

THIRD DIVISION

[G.R. No. 175795, June 22, 2015]

**NORMILITO R. CAGATIN, PETITIONER, VS. MAGSAYSAY
MARITIME CORPORATION AND C.S.C.S. INTERNATIONAL NV,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* assailing the Court of Appeals' Decision^[1] dated July 21, 2006 and Resolution^[2] dated December 5, 2006 which affirmed the dismissal of petitioner's complaint by the National Labor Relations Commission (*NLRC*).

The facts of the case follow.

On March 16, 2001, respondent Magsaysay Maritime Corporation (*Magsaysay Maritime*) employed petitioner Normilito R. Cagatin (*Cagatin*) in behalf of its foreign principal, C.S.C.S. International NV (*C.S.C.S.*), for the position of Cabin Steward on board the vessel *Costa Atlantica*, under a Contract of Employment of even date. The POEA-approved contract was for a period of seven (7) months, with a basic salary of \$298.00 per month.^[3]

On April 24, 2001, petitioner left the Philippines and commenced work at the ship *Costa Atlantica*. However, on May 27, 2001, he was assigned to work at another ship, *Costa Tropicale*, which was then on drydock. There, he performed tasks such as cleaning the ship and lifting objects like furniture, steel vaults and others for almost two months or until mid-July 2001. Thereafter, after the ship had sailed and petitioner started performing his official duty as Cabin Steward, he felt what he described as a "crackle" or a slip in his back or spinal bone, which was followed by an intense pain in the lower back and an inability to bend. The next morning, he was unable to stand up due to the intense pain in his lower back. He was brought to the clinic and was given shots of a painkiller for about three days, after which, he resumed work.^[4]

Upon disembarkation in Italy, he underwent a medical examination and an X-ray procedure. Then, on July 28, 2001, he was told by the doctor that he could no longer continue working in the vessel. Thus, on that date, petitioner was signed off the ship and, on August 1, 2001, he returned to the Philippines.^[5]

In the Philippines, he immediately reported to respondent Magsaysay Maritime, which referred him to the hospital Medical Center Manila and the company-designated physician Dr. Nicomedes Cruz. Petitioner underwent a Magnetic Resonance Imaging (*MRI*) of the lumbosacral spine.^[6]

The findings were as follows:

FINDINGS:

The lumbar lordosis is straightened.
There is a small focal central disc protrusion at L5-S1 interspace level, associated with an annular fissure formation.
This indents slightly on the thecal sac.
The disc per se shows decreased T2-signals indicating desiccation.
A small broad annular bulge is also seen at L4-L5 interspace.

There is no evident intradural lesion.
The conus medullaris and caudal roots are intact.
The spinal canal, lateral recesses and neural foramina are not narrowed.
The ligamentum flavum is not hypertrophic.
The rest of the intervertebral discs, vertebral bodies, posterior elements and facet joints are normal.
The pre- and paraspinal soft tissues are clear.

IMPRESSION:

Small central disc protrusion, with annular fissure formation, L5-S1.
Disc annular bulge, L4-L5.
Straightened lumbar lordosis.
No evident intradural abnormality.^[7]

Dr. Cruz diagnosed petitioner as suffering from "small central disc protrusion with annular fissure formation L5S1; disc annular bulge L4L5." Thereafter, petitioner was referred to specialists, while Dr. Cruz continued to see and treat petitioner until January 15, 2002.^[8]

Meanwhile, on January 10, 2002, Dr. Cruz reported that the results of petitioner's "EMG-NCV" was "Normal,"^[9] as detailed below:

PHYSICAL/NEUROLOGIC EXAMINATION

Ambulatory, nicrdauton_ks: intact
Mmt: (B) ue: 5/5
(B) le: 5/5
Sensory: no deficit
Reflexes: #
Straight leg raising test: negative

xxx

RESULTS

NCS

H-reflex studies do not show significant side to side difference and when

compared to computed values

EMG

All muscles tested were silent at rest

INTERPRETATION

Present EMG-NCV findings essentially normal.^[10]

On the same date, Dr. Cruz further reported that:

The patient has no low back pain and radiculopathy. The range of motion of his trunk is full. He has improved tolerance to prolonged sitting, standing and walking. His lifting capacity has improved to 40 kilos. EMG-NCV is normal. He was advised to continue his physical therapy and occupational therapy.

DIAGNOSIS:

Small central disc protrusion with annular fissure formation

L5S

Disc annular bulge L4L5

He is advised to come back on January 18, 2002.^[11]

On January 15, 2002, Dr. Cruz declared petitioner as fit to work and executed an affidavit to such effect.^[12] The medical report of January 15, 2002 stated:

The patient has no low back pain and radiculopathy. The range of motion of his trunk is full. He has good tolerance to prolonged sitting, standing and walking. His trunk muscle strength is good. He was evaluated by our orthopedic surgeon and rehabilitation medicine specialist who allowed him to resume his previous activities.

DIAGNOSIS:

Small central disc protrusion with annular fissure formation

L5S1

Disc annular bulge L4L5

He is fit to work effective today, January 15, 2002.^[13]

Almost seven months later, or on August 6, 2002, petitioner went to another physician, Dr. Enrique Collantes, Jr., for another opinion. Dr. Collantes examined petitioner and, thereafter, made the finding that petitioner was "no longer fit to work at sea" in a vessel, which contradicts the earlier finding of Dr. Cruz. Dr. Collantes gave petitioner a disability grading of 8 (33.59%) for his injury.^[14]

The Medical Report of Dr. Collantes, dated August 9, 2002, in part, states:

Symptoms apparently started since April 15, 2001 after lifting a bed cabin as part of his daily routine, after which, he heard and felt a click at his lower back followed by pain. He had to lie down and rest thereafter, to relieve him of the said pain. He consulted the medical house officer where he was given analgesics that relieved him of his pain temporarily. However, the pain recurred and persisted, this time radiating to his left

buttock and thigh up to the lateral part of his left leg and foot. He was referred to an orthopedic surgeon in Venezia, Italy, where he was diagnosed to have a slipped disc at the lumbar spine. He was repatriated to the Philippines on July 28, 2001 and reported at Medical Center Manila under Dr. Nicomedes Cruz for his further evaluation and management. An MR1 was requested and revealed central disc protrusion at L5-S1 level and was referred to the physical therapist. The therapist subjected him to a regimen that lasted from August 1, 2001 to January 2002 and was given a certificate that stated he was "fit to work." The patient objected to this decision and sought my orthopedic opinion on August 6, 2002.

On physical examination, the patient was ambulatory, with no limp nor abnormal listing. On inspection, there was muscle atrophy at the left gluteal, quadriceps and gastrocnemius muscles. There was weakness, grade 4/5, on flexion and extension of the left hip, knee and ankle. The dorsiflexion of the toe of his left foot was weak. There was no sensory deficit noted. There was tenderness on palpation over the lower lumbar paravertebral muscles with weakness of the abdominal muscles causing him difficulty in lifting his body from a lying position. Straight leg-raising test was (+) at 50 degrees elevation at the left.

DIAGNOSIS: HERNIATED NUCLEUS PULPOSUS, L5-S1, WITH NEUROPATHY

Based on the clinical course and present physical findings, I am recommending a partial permanent disability with POEA Schedule of Disability Grading of Grade 8, 33.59%, that is, moderate rigidity of 2/3 loss of motion or lifting power of the trunk. The period of healing remains undetermined. The patient is now unlit to go back to work at sea at whatever capacity.^[15]

And in a Justification of Impediment Grade 8 (33.59%) report of the same date, also prepared by Dr. Collantes, it was also stated, in part:

x x x x

In persons who continue with symptoms for longer than 1 year, the results of surgical intervention are not as good as relieving leg pain as in patients who undergo surgery within 3 months from the onset of sciatica. There could have occurred an irreversible neurologic damage, intraneural fibrosis, or altered behavioral patterns to the patient. This relates to the irreversible effect of chronic ischemic compression in normal neurophysiology. The more prolonged the pressure in the spinal nerve, the more intense the compression, the less likely is the return to function.

It has been well documented that long standing pain leads to depression. With depression, the patient develops an element of hostility toward pain and his relationship to the sociologic environment, thus, giving poor result after surgery.

Because of such delay, I have explained to the patient its deleterious

effect on his life and his future as a seaman. I have advised him to seek permanent modifications in his lifestyle and nature of work. With a concomitant neurologic deficit secondary to a stroke, the patient is declared PERMANENTLY UNFIT TO RETURN TO SEA DUTY IN WHATEVER CAPACITY.^[16]

Thus, petitioner filed his Complaint^[17] before the NLRC claiming for Disability Benefits and damages from respondents.

On June 18, 2003, Labor Arbiter Hatima Jambaro-Franco promulgated a Decision^[18] in favor of petitioner as complainant. The dispositive portion of the Decision states:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Magsaysay Maritime Corporation and C.S.C.S. International NV to pay complainant Normilito R. Cagatin the amount of SIXTEEN THOUSAND SEVEN HUNDRED NINETY-FIVE US DOLLARS (US\$16,795.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefit.

All other claims are DISMISSED for lack of merit.

SO ORDERED.^[19]

The Labor Arbiter found that Dr. Cruz's recommendation that petitioner was "fit to work" was without basis, as petitioner was still experiencing back pain. The arbiter defined "fit to work" as the employee being in the same condition he was in at the time he boarded the vessel. The Labor Arbiter found that such was not the case with petitioner.^[20]

On appeal to the NLRC, the latter tribunal, in a Decision^[21] promulgated on January 29, 2004, overturned the Labor Arbiter's decision. It held:

WHEREFORE, the assailed decision of 18 June 2003 is REVERSED and SET ASIDE. Accordingly, respondents-appellants are ordered *in solidum* to pay the complainant-appellee his sickness allowance for one hundred twenty (120) days.

SO ORDERED.^[22]

The NLRC held that the power and authority to assess and declare a seafarer's disability or report him as fit to work is vested solely on the company-designated physician.^[23] It added that in order for such an employee to claim disability benefits, he must first be assessed and declared by the company-designated physician as suffering from permanent disability, either total or partial, caused by an injury or illness during his term of employment.^[24] It held that the findings of the company-designated physician, and not that of the employee's private physician, are those which are accorded respect and judicial weight in the absence of bad faith, malice or fraud.^[25]

The motion for reconsideration filed by petitioner was similarly denied by the NLRC,