SECOND DIVISION

[G.R. No. 159146. January 28, 2005]

OSM SHIPPING PHIL., INC., *petitioner*, *vs.* ANTONIA DELA CRUZ, *respondent.*

D E C I S I O N

PUNO, *J.*:

Petitioner OSM Shipping Phil., Inc. (OSM) appeals by *certiorari* under Rule 45 of the Rules of Court the Decision[1] of the Court of Appeals in CA-G.R. SP. No. 76136 dated May 27, 2003 and the Resolution[2] dated July 18, 2003 of the Special Third Division denying its Motion for Reconsideration.

Respondent Antonia dela Cruz represents her deceased husband Arbit dela Cruz (Arbit), a seaman contracted by petitioner for and in behalf of its foreign principal.

On December 12, 1997, Arbit filed an Application for Shipboard Employment with OSM, a domestic corporation licensed by the Philippine Overseas Employment Administration (POEA) to operate as a manning agency. As a standard operating procedure, OSM directed Arbit to undergo a medical check-up at the St. Thomas Diagnostic, Medical and Dental Clinic, Inc., its accredited hospital. He was reported fit to work.

OSM hired Arbit as Tug Master for and in behalf of Linden Shipping International for twelve months commencing on January 5, 1998 and ending on January 5, 1999. He was contracted with a basic monthly salary of US$723.00, plus fixed overtime pay of US$216.90 (not exceeding 105 hours per month) and vacation pay of 2 days or US$60.25 per month.[3]

Arbit departed from Manila on February 24, 1998. He was directed to man the self-propelled speed barge Mannta Ann and later on the tug boat MT Grouper Ann.[4]

After almost nine (9) months, or on November 14, 1998, while the vessel was in India, Arbit wrote a letter[5] to Mr. Dick Van Der Linden, Jr., managing director of Linden Shipping International. He informed the latter that he was resigning for personal reason. He also requested for a reliever as soon as possible. Mr. Linden sent no reply.

Arbit wrote a second letter[6] on November 26, 1998 and reiterated his request to be relieved and be allowed to go home for medical purpose. In the letter, he confided to Mr. Linden that he was suffering from hypertension. Again, there was no reply. He wrote a third letter[7] on November 30, 1998. He stated that should Mr. Linden send no reliever, he is left with no recourse but tie up the tug and disembark. He also lamented that the

provisions of the crew were insufficient and did not arrive on time. Linden Shipping International finally responded on November 30, 1998 but asked Arbit for more time. He said that India was not a convenient port for crew change.

Arbit nevertheless disembarked from the vessel while it was in India on December 2, 1998. He went to the Sha Surgical Hospital at Jamnager, Gujarat State the following day. He was examined by Dr. M.A. Santwani who diagnosed that he was suffering from hypertension with LVF[8] and Asthmatic Bronchitis. The doctor advised that he be hospitalized for further management and indoor treatment.[9]

On the same day, Arbit wrote to Ambassador Jose del Rosario of the Philippine Embassy in New Delhi, India. He informed the latter about his health condition and desire to be repatriated.[10] The Ambassador replied that his employer was already working on his repatriation.

Arbit was repatriated to Manila on January 5, 1999. He paid for his own airfare and the transportation cost of his reliever. Upon his arrival, petitioner directed him to proceed to the St. Thomas Diagnostic, Medical and Dental Clinic, Inc. for post-medical examination. Arbit was diagnosed to be possibly suffering from a heart ailment and should be endorsed to a cardiologist. The medical follow-up report[11] dated January 28, 1999 showed that Arbit had ischemic cardiomyopathy.[12] He was advised to continue taking his medications and report for follow-up after completing his initial treatment schedule.[13] In the same report, he was declared x x x still UNFIT for sea duty.[14]

After his visit to the St. Thomas Diagnostic, Medical and Dental Clinic, Inc., Arbit sought medical attention from other hospitals: the Accuvision Diagnostic Center, Inc., the Philippine Heart Center, the Manila Sanitarium and the Metropolitan Hospital. Arbit shouldered all medical expenses. He tried to claim reimbursement from petitioner but the latter refused. Hence, he filed a complaint with the National Labor Relations Commission (NLRC) for the recovery of unpaid wages, repatriation cost, sickwage allowance, medical and hospital expenses, permanent and total disability benefits, damages and attorneys fees. Before the case could be resolved, Arbit died of ischemic cardiomyopathy on December 29, 1999. Respondent substituted her husband.

On April 16, 2001, Labor Arbiter Ermita T. Abrasaldo-Cuyuca rendered judgment ordering petitioner to pay Arbit the following:

US$1,109.90 - representing unpaid salary and other benefits.
₱16,177.20 - representing reimbursement of medical expenses.
US$2,892.00 - representing sickwage allowance.
Ten percent of the total award as attorneys fees.[15]

Respondent appealed to the NLRC for the award of disability benefits and reimbursement of full medical expenses, repatriation and transportation costs of Arbits reliever.

The NLRC affirmed *in toto* the decision of the Labor Arbiter and denied the Motion for Reconsideration of respondent. She filed a Petition for Certiorari[16] with the Court of Appeals.

Respondent alleged that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied Arbit the full cost of his repatriation despite the fact that he disembarked for medical reasons. She also contended that petitioner should be held liable for the full cost of Arbits medical and hospital expenses since the POEA Standard Employment Contract provides no restriction on seeking medical attention from hospitals not accredited by a seafarers employer. Lastly, she averred that the NLRC erred in not awarding her husband disability benefits due to misrepresentation.

The Court of Appeals found the petition meritorious and ordered petitioner to pay Arbit permanent total disability compensation and to reimburse him for the full cost of his repatriation, the transportation cost of his reliever and full medical and hospital expenses. The appellate court likewise affirmed the award of the NLRC on the payment of unpaid salaries and other benefits, sickwage allowance, and attorneys fees.

Petitioner simultaneously filed a Motion for Reconsideration and a Motion [t]o Inhibit the Ponente and the Division Members of the Honorable Third Division From Acting on the Motion for Reconsideration. It was allegedly alarmed at the unusual haste by which the case was decided.[17] In its assailed Resolution,[18] the Special Third Division denied both Motions. Hence, this appeal.

Petitioner raises the following issues:

1. THE DECISION OF THE CAS THIRD DIVISION WAS RENDERED WITH UNUSUAL, EXTRAORDINARY HASTE[.]
2. THE DECISION IS CONTRARY TO THE FACTS AND THE EVIDENCE ESTABLISHED BEFORE THE NLRC; THE HONORABLE THIRD DIVISION OF THE COURT OF APPEALS BASED ITS DECISION ONLY ON THE FACTUAL NARRATION OF RESPONDENT, TOTALLY DISREGARDING THAT OF PETITIONERS[.]
3. NO ABUSE OF DISCRETION WHEN NLRC DENIED REIMBURSEMENT OF DECEASEDS REPATRIATION COST[.]
4. THE NLRC DID NOT GRAVELY ABUSE ITS DISCRETION WHEN IT DENIED RESPONDENT THE REIMBURSEMENT OF THE DECEASEDS MEDICAL EXPENSES AND SICKWAGE ALLOWANCE[.]
5. [THE] NLRC NEVER ABUSED ITS DISCRETION WHEN IT DENIED THE DISABILITY BENEFITS CLAIMS OF RESPONDENT[.][19]

We shall resolve the issues in *seriatim.*

First. Petitioner is intrigued that the members of the Third Division of the appellate court were able to render the assailed Decision twenty (20) days after respondent moved to submit the case for decision.[20] It contends that the unusual speedy resolution of the case might have caused the appellate court to overlook material facts in the records.

This matter was sufficiently explained by the appellate court in its Resolution[21] where the *ponente*[22] presented his record *re* the disposition of cases assigned to him. He explained that his speedy resolution of cases and average monthly

output are in keeping with the Zero Backlog Project of the Court. Suffice it to state that aside from its sentiment that this unusual, extraordinary haste raises suspicion, petitioner was not able to present any concrete evidence of irregularity.

Second. Petitioner contends that the appellate court totally disregarded factual findings of the Labor Arbiter and the NLRC which allegedly are supported by substantial evidence. The factual findings[23] which are relevant to the issues raised are: 1) Arbit resigned due to inadequate food provisions; 2) Arbit sought medical attention from hospitals other than those accredited by petitioner in violation of the latters advice to transfer Arbit to the Metropolitan Hospital; and, 3) Arbit misrepresented his true medical condition and employment history. These issues shall be resolved in the succeeding discussions.

Third. Petitioner argues that the NLRC did not abuse its discretion when it denied Arbit of repatriation cost. The NLRC applied Section 18(B)[3] of the POEA Standard Employment Contract[24] (Contract), *viz*:

SECTION 18. TERMINATION OF EMPLOYMENT

x x x

B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:

x x x

3. when the seafarer, in writing, voluntarily resigns and signs-off prior to expiration of contract pursuant to Section 19(G) of this Contract.

x x x

Section 19(G) states:

Section 19. REPATRIATION

x x x

G. A seafarer who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement. x x x.

Finding that Arbit signed-off and disembarked due to poor food provisions and gross negligence,[25] the NLRC denied reimbursement of the cost of repatriation pursuant to Section 19(G) of the Contract.

The Court of Appeals found otherwise and applied Section 18(B)[1] of the Contract, *viz*.:

SECTION 18. TERMINATION OF EMPLOYMENT

x x x

B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:

1. when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20(B)[5] of this Contract.

x x x

Section 20(B)[5] of the Contract states that upon the seafarers sign-off from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts. Finding that Arbit signed-off and disembarked for medical reasons, the Court of Appeals awarded Arbit the full cost for his repatriation and the transportation cost of his reliever.

We sustain the factual finding of the Court of Appeals. While findings of fact by administrative tribunals like the NLRC are generally accorded not only respect but, at times, finality, this rule admits of exceptions,[26] as in the case at bar.

The Labor Arbiter and the NLRC misappreciated the facts. The records establish that Arbit disembarked for medical reasons. He wrote three (3) letters to Mr. Linden asking that he be relieved for medical reasons. His deteriorating health condition was proven by his medical certificate from the Sha Surgical Hospital at Jamnager, Gujarat State, India. He was diagnosed to be suffering from hypertension with LVF and Asthmatic Bronchitis. Dr. Willy Que, the petitioners company-designated physician, found him to be suffering from ischemic cardiomyopathy which eventually caused his death. Several documents in the records prove that he sought medical attention from various hospitals.

It would have been absurd for Arbit to land in a foreign port for treatment if he did not feel the urgency of his condition. The finding that he disembarked on foreign land, barely five (5) weeks before the termination of his contract, due to insufficient food provisions is not supported by the evidence on record. Further, the allegation that he was grossly negligent in fulfilling his duties on board came from the sworn statements of his two co-crew members at the Mannta Ann. Their statements, uncorroborated by any other evidence, are suspect for being biased in favor of petitioner.

Fourth. Petitioner avers that the NLRC did not err in denying full reimbursement of Arbits medical expenses and sickwage allowance.

The NLRC found that neither petitioner nor the St. Thomas Diagnostic, Medical and Dental Clinic, Inc. authorized Arbit to seek medical treatment from hospitals that are not accredited by petitioner. Hence, it only granted reimbursement for medical expenses that Arbit incurred at the Metropolitan Hospital, an accredited hospital. His expenses in the non-accredited hospitals are to his personal account.

The Court of Appeals granted full reimbursement. We sustain the award.

Under Section 20(B)[2] of the Contract:

SECTION 20. COMPENSATION AND BENEFITS

x x x

B. x x x

x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to [be] repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

x x x

In the case at bar, Arbit reported for consultation at the St. Thomas Diagnostic, Medical and Dental Clinic, Inc. the day following his arrival in the country. He was diagnosed to be suffering from heart ailment. When endorsed to Dr. Que, the company-designated physician, he was found to be suffering from ischemic cardiomyopathy. His medical follow-up report dated January 28, 1999 declared him x x x UNFIT for sea duty.[27]

Petitioners contention that it instructed Arbit not to go to non-accredited hospitals and transfer to the Metropolitan Hospital does not negate the claim for full reimbursement. First, petitioner failed to prove that it gave such instruction. Second, in the medical follow-up report where Arbit was diagnosed to have ischemic cardiomyopathy, he was merely advised to continue present medication and report for follow-up after completing his initial treatment schedule. No other action was taken by the clinic despite Arbits deteriorating physical condition as attested by his medical certificates from the non-accredited hospitals. Third, the Contract does not specifically state that seafarers must only seek medical attention from hospitals accredited by the employer in order to claim reimbursement.

We likewise affirm the award of the Labor Arbiter and the NLRC for sickwage allowance.

The contractual liability of an employer to pay sickwage allowance to a seafarer who suffered illness or injury during the term of his contract is governed by the provisions of Section 20(B)[3] of the Contract, *viz.*:

SECTION 20. COMPENSATION AND BENEFITS

x x x

B. x x x

x x x

3. Upon signoff from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in the forfeiture of his right to claim the above benefits. x x x

x x x

Arbit complied with the requirements for post-employment medical examination under this Section. He reported at the St. Thomas Diagnostic, Medical and Dental Clinic, Inc. on the day following his repatriation. He was declared x x x UNFIT for sea duty by no less than the company-designated physician in a medical certificate dated January 28, 1999. He was thus unfit until his death on December 29, 1999.

Fifth. Petitioner contends that the NLRC did not err when it did not award disability benefits to Arbit due to misrepresentation.

The NLRC affirmed the factual finding of the Labor Arbiter which was based on the following: 1) in his application for shipboard employment, Arbit ticked NO beside the question ANY PREVIOUS ILLNESS;[28] 2) in his employment history, he did not state the name of his last employer with whom he executed a Release and Quitclaim, dated September 26, 1997, in consideration of the illness he suffered on board his vessel of assignment; and, 3) in a medical certificate issued by the Metropolitan Hospital on July 23, 1996, Arbit was diagnosed to have hypertension, coronary artery disease and heart failure.

The Labor Arbiter ruled, *viz.*:

x x x in the same application for shipboard employment, complainants husband in a question: any previous illness he checked No. Furthermore, in the employment history, complainants husband did not state the vessel M/V Sea Husky. Record shows that on September 26, 1997, complainants husband, Arbit dela Cruz, executed a Release and Quitclaim x x x.

Respondents likewise were able to establish the fact that even prior to the signing-on of Arbit dela Cruz on board MV Ray Ann he was diagnosed by the Marine Medical Services, Metropolitan Hospital x x x stating that:

This is to certify that Mr. Arbit dela Cruz was seen at Metropolitan Hospital on July 23, 1996 and was diagnosed to have hypertension, coronary artery disease x x x heart failure x x x.[29]

The Court of Appeals rendered a contrary ruling, *viz*.:

x x x Notwithstanding that [Arbits] illness was already pre-existing, such fact will not defeat his right to claim disability benefits under the POEA Standard Employment Contract considering that he underwent a thorough medical examination conducted by a physician designated by private respondents and therefore, private respondents have every opportunity to determine if [Arbit] was medically, psychologically and mentally fit for the job x x x Furthermore, even assuming that the ailment of [Arbit] was contracted prior to his employment, this still would not deprive him of compensation benefits. For what matters is that his work had contributed, even in a small degree, to the development of the disease and in bringing about his eventual death. x x x[30]

We rule for petitioner.

The appellate court failed to refute the factual finding of the NLRC. Its ruling that Arbit underwent a thorough medical examination conducted by a company-designated physician, was found fit for the job, and therefore must be given disability compensation even if his ailment was contracted prior to his employment, did not categorically rule out that Arbit misrepresented his true medical condition and concealed material information in his employment history. Misrepresentation is a question of fact which may be reversed on appeal by a contrary factual finding. There being none, we sustain the Labor Arbiter and the NLRC whose findings are supported by substantial evidence.

The assailed Decision cited the case of **Wallem Maritime Services, Inc. v. NLRC**.[31] As correctly pointed out by petitioner, the doctrine in Wallem is not applicable to the case at bar. In that case, the issue is whether respondents husbands death, caused by a pre-existing disease, is compensable despite the failure of the deceased to comply with the post-medical examination requirement under the Contract. It did not involve any issue of misrepresentation.

Respondent does not deny that Arbit ticked NO in his application but proffers an explanation:

It is worth repeating that on December 12, 1997, Arbit went to the office of the respondent OSM and filed an Application for Shipboard Employment. Under the sub-heading MEDICAL HISTORY and after the item ANY PREVIOUS ILLNESS, Arbit checked the box pertaining to NO. This was done under the belief that he did not have any serious illnesses before, except for his eye injury which he declared, and that he would undergo rigid pre-employment medical examination and any serious illness/es would be discovered by the respondents company-designated physicians. Fortunately, he was declared FIT TO WORK by the respondents company-designated physician after a rigid pre-employment medical examination. In fact, he was able to serve [respondents] for eight (8) months and twenty (20) days after he joined his vessel of assignment.[32]

Respondent does not likewise deny the existence and genuineness of the medical certificate and the Release and Quitclaim but contends that:

The certification[33] issued by Dr. Robert Lim of the Metropolitan Hospital x x x should be interpreted with the Release and Quitclaim signed by Arbit on September 26, 1997 x x x and Section 30-A of the POEA Standard Employment Contract.

A reading of the front page of the Release and Quitclaim would reveal that Arbit was paid the Philippine Currency equivalent of US$12,500 or PhP406,250. Without the said Release and Quitclaim, a layman would interpret Dr. Lims certification as determining Arbits degree of disability as TOTAL AND PERMANENT. But such erroneous conclusion could be avoided if the said certification is interpreted with the said Release and Quitclaim, together with Section 30-A of the POEA Standard Employment Contract.[34]

Respondent contends that the amount of settlement (US$12,500) Arbit received is short of the disability allowance recoverable under Section 30-A of the Contract. Under this Section, a seafarer with permanent disability is entitled to a benefit of US$13,060.[35] If the disability is total and permanent, the benefit is US$60,000. Since Arbit received less, his disability could not have been total and permanent when he signed the Release and Quitclaim. This addresses the argument of petitioner that a person who has already received his disability benefits cannot be granted his disability claims anew.[36]

Respondents arguments fail to impress. The evidence proves that Arbit was previously ill and he knew it. He committed misrepresentation. Not once but twice.

Even if we take petitioners contention that Arbits previous disability was not total and permanent, making him qualified to seek permanent total disability compensation in

this case, this does not disprove misrepresentation. Ironically, it proves that Arbit knew he had previous illness and he did not disclose it.

We are also not persuaded by Arbits defenses: he believed that he did not have any serious illnesses before; and, he was under the belief that he would undergo rigid pre-employment medical examination and any serious illness/es would be discovered by the petitioners company-designated physicians.[37] This good faith defense is negated by his misrepresentation in his employment history. He concealed a material fact when he did not state the name of his last employer with whom he executed the Release and Quitclaim in consideration of the illness he suffered on the latters vessel.

It is the ultimate prayer of petitioner that due to misrepresentation, Arbit must be denied his other claims and benefits under the Contract.

We disagree. We affirm the appellate courts award for unpaid salary and other benefits, sickwage allowance, full repatriation cost and transportation cost of Arbits reliever, full medical and hospitalization expenses, and attorneys fees.

Labor contracts are impressed with public interest and the provisions of the POEA Standard Employment Contract must be construed fairly, reasonably and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Despite his misrepresentation, Arbit underwent and passed the required pre-medical examination, was declared fit to work, and was suffered to work by petitioner. Upon repatriation, he complied with the required post-employment medical examination.

Under the beneficent provisions of the Contract, it is enough that the work has contributed, even in a small degree, to the development of the disease and in bringing about his death.[38] Strict proof of causation is not required.[39] As stated by the Court of Appeals:

x x x In the case at bar, it cannot be denied that as the Tug Master of MV Grouper Ann, Arbit has an enormous responsibility and pressure to deal with in view of the fact that he is not only responsible for the safety of the vessel but more importantly, he is responsible for the lives and well-being of his crew. That is why in one (1) of his letters to Mr. Linden, he complained about the insufficiency of their provisions and the delay in their delivery. As a tug master, such deplorable plight of his crew caused him extreme anxiety and work pressure which took a heavy toll on his health and has surely contributed even in a small degree to the development of his illness.[40]

To be sure, petitioners delay in heeding the requests of Arbit for his replacement and immediate repatriation cannot be denied. Arbit had to write three (3) letters before a response could be elicited from Linden Shipping International. This is aggravated by the fact that when Linden finally replied, it requested Arbit to give them more time because India was not a convenient port for crew change. Lindens concern for convenience hardly overrides Arbits urgent need for medical attention. Given these circumstances, it was not abandonment when Arbit signed-off and disembarked for medical reasons without waiting for a reliever.

IN VIEW WHEREOF, the petition is GRANTED IN PART. The Decision of the Court of Appeals in CA-G.R. SP. No. 76136 dated May 27, 2003 and the Resolution of the Special Third Division dated July 18, 2003 are AFFIRMED as to the award of unpaid salary and other benefits, sickwage allowance, full repatriation cost and transportation cost of Arbits reliever, full medical and hospitalization expenses, and attorneys fees. The award of permanent total disability compensation is ANNULLED and SET ASIDE.

SO ORDERED.

Austria-Martinez, Tinga, and *Chico-Nazario, JJ.,* concur.
Callejo, Sr., on official leave.

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[1] *Rollo*, 9-18.

[2] *Id.* at 88-91.

[3] Contract of Employment; CA *Rollo*, 78.

[4] He manned these vessels instead of the tug boat MV Ray Ann which was his vessel of assignment in the Contract of Employment.

[5] CA *Rollo*, 80.

[6] *Id.* at 81.

[7] *Id.* at 82.

[8] Left Ventricular Failure.

[9] Medical Certificate dated December 3, 1998.

[10] CA *Rollo*, 83.

[11] Signed by Dr. Dominador Autentico.

[12]The cardiac examination was conducted by Dr. Willy Que, a company-designated physician.

> Ischemic cardiomyopathy is a medical term that doctors use to describe patients who have congestive heart failure that is a result of coronary artery disease. (A.D.A.M. Illustrated Health Encyclopedia,http://adam.about.com/encyclopedia/000160.htm, last visited on December 9, 2004.)

[13] CA *Rollo*, 87.

[14] *Ibid.*

[15] Decision of Labor Arbiter Ermita T. Abrasaldo-Cuyuca, 1-18; *Rollo*, 99-115.

[16] Petition for Certiorari, 1-29; CA *Rollo*, 2-30.

[17] Petition for Review on Certiorari, 14; *Rollo*, 41.

[18] Resolution, 1-4; *Id.* at 21-24.

[19] Petition for Review on Certiorari, 1-46; *Id.* at 28-73.

[20] *Id.* at 16-20; *Id.* at 43-47.

[21] Resolution, 1-4; *Id.* at 21-24.

[22] *J*. Villarama, Jr.

[23] Petition for Review on Certiorari, 22-23; *Id.* at 49-50.

[24] Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

[25] Two of Arbits co-crew members issued sworn statements that Arbit was negligent in the performance of his duties as Tug Master.

[26] In Employees Association of the Philippine American Life Insurance Co. *v.* NLRC (G.R. No. 82976, July 26, 1991, 199 SCRA 628), the established exceptions are as follows:

a) the conclusion is a finding of fact grounded on speculations, surmises and conjectures;

b) the inferences made are manifestly mistaken, absurd or impossible;

c) there is a grave abuse of discretion;

d) there is misappreciation of facts; and

e) the court, in arriving in its findings, went beyond the issues of the case and the same are contrary to the admission of the parties or the evidence presented.

[27] CA *Rollo*, 87.

[28] *Rollo*, 111.

[29] Decision of Labor Arbiter Ermita T. Abrasaldo-Cuyuca, 14-16; *Rollo*, 111-113.

[30] CA Decision, 8-9; *Rollo*, 16-17.

[31] G.R. No. 130772, November 19, 1999, 318 SCRA 623.

[32] Memorandum on Appeal, 22-23; CA *Rollo*, 170-171.

[33] Dated July 23, 1996.

[34] Memorandum on Appeal, 21; CA *Rollo*, 169.

[35] This rate is applicable to impediment grade nine (9).

[36] Petitioners Motion for Reconsideration, 22; *Rollo*, 160.

[37] *Supra* Note 31.

[38] *Supra* Note 29.

[39] Philippine Transmarine Carriers, Inc. *v.* NLRC, G.R. No. 123891, February 28, 2001, 353 SCRA 47.

[40] CA Decision, 9; *Rollo*, 17.