

SECOND DIVISION

[G.R. No. 183329, August 27, 2009]

RUFINO C. MONTOYA, PETITIONER, VS. TRANSMED MANILA CORPORATION/MR. EDILBERTO ELLENA AND GREAT LAKE NAVIGATION CO., LTD., RESPONDENTS.

DECISION

BRION, J.:

Before the Court is the petition for review on *certiorari*,^[1] filed by petitioner Rufino C. Montoya (*Montoya*), seeking to set aside the decision^[2] and resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 98516,^[4] entitled "*Rufino C. Montoya v. National Labor Relations Commission, et al.*"

THE ANTECEDENT FACTS

On January 14, 2003, Montoya entered into a one-year contract of employment with respondent Transmed Manila Corporation (*Transmed*) for its principal, Great Lake Navigation Co., Ltd. (*Great Lake*); he was employed as an able seaman on board the *M/V Papa* with a basic monthly salary of US\$385.00. Montoya was medically examined, as required before employment, and was declared fit to work by the company-designated physician. He boarded the *M/V Papa* on February 12, 2003.

Sometime in May 2003 or a short three months after, while on duty, Montoya was accidentally hit by a pipe on the right side of his abdomen. He complained of abdominal pains and had to be confined for treatment at a hospital in Amsterdam, The Netherlands, from July 21 to 24, 2003. His diagnosis showed that he had "*contusion right upper abdomen: (1) hematoma between skin and liver; (2) contusion of kidney function; and unclear damage of gut right upper abdomen.*" **He was also declared unfit for duty.**^[5]

On July 25, 2003, Montoya was repatriated to the Philippines, and was confined at the Metropolitan Hospital under the care of the company-designated physicians, Dr. Alexander Uy (*Dr. Uy*) and Dr. Robert Lim (*Dr. Lim*). The doctors referred him to a pathologist for further examination. The examination showed that he had "*chronic granulomatous inflammation with caseation necrosis and langhans type giant cell, consistent with tuberculosis.*"^[6]

On July 31, 2003, Montoya underwent an operation under the directive: "*Explore Laparotomy - Drainage of Intra-Peritoneal Abscess,*" and was found to be suffering from:

- Subphrenic and subhepatic abscess secondary to blunt abdominal trauma;
- Tuberculosis ileitis;
- S/P Exploratory Laparotomy with drainage of subphrenic and subhepatic abscess on July 31;
- Incidental finding - HIV Positive. [7]

Montoya underwent further medical check-ups on September 1, 2003, September 22, 2003, and November 10, 2003, revealing improvements in his condition. His diagnosis showed that "[T]he drain site wound has already healed. Patient was noted to be gaining weight with no gastro-intestinal problem at present. He was advised to continue his anti-tuberculosis medications for his tuberculosis ileitis." [8]

Montoya did not return for further scheduled check-ups. Claiming that the company-designated doctors failed to properly evaluate his disability, Montoya sought in March 2004 the medical advice of Dr. Efren R. Vicaldo (*Dr. Vicaldo*), a private physician, who made the following findings:

- Subphrenic, subhepatic abscess secondary to blunt trauma;
- S/P Exploratory Laparotomy with drainage of subphrenic and subhepatic abscess;
- Tuberculous Eleitis;
- Incidental finding - HIV Positive;
- Impediment Grade I (120%). [9]

On the basis of Dr. Vicaldo's findings, Montoya demanded the payment of his disability benefits and illness allowance from respondents Transmed and Great Lake, which demand the respondents refused to heed. The denial prompted the filing of Montoya's complaint against the two firms with the National Labor Relations Commissions (*NLRC*). [10]

THE LABOR ARBITRATION RULINGS

Montoya alleged before the labor arbiter that his illness - "Tuberculosis Ileitis" - resulted from the traumatic accident he suffered while at work, not from the HIV incidentally found during his examination. He added that Dr. Vicaldo had certified to the work-related status of his illness, as it was caused by his workplace accident, aggravated by his constant exposure to harmful substances on board the vessel. He claimed that Section 32-A, paragraph 18, of the POEA Standard Employment Contract (*Contract*) considers pulmonary tuberculosis compensable in cases of constant exposure to harmful substances in the working environment.

Transmed denied Montoya's claims, contending that his sickness allowance and medical expenses for his "subphrenic and subhepatic abscesses secondary to blunt abdominal trauma have been paid" and that "tuberculosis, brought about by his illness diagnosed as HIV positive," is not compensable under both his employment contract and the Labor Code.

Labor Arbiter Jovencio Ll. Mayor, Jr. ruled in Montoya's favor. He found Montoya permanently and totally disabled and awarded him disability compensation of US\$60,000.00; illness allowance of US\$1,540.00; and 10% attorney's fee, or US\$6,154.00; or a total of US\$67,694.00.

The NLRC, on Transmed's appeal, reversed the labor arbiter's decision,^[11] thereby granting the appeal and dismissing the underlying complaint. Montoya moved for the reconsideration of the ruling, but the NLRC denied his motion.^[12] Montoya then sought relief from the CA by way of a petition for *certiorari* under Rule 65 of the Rules of Court.

THE CA DECISION

In its decision promulgated on February 11, 2008,^[13] the CA dismissed the petition (and thereby effectively affirmed the NLRC's decision) for Montoya's failure to establish any grave abuse of discretion in the NLRC's decision. The appellate court pointed to several reasons in support of its conclusion.

First, Montoya failed to observe the established procedure in the assessment of his illness under Section 20(B), Nos. 2 and 3, pars. 2 and 3 of the Contract, particularly the provision which states that "*if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.*" Montoya, therefore, failed to administratively contest the company's assessment on his medical condition and fitness for work, and the absence of any work-related disability. ^[14]

Second, the CA found that the NLRC correctly ruled that Montoya's illness for which he claimed compensation was not work-related. The appellate court held, as the NLRC did, that Montoya failed to properly establish *by evidence* that he contracted tuberculosis because of the accident and injury he suffered while working on board, and that his tuberculosis was aggravated by "inhalation and direct contact to various harmful chemicals x x x and other deleterious substances/agents," his exposure "to varying hot and freezing cold temperature as the vessel crossed ocean boundaries, amidst harsh sea weather conditions," and "the strenuous work on board the vessel." To the CA, Montoya only submitted bare allegations, unsubstantiated and uncorroborated by any other evidence establishing: a causal link between his *tuberculosis ileitis* and the abdominal trauma he suffered in his accident, and the claimed aggravation of his tuberculosis by shipboard working conditions.

Third, the CA saw no evidence showing that Montoya ever complained of any illness while on board the vessel, or that he was repatriated due to tuberculosis. The appellate court noted that Montoya was afforded proper medical attention upon his repatriation, and his "subphrenic and subhepatic abscess secondary to blunt trauma" that resulted from his accident had healed. Hence, the accident he suffered and the resulting trauma were too remote to cause the illness he sought compensation for. Montoya likewise failed to refute the findings of his own physician that his being HIV positive made him "prone to other viral, bacterial or even fungal infections," which "could be fatal," and there is "no assurance of complete cure nor

assurance of non-occurrence" of *tuberculosis ileitis*.

THE PETITION

Montoya filed the present petition based on the following grounds:

1. the CA erred in not holding that petitioner is suffering from total and permanent disability following the ruling in *Crystal Shipping, Inc., A/S Stein Line Bergen v. Deo P. Natividad*;^[15]
2. there is great probability that petitioner suffered his tuberculosis due to his exposure to the elements and working conditions on the vessel; and
3. he is entitled to attorney's fees.

Directly addressing the CA's findings, Montoya argues that pursuant to the Contract, a seafarer is not prohibited from securing the services of his own physician; the company-designated physician does not have exclusive authority to examine the seafarer and to declare and determine his disability because "the company-designated physician is, more often than not, palpably self-serving and biased in favor of the company." Montoya points out that the referral of a seafarer to a third doctor, in case of conflicting opinions between the company-designated doctors and his own physician, is not mandatory but optional, pursuant to the provision of the Contract cited by the CA.

Montoya disputes the CA's finding that there is no evidence to show that he suffered from tuberculosis on account of his work. He reiterates that working on board the vessel exposed him to various harmful chemicals, fumes, hydrocarbon emissions, and other deleterious substances/agents, as well as to varying hot and freezing temperature; moreover, his separation from his family made his work emotionally stressful, so that there is great probability that he contracted tuberculosis while working on board *M/V Papa*. He posits that considering the working conditions on board the vessel, it is more reasonable and probable to state that his *tuberculosis ileitis* is work-related than to assert that it was due to his being HIV positive.

Montoya also contends that he had been unable to perform his work as an able seaman for more than 120 days from the time of his repatriation on July 25, 2003. He argues that the company-designated physicians have not declared him fit to work; on the other hand, in a certification dated March 18, 2004, his independent physician "declared him unfit to work" and determined his disability as Grade 1. He submits that because he has been unable to perform his work for more than 120 days, he may be considered as suffering from total and "permanent disability," as defined by the Court in *Crystal Shipping*.^[16]

Finally, Montoya claims that the unjustified failure and refusal of Transmed and Great Lake to satisfy his valid claim compelled him to secure the services of a counsel, for which he should be awarded attorney's fees.

THE RESPONDENTS' POSITION

In their Comment, respondents Transmed and Great Lake note that Montoya's arguments have been fully passed upon and found unmeritorious by the CA and the NLRC. They also contend that the petition involves questions of fact which are not allowed under Rule 45 of the Rules of Court.

The respondents point out as well that the reason for the denial of Montoya's claim was the absence of substantial evidence showing the connection between his work and "*tuberculosis ileitis*" - the illness cited as basis for the compensation claim. The evidence on record, particularly the findings of the company-designated physicians and Montoya's own physician, shows that the tuberculosis he contracted was not due to his work on board the vessel, but to his self-inflicted HIV positive status.

Lastly, they argue that if Montoya can cite a cause for compensable disability, this was the injury he suffered from his work-related accident, but this injury had already been treated and had healed; the benefits and allowances due him for his injury have all been paid. On the other hand, Montoya did not even complain of tuberculosis while on board the vessel, and likewise failed to prove any reasonable connection between this illness and the nature of his job.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

1. We review in this **Rule 45 petition** the decision of the CA on a Rule 65 petition filed by Montoya with that court. In a Rule 45 review, we consider the **correctness of the assailed CA decision**,^[17] in contrast with the review for jurisdictional error that we undertake under Rule 65.^[18] Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision.^[19] In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.**^[20] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**

2. As framed by Montoya, the petition before us involves mixed questions of fact and law, with the core issue being one of fact. This issue - from which the other issues spring - is whether the tuberculosis afflicting the petitioner is work-related. Stated otherwise, can this illness be reasonably linked to, or reasonably be said to be caused by, Montoya's work as a seaman, his working environment, or incidents at work; or, is it an illness that Montoya contracted outside of his work, or because of genetic predisposition, or from another illness contracted out of work but which led to the tuberculosis? As a question of fact, this question of linkage or causation is