FIRST DIVISION

SEAGULL MARITIME CORP. and G.R. No. 165156
SEAGIANT SHIPMANAGEMENT
CO. LTD.,
Petitioners, Present:
PUNO, *C.J.*, *Chairperson*,
- v e r s u s - SANDOVAL-GUTIERREZ,
CORONA,
AZCUNA and
GARCIA, *JJ.*

JAYCEE DEE and NATIONAL
LABOR RELATIONS COMMISSION,
Respondents.
Promulgated:
April 2, 2007

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D E C I S I O N

CORONA, *J.*:

Before us is a petition for review under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals,[1] finding that the National Labor Relations Commission (NLRC)[2] did not commit grave abuse of discretion in setting aside the decision of the labor arbiter.[3]

The antecedents follow.

Sometime in 1999, private respondent Jaycee Dee was employed as an able-bodied seaman by petitioner Seagiant ShipManagement[4] Co. Ltd., through the assistance

of local manning agent Seagull Maritime Corporation. He was assigned to the vessel M/V Castor.

On May 3, 2000, a passing ship collided with M/V Castor while it was berthed in Hamburg, Germany. Its portable gangway got jammed between the other ships walls and the shore rail. Then, it suddenly moved back to the berth. Because of these rapid movements, private respondents left foot was pinned between the ships two metal beams and was crushed.

After initial treatment at a German hospital, private respondent was repatriated back to the Philippines to receive medical treatment. He was examined and treated in several hospitals and clinics. He was operated on twice (application of pin in May 2000 and removal of pin in August 2000) and underwent eight months of physical therapy.

Despite the treatment, private respondent continued to suffer from severe pain and difficulty in moving and weight-bearing on the left foot while ambulating.

As a result of his condition, private respondent filed a complaint in the NLRC against petitioners for the payment of permanent total disability benefits amounting to US$60,000.

Petitioners interposed the defense that private respondents condition could still be remedied by a triple arthrodesis operation. They were thus surprised when he rejected it. They also vehemently opposed the amount of the claim. They argued that the company-designated physician, Dr. Albert M. Manalang, characterized

private respondents injuries as closest to complete immobility of an ankle joint in normal position.[5] In the POEA standard employment contract, such injury was rated with impediment grade no. 11, compensable by US$7,465.

On March 15, 2002, the labor arbiter ruled in favor of petitioners:

> WHEREFORE, the claim of disability benefit is hereby found meritorious, and thereby, the respondents are hereby directed to pay the complainant US$7,465.00, or its peso equivalent. However, the other claims are hereby denied for lack of merit.
>
> SO ORDERED.[6]

According to the labor arbiter, in the POEA-prescribed contracts Schedule of Disability or Impediment for Injuries Suffered on Lower Extremities,[7] the closest to private respondents ailment was:

> 18. Complete immobility of an ankle joint in normal position Grade 11.

He emphasized that despite the medical opinions of other doctors, only Dr. Manalang gave an impediment grade for private respondents injury. Such impediment grade[8] happened to be the same grade for the injury he found closest to private respondents condition.

On appeal, the NLRC set aside the above decision:

> WHEREFORE, premises considered, the decision under review is hereby SET ASIDE, and another entered in its stead, declaring complainants disability as permanent and total.
>
> Accordingly, respondents are directed to pay the complainant US$60,000.00 or its peso equivalent. All other claims are DISMISSED for lack of merit.

SO ORDERED.[9]

In so ruling, the NLRC considered the medical findings of Dr. Norberto Meriales of the Philippine General Hospital (PGH)/Medical Center Manila. Dr. Meriales opined that, with or without additional medical treatment on private respondents foot, a return to his previous work as a seaman was no longer possible. Consequently, private respondents refusal to undergo a triple arthrodesis operation on his foot should not defeat the merits of his claim. Even if he underwent the surgery, there was no guarantee that it would alleviate private respondents pain, bring back the full mobility and use of his foot and ability to work as a seaman. The operation was intended merely to relieve him of pain.

The NLRC also noted the findings of Dr. Rafael Bundoc, orthopedic surgeon in PGH:

> x x x. It is my opinion xxx that results of these surgeries might not live up to the expectations of Mr. Dee. As it is, patient is already frustrated with the degree of immobility of his hind and midfoot. Fusion is going to compromise this further. Even if the surgeries are designed to lessen the pain of his foot, results are still undeniably variable. Patient is very much aware of the consequences of having corrective foot surgery or none at all. It is for the patient to finally decide to undergo such an elective procedure when he feels that its benefit outweigh its other limitations. Nevertheless, patient will never be able to attain the level of activity that he could perform as a seaman. It would be best for him to seek an occupation that would not entail heavy manual work and prolonged ambulation. [10]

On this basis, the NLRC ruled that private respondents disability was permanent and total in character, warranting a US$60,000 award.

The NLRC likewise denied petitioners motion for reconsideration in a resolution dated July 23, 2003.[11]

On petition for certiorari under Rule 65, the Court of Appeals found no grave abuse of discretion on the part of the NLRC in deciding for private respondent. It thus affirmed the NLRCs decision.[12]

The subsequent motion for reconsideration was denied in a resolution dated August 20, 2004.[13]

Hence, the instant petition anchored on the following assignment of errors:

> THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE LABOR ARBITER CONSIDERING THAT:
>
> (A) THE LATTER STUCK TO THIS HONORABLE COURTS PRECEDENT-SETTING RULING IN *GERMAN MARINE AGENCIES V. NLRC,*[14] THAT IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO MUST ASSESS THE NATURE AND EXTENT OF DISABILITY OF AN INJURED SEAFARER.
>
> (B) THE LATTER APPLIED THE PROVISIONS OF THE POEA-PRESCRIBED STANDARD EMPLOYMENT CONTRACT; and
>
> (C) THE COMPLAINANTS INJURY WAS CONFINED ONLY TO HIS LEFT FOOT, AND THUS HIS DISABILITY IS NOT TOTAL, BUT ONLY PARTIAL.

There is no merit in the petition.

We have said often enough that for the extraordinary remedy of certiorari to lie by reason of grave abuse of discretion, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to

perform the duty enjoined or to act at all, in contemplation of law. The judgment must be rendered in a capricious, whimsical, arbitrary or despotic manner by reason of passion, prejudice or personal hostility.[15]

Abuse of discretion does not necessarily follow in cases where the NLRC reverses a labor arbiters decision. The mere variance in evidentiary assessment between the labor arbiter and the NLRC does not automatically call for a full review of the facts by this Court. The decision of the NLRC, so long as it has substantial support from the records, deserves respect from this Court.[16]

The appellate courts decision, for its part, is clear:

> The NLRC could hardly be accused of misappreciating the facts of the case, as it is undisputed that the private respondent sustained his injury while serving on board the M/V Castor belonging to petitioner Seagiant Management Co., Ltd., and that the said injury was compensable. Nor could the NLRC be accused of misapprehending the extent of the private respondents injury as in making its conclusions, the NLRC referred to matters of evidence appearing on record, after using its own reasoning and cognitive powers. We see that the NLRC gave weight to the observations of Dr. Norberto Meriales that the private respondent, whether operated on or not, will not be able to perform or be hired for his previous work as a seaman, and no grave abuse of discretion could be gleaned from such fact. The NLRC also relied on the observations of Dr. Rafael Bundoc of the PGH, which point out that even if private respondent is allowed surgeries to lessen his pain, he will never be able to attain the level of activity that he could perform as a seaman.
>
> The NLRC also did not misconstrue or misapply the legal principles it had cited in resolving the appeal before it. It is in accord with judicious reasoning for the NLRC to cite the rule that a claimants disability should not be understood solely on its medical significance, but also on the real and actual effects of the injury to the claimants right and opportunity to perform work and earn a living. In fine, private respondents injury rendered him incapable of performing the same work or work of a similar nature as he was trained or accustomed to. It is only just that the remuneration paid to him at least approximates his loss.

> Thus, it can not be said that the NLRC acted with wantonness or arbitrariness or in a despotic manner as its findings and conclusions are based on matters on record.[17]

Petitioners insistence that the NLRC committed grave abuse of discretion when it did not follow this courts ruling in *German Marine Agencies, Inc.* is unconvincing.Nowhere in that case did we hold that the company-designated physicians assessment of the nature and extent of a seamans disability is final and conclusive on the employer company and the seafarer-claimant. While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment,[18] it does not deprive the seafarer of his right to seek a second opinion.

> The relevant provision of the POEA Standard Employment Contract states:
>
> **SECTION 20. COMPENSATION AND BENEFITS**
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> x x x x x x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> x x x x x x x x x
>
> 3. Upon sign-off 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 his forfeiture of the right to claim the above benefits.
>
> **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 doctors decision shall be final and binding on both parties. (emphasis supplied)

Thus, the POEA Standard Employment Contract recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice. In case of disagreement between the assessments of the company-designated physician and the seafarers doctor of choice, they may agree to refer the seafarer to a third doctor. In such a case, the third doctors assessment shall be final and binding on both the employer and the seafarer.

It was therefore not erroneous at all for the NLRC and Court of Appeals to base their decisions on the assessment of private respondents chosen physicians, Dr. Meriales and Dr. Bundoc, specially since their conclusion was arrived at only after a consideration of the medical findings of Dr. Manalang, the company-designated physician. We quote the medical certificate issued by Dr. Manalang:

> This is in reference to Seaman/AB Jaycee Dee who was repatriated due to fractured left foot.
>
> Patient was seen and re-evaluated by our Orthopedic Surgeon. He was diagnosed to have Traumatic Arthritis Subtalar joint (Talonavicular Talocalcaneal and Calcaneocuboid joint) **left foot**as a result of previous traumatic injury (Talar and Calcaneal Fracture with Alonavicular Dislocation).
>
> Presently, **patient has severe pain** over the subtalar joint **with difficulty in weight bearing on the left foot while ambulating**. **The proposed Triple Arthrodesis, which *might*eliminate, relieve and stabilized left foot for functional weight bearing and ambulation was rejected by the seaman.**

> Although **there is no guarantee that he will be able to return to his previous strenuous work, he *might* be able to walk for activity of daily living with a less painful or more comfortable left foot.**
>
> Based [on] these findings, **we are giving Disability Grade 11 for Mr. Dee ($50,0000.00 x 14.93%) = $7465.00).**[19] (emphasis ours)

Significantly, Dr. Manalangs medical findings did not differ from those of the other doctors consulted by private respondent. Essentially, he shared their opinion that the triple arthrodesis operation could not guarantee the restoration of private respondents former physical condition. His pronouncement that

> all that the operation **might** do is to enable private respondent to walk for daily activities with a less painful or more comfortable left foot

insinuated that private respondents disability was permanent. His medical opinion could be safely interpreted to mean that, as a result of the injury, private respondent would no longer be able to perform strenuous activities such as the rigorous duties of a seaman.

It is not surprising why Dr. Manalangs conclusion as to how much private respondent should receive as disability benefit was at odds with his own findings. The doctor, as the company-designated physician, must have downplayed the compensation due to private respondent; the company, after all, expected that of him. In this light, it is thus not difficult to understand why the seafarer is given the option by the POEA Standard Employment Contract to seek a second opinion from his preferred physician.

Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to

be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.

Accordingly, if serious doubt exists on the company-designated physicians declaration of the nature of a seamans injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These evidences will in turn be used to determine the benefits rightfully accruing to him.

Besides, we have consistently ruled that disability is intimately related to ones earning capacity. The test to determine its gravity is the impairment or loss of ones capacity to earn and not its mere medical significance. *Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform*, or any kind of work which a person of his mentality and attainment can do. It does not mean state of absolute helplessness but *inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain* and without material injury or danger to life.[20] In disability compensation, it is not the injury per se which is compensated but the incapacity to work.

Although private respondents injury was undeniably confined to his left foot only, we cannot close our eyes, as petitioners would like us to, to the inescapable impact of private respondents injury on his capacity to work as a seaman. In their

desire to escape liability from private respondents rightful claim, petitioners denigrated the fact that even if private respondent insists on continuing to work as a seaman, no profit-minded employer will hire him. His injury erased all these possibilities.

It should not be assumed as well that the POEA standard employment contract contains all the possible injuries that render a seafarer unfit for further sea duties.This very case is in fact one of those not specified in its schedule of disabilities. Petitioners are, at this point, reminded that the POEA standard employment contract for seamen was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect.[21]

WHEREFORE, the petition is hereby **DENIED**. The decision of the Court of Appeals is **AFFIRMED**.

Costs against the petitioners.

SO ORDERED.

RENATO C. CORONA
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Chief Justice
Chairperson

ANGELINA SANDOVAL-GUTIERREZ ADOLFO S. AZCUNA
Associate Justice Associate Justice

CANCIO C. GARCIA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO
Chief Justice

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[1] Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Mario L. Guaria, III and Santiago Javier Ranada (retired) of the Fourteenth Division of the Court of Appeals.
[2] Resolution dated January 31, 2003. Penned by Presiding Commissioner Raul T. Aquino, concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan of the NLRC Second Division.
[3] Labor arbiter Pablo S. Magat, NLRC-NCR-North Arbitration Branch.
[4] Sometimes written as Ship Management in other parts of the rollo.
[5] Listed in No. 18, Section 32, Appendix A of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.
[6] *Rollo*, pp. 65-72.
[7] See note 5.
[8] Impediment Grade 11 is computed as: US$50,000 x 14.93% = US$7,465.

[9] *Rollo,* pp. 44-61.
[10] Id., p. 57.
[11] Id., pp. 62-63.
[12] Id., pp. 34-42.
[13] Id., p. 43.
[14] G.R. No. 142049, 30 January 2001, 350 SCRA 629.
[15] *J.L. Bernardo Construction v. Court of Appeals*, 381 Phil. 25 (2000).
[16] *Sanchez v. NLRC*, 371 Phil. 649 (1999).
[17] See note 11.
[18] See note 13.
[19] Id., p. 15.
[20] *Bejerano v. Employees Compensation Commission*, G.R. No. 84777, 30 January 1992, 205 SCRA 598.
[21] *Philippine Transmarine Carriers v. NLRC*, G.R. No. 123891, 28 February 2001, 353 SCRA 47.