

SECOND DIVISION

[G.R. No. 123619, June 08, 2000]

**SEAGULL SHIPMANAGEMENT AND TRANSPORT, INC., AND
DOMINION INSURANCE CORPORATION, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION AND BENJAMIN
T. TUAZON, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review is properly a special civil action for *certiorari* under Rule 65 and not Rule 45 of the Revised Rules of Court. In it, petitioners assail the Resolution dated November 24, 1995 of the National Labor Relations Commission (NLRC) which affirmed the Decision dated January 19, 1995 of the Philippine Overseas Employment Administration (POEA). The Resolution ordered petitioners to pay, jointly and severally, complainant Benjamin Tuazon, the amount of US\$2,200 representing 120 days sickness benefits and US\$15,000 representing disability benefits as appended to the POEA Standard Contract.

On March 17, 1991, private respondent Benjamin T. Tuazon, now deceased, and represented in the instant case by her daughter, Mrs. Noelee Tuazon-Buenaventura, [1] was deployed by Seagull to work as radio officer on board its vessel, *MV Pixy Maru*. The contract was for 12 months commencing on March 7, 1991, with basic monthly salary of US\$550.00 plus a fixed monthly overtime pay equivalent to thirty (30%) percent of the basic monthly salary.

Prior to his deployment and as a condition to final hiring, Tuazon was required to submit to a medical examination with the petitioner's accredited clinic which is the LDM Clinic and Laboratory. The medical examination consisted among others, of the standard X-ray exposure, and urine tests.

In 1986, complainant underwent a heart surgery for an insertion of a pacemaker. [2] Hence, the accredited clinic of Seagull, through Dr. Tordesillas, [3] required him to secure from his cardiologist a certification to the effect that he could do normal physical activities. Consequently, he was declared fit to work.

Sometime in December 1991, while on board the vessel, Tuazon suffered bouts of coughing and shortness of breathing. He was immediately sent to a hospital in Japan for medical check-up, and was confined at the Kagoshimashiritsu Hospital, Kagoshima City, from December 12 to 27, 1991. [4] Based on the doctor's diagnosis, an open heart surgery was needed. Due to this medical findings, on December 28, 1991, he was repatriated back in the Philippines. Upon arrival, Seagull referred him to its accredited physician, Dr. Villena. [5] An open-heart surgery was then performed on Tuazon. He shouldered all the costs and expenses.

Tuazon then filed a complaint asking for sickness and disability benefits with the POEA. On January 19, 1995, the POEA rendered a decision, the dispositive portion of which states:

"WHEREFORE, foregoing premises considered, respondent Seagull Shipmanagement and Transport, Inc. and Dominion Insurance Corporation are hereby ordered jointly and severally liable to pay complainant, Benjamin Tuazon, the following:

1. US\$2,200 representing 120 days sickness benefits;
2. 100% for permanent disability in the amount of US\$15,00[0].00 representing the disability benefits provided for under Appendix "A" of the POEA Standard Contract.

SO ORDERED."^[6]

On appeal the NLRC affirmed the findings of the POEA and dismissed the appeal for lack of merit. In its Resolution dated November 24, 1995 the NLRC held in part,

"It must be stated, at the outset that the appeal is not impressed with merit. The preponderance of evidence indicates that complainant was repatriated due to an illness sustained during the period of his employment with the respondent. Moreover, it was sufficiently established that respondent's physician already knew, as early as June 1989, of the existence of complainant's pacemaker. This is, indeed, precisely the reason why he was asked to submit a medical certificate to the effect that he could do normal physical activities." (p. 3 of Administrator's Decision; Rollo, p. 141)^[7]

Dissatisfied, petitioners now claim before us that the NLRC erred:

- I. ... IN AFFIRMING THE FINDINGS OF POEA THAT IT WAS SUFFICIENTLY ESTABLISHED THAT PETITIONER'S PHYSICIAN KNEW OF THE EXISTENCE OF THE PACEMAKER INSERTED IN PRIVATE RESPONDENT
- II. ...IN NOT FINDING THAT PRIVATE RESPONDENT MISREPRESENTED AND/OR DID NOT MAKE A FULL DISCLOSURE OF HIS STATE OF HEALTH AND/OR MEDICAL HISTORY
- III. ... IN FINDING THAT PRIVATE COMPLAINANT'S SICKNESS WAS SUSTAINED DURING THE PERIOD OF HIS EMPLOYMENT AND THEREFORE COMPENSABLE
- IV. ... IN SUSTAINING THE POEA IN AWARDING SICKNESS AND PERMANENT DISABILITY BENEFITS
- V. ... IN NOT FINDING THAT PRIVATE RESPONDENT SHOULD BE LIABLE FOR PAYMENT OF REPATRIATION EXPENSES AND ATTORNEY'S FEES.

In their Memorandum, petitioners admitted that they inadvertently stated that the instant petition is under Rule 45 but asked for consideration since they had