

FIRST DIVISION

[G.R. NO. 165156, April 02, 2007]

**SEAGULL MARITIME CORP. AND SEAGIANT SHIPMANAGEMENT
CO. LTD., PETITIONERS, VS. JAYCEE DEE AND NATIONAL LABOR
RELATIONS COMMISSION, RESPONDENTS.**

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 ship's walls and the shore rail. Then, it suddenly moved back to the berth. Because of these rapid movements, private respondent's left foot was pinned between the ship's 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 respondent's 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 respondent's 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 contract's "Schedule of Disability or Impediment for Injuries Suffered on Lower Extremities,"^[7] the closest to private respondent's 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 respondent's injury. Such impediment grade^[8] happened to be the same grade for the injury he found closest to private respondent's 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 complainant's 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 respondent's foot, a return to his previous work as a seaman was no longer possible. Consequently, private respondent's 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 respondent's 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 respondent's 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 NLRC's 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 COURT'S 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 COMPLAINANT'S 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 arbiter's 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 court's 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 respondent's 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 claimant's disability should not be understood solely on its medical significance, but also on the real and actual effects of the injury to the claimant's right and opportunity to perform work and earn a living. In fine, private respondent's 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 court's ruling in *German Marine Agencies, Inc.* is unconvincing. Nowhere in that case did we hold that the company-designated physician's assessment of the nature and extent of a seaman's 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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B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related