Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RUFINO C. MONTOYA, Petitioner,	**G.R. No. 183329**
	Present:
- versus -	QUISUMBING, *J., Chairperson,* CARPIO-MORALES, BRION, DEL CASTILLO, and ABAD, *JJ.*
TRANSMED MANILA CORPORATION / MR. EDILBERTO ELLENA and GREAT LAKE NAVIGATION CO., LTD., Respondents.	Promulgated: August 27, 2009

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D E C I S I O N

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 Laparatomy 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 Laparatomy 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 Laparatomy with drainage of subphrenic and subhepatic abscess;
- Tuberculous Eleitis;
- Incidental finding HIV Positive;
- Impediment Grade I (120%).[9]

On the basis of Dr. Vicaldos 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 Montoyas 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 Montoyas 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 Montoyas 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% attorneys fee, or US$6,154.00; or a total of US$67,694.00.

The NLRC, on Transmeds appeal, reversed the labor arbiters 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 NLRCs decision) for Montoyas failure to establish any grave abuse of discretion in the NLRCs 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 doctors decision shall be final and binding on both parties.* Montoya, therefore, failed to administratively contest the companys 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 Montoyas 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 attorneys fees.

Directly addressing the CAs 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 CAs 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 attorneys fees.

THE RESPONDENTS POSITION

In their Comment, respondents Transmed and Great Lake note that Montoyas 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 Montoyas 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 Montoyas 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 COURTS 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, Montoyas 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 an issue we cannot touch under Rule 45, *except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating this factual issue.*

Whether Montoya is entitled to disability or to attorneys fees are issues that require the consideration and application of provisions of law and are essentially questions of law. In the context of this case, however, these are legal questions that spring from and cannot be resolved without the definitive resolution of the factual issue mentioned above.

3. Our review of the records and of the CA decision shows that the CA correctly ruled in recognizing that the NLRC did not commit any grave abuse of discretion in concluding that Montoyas claim for disability benefits was without basis. Tuberculosis, the ailment for which Montoya claimed compensation, is not work-related under the circumstances of this case, as the NLRC and the CA commonly ruled. The CAs consideration of this factual issue as basis for the finding that the NLRC did not commit grave abuse of discretion was clear and concise. To quote the CA:

> In this case, petitioners contention that he contracted tuberculosis while on board the vessel as a result of 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 the vessel, are bare allegations which were not substantiated nor corroborated by any other evidence that would have established a causal relationship between tuberculosis ileitis that rendered him unfit to work with the condition of his work aboard the vessel, and the abdominal trauma he suffered when he was hit by a pipe.
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> x x x x x x x x x
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> There was likewise no showing that he complained of any illness while on board the vessel nor was it established that petitioner was repatriated due to tuberculosis. Moreover, it bears to note that petitioner was afforded proper medical attention upon his repatriation due to the accident he suffered while on board the vessel M/V Papa and the operation he underwent due to subphrenic and subhepatic abscess secondary to blunt trauma have (*sic*) healed. Hence, his having been hit by a pipe is too remote a cause as to result in the illness sought to be compensated. Besides, petitioner 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-recurrence of tuberculosis ileitis.[21]

While pulmonary tuberculosis appears in the list of occupational diseases in the contract of

employment, the inclusion is conditional;[22] a claimant has to show *actual* work-relatedness if the condition does not apply. Montoya was not engaged in one of the occupations where tuberculosis is a listed illness; thus, Montoya carried the burden of showing by substantial evidence that his *tuberculosis ileitis* was due to the abdominal injury he sustained on board the M/V *Papa* or to his exposure to toxic chemicals and substances and to harsh weather conditions. As the CA found, he had nothing to support his claim other than the cryptic comment of his physician, Dr. Vicaldo, that [H]is illness is considered as work-related and work-aggravated,[23] without elaborating on how the doctor arrived at this finding.

We note that the medical examination Dr. Vicaldo conducted on Montoya several months after the latters repatriation was markedly different from the procedure the company-designated physicians undertook on Montoya upon his arrival. The records show that upon his repatriation, Montoya was admitted to the Metropolitan Hospital and was examined by Dr. Lim and Dr. Uy, the company doctors, and was operated on, revealing the extent of his on-board injury. Montoya underwent post-operation check-ups, three sessions in all, (September 1 & 22, 2003, and November 10, 2003) whose significant findings were the subject of Dr. Lims reports.[24] These reports indicated the progressive healing of his injury; his check-up in November showed that Montoyas wound had already healed, and he was advised to continue his anti-tuberculosis medications. Notably, the doctors asked him to return for re-evaluation in December, but he did not. In March the following year, he consulted Dr. Vicaldo; allegedly, he was dissatisfied with the respondents company-designated physicians findings.

Significantly, Dr. Vicaldo came up with the same medical results, and differed only on the assessment that Montoyas illness was work-related and work-aggravated. A divergence in medical findings and assessment is a possibility the contract of employment and the law have anticipated so that a mechanism for resolution was properly provided. Section 20(B)(3) of Department Order No. 4, as implemented by POEA Memorandum Circular No. 9, Series of 2000, which forms part of the Contract, provides that *[I]f 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.* Had Montoya observed the procedure laid down in the Contract, the disagreement could have been clarified or resolved at that point. From the point of view of the decision under review, the CA

properly noted this aspect of the case and concluded that the NLRC did not commit any grave abuse of discretion in making Montoyas failure to use the prescribed procedure a basis for its finding that his compensation claim should be denied.

Dr. Vicaldo declared Montoya unfit to work, not for the injury he sustained as this had completely healed, but for *tuberculosis ileitis* which Dr. Vicaldo declared to be work-related. Notably, this declaration was not supported by any reason or proof submitted together with the assessment or in the course of the arbitration. The declaration was a plain statement that his illness was work-related and work-aggravated; nothing more followed.

In contrast, Dr. Uy, who, together with Dr. Lim, attended to Montoya when he was repatriated and who monitored his progress until his wound had completely healed, certified that his tuberculosis ileitis cannot be directly connected with the abdominal trauma he suffered. It could have been pre-existing before the trauma and might have just flared up because of the stress-related accident.[25] Montoya rejected this assessment as he considered the findings of the company-designated physicians more often than not, palpably self-serving and biased in favor of the company. As already mentioned, neither he nor his physician presented any proof of work relatedness other than the bare allegation that the tuberculosis was the result of the injury Montoya sustained while at work and was an illness aggravated by the working conditions on board the vessel.

In considering this conflict of medical assessment, we took into account the fact that the company-designated physicians attended to Montoya and coordinated his medical examination and treatment upon his repatriation on July 25, 2003, up to late November 2003; Dr. Vicaldo examined Montoya only eight months after his repatriation. The examination and treatment of Montoya by the company-designated physicians had been much more extensive than the examination conducted by Dr. Vicaldo in his clinic. Not only was Montoya examined by Drs. Lim and Uy, he was referred to and examined by a pathologist (Dr. Nelson T. Geraldino);[26] was operated on by a surgeon, Dr. Danilo Chua (*Dr. Chua*); and had been monitored after his operation by Dr. Chua and a gastroenterologist.[27] In the absence of clear proof to the contrary, this series of specialized treatments negates the claim that the evaluation of the company-designated physicians was self-serving and biased in favor of the company. They

amply demonstrate, too, that they arrived at their evaluation after a close and meticulous monitoring and actual treatment of their patients condition.

We likewise find it significant that the doctors on both sides of the case had the same *medical findings.* Dr. Vicaldos findings themselves show that Montoyas injury had completely healed, and that he confirmed that the *incidental HIV positive finding* made Montoya prone to other viral, bacterial or even fungal infections as a consequence x x x.[28] Dr. Vicaldo also noted that there was no assurance of complete cure, nor assurance of non-recurrence due to his HIV positive condition. These considerations, in our view, tilt the work-relatedness argument towards the CAs conclusion that Montoyas having been hit by a pipe is too remote a cause as to result in the illness sought to be compensated.

To recapitulate, the CA properly recognized that the NLRC committed no grave abuse of discretion in dismissing Montoyas complaint; the NLRCs findings of facts have sufficient basis in evidence and in the records of the case and, in our own view, far from the arbitrariness that characterizes excess of jurisdiction. If Montoya had any basis at all to support his claim, such basis *might* have been found after considering that he was medically fit when he boarded the ship based on the requisite pre-employment examination;[29] his tuberculosis was only discovered after repatriation,[30] and the company doctor himself certified that it could have been pre-existing and *might have just flared up because of the accident.*[31] Under this Courts ruling in *Belarmino v. Employees Compensation Commission,*[32] a work-relatedness could *possibly* have been shown since the tuberculosis, apparently dormant when Montoya boarded his ship, flared up after the work-related accident and its stresses intervened. This possible line of argument, however, is one that escaped the parties and the tribunals below, and to date has remained unexplored. In any event, even if invoked, the CAs omission to recognize the validity of this line of argument would have only been an error of judgment, not a grave abuse of discretion, since the argument would have simply embodied a competing theory that the CA did not adopt in a situation not attended by any arbitrariness or grave abuse of discretion.

In the absence of any duly proven work-relatedness, we see no point in considering the imputed legal errors that could have only been triggered by a finding of work-relatedness.

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit. Costs against the petitioner.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CONCHITA CARPIO-MORALES
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

ATTESTATION

I attest 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.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons Attestation, it is hereby certified that the conclusions in the above Decision were 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] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 9-26.

[2] Promulgated on February 11, 2008, and penned by Associate Justice Estela M. Perlas with Associate Justice Portia Alio Hormachuelos and Associate Justice Lucas P. Bersamin (now a Member of this Court), concurring; *id*., pp. 207-216.

[3] Promulgated on June 5, 2008; *id.*, p. 218.

[4] *Id.*, p. 30.

[5] *Ibid.*

[6] *Id.,* p. 35.

[7] *Id.*, p. 36.

[8] *Id.,* pp. 38-40.

[9] *Id.*, p. 41.

[10] NLRC OFW Case No. (M) 04-05-01285-00.

[11] *Rollo,* pp. 143-149.

[12] *Id.,* pp. 163-164.

[13] *Supra* note 2.

[14] CA Decision, 1st par., p. 4, *id.*

[15] G.R. No. 154798, October 20, 2005, 473 SCRA 559.

[16] *Ibid.*

[17] The remedy under Rule 45 is after all an appeal. An appeal brings up for review errors of judgment committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment. See *Silverio v. CA,* G.R. No. L-39861, March 17, 1986, 141 SCRA 469.

[18] See *Hajin Engineering and Construction Co., Ltd. v. CA,* G.R. No. 165910, April 10, 2006, 487 SCRA 78. See also *Coca-cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494.

[19] Rule 45, Sec. 1. A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** [emphasis supplied]

[20] *Coca-cola Bottlers Phils., Inc. v. Daniel, supra;* Sec. 1, Rule 65 of the Rules of Court.

[21] *Rollo,* pp. 214-215.

[22] *S*ee: Annex A, 7(e), Rule XII, Book IV of the Implementing Rules and Regulations of the Labor Code (*ECC Rules*) which provides that tuberculosis is an occupational disease in Any occupation involving close and frequent contact with a source or sources of tuberculosis infection by reason of employment: (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis; (b) as a laboratory worker, pathologist or postmortem worker, where occupation involves working with material which is a source of tuberculosis infection.

[23] *Rollo,* p. 14.

[24] *Supra* note 8.

[25] *CA rollo,* p. 123.

[26] *Supra* note 6.

[27] *Supra* note 7.

[28] *Rollo,* p. 14.

[29] See statement on this point at p. 2 hereof.

[30] *Supra* note 6.

[31] *Supra* note 25.

[32] G.R. No. 90104, May 11, 1990, 185 SCRA 304.