THE FACT THAT HE HAS BEEN UNABLE TO RETURN TO HIS WORK AS SEAMAN FOR MORE THAN 240 DAYS BECAUSE OF HIS WORK-RELATED INJURY.

(2) THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PRESUMPTION OF PERMANENT TOTAL DISABILITY ENUNCIATED IN THE CASE OF ALPHA SHIP MANAGEMENT CORPORATION VS. CALO (G.R. NO. 192034, JANUARY 13, 2014)

(3) THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING ONLY SEC. 32 OF THE POEA STANDARD EMPLOYMENT CONTRACT IN MEASURING THE DEGREE OF SEAMAN CUTANDA'S DISABILITY WITHOUT REGARD TO THE LABOR CODE PROVISIONS WHICH ARE APPLICABLE TO SEAFARERS.

(4) THE HONORABLE COURT OF APPELAS ERRED IN NOT APPYING THE LABOR CODE CONCEPT OF PERMANENT TOTAL DISABILITY TO THE CASE AT BAR.

(5) THE HONORABLE COURT OF APPEALS ERRED IN ITS APPRECIATION OF EVIDENCE IN NOT FINDING THAT THERE IS NO NEED FOR SEAMAN CUTANDA TO SEEK THE OPINION OF HIS OWN DESIGNATED PHYSICIAN SINCE THE COMPANY- DESIGNATED PHYSICIAN ALREADY DECLARED HIM UNFIT TO WORK.

(6) THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF PROCEEDINGS IN REVERSING THE NLRC'S FINDINGS AFFIRMING THOSE OF THE LABOR ARBITER, WHICH ARE ENTITLED TO RESPECT AND FINALITY, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE.

(7) THE COURT OF APPEALS GRAVELY ERRED REVERSING THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT SEAMAN CUTANDA IS ENTITLED TO THE MAXIMUM OR "GRADE 1" DISABILITY COMPENSATION UNDER THE POEA STANDARD EMPLOYMENT CONTRACT.

(8) THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT TFIE RESPONDENTS ARE LIABLE FOR MORAL DAMAGES AND ATTORNEY'S FEES.<sup>[12]</sup>

In their Comment<sup>[13]</sup> dated November 23, 2015, the respondents insist that the CA did not err in ruling that petitioner is only entitled to the benefits under the classification of Grade 10 and that the arguments the latter presented in his petition are factual and cannot be the subject of a petition for *certiorari* under Rule 45 of the Rules of Court.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court<sup>[14]</sup> are reviewable by this Court.<sup>[15]</sup> 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.<sup>[16]</sup> However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[, ] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[, ] as well as in the petitioner's main and reply briefs[, ] are not disputed by the respondent;'
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different