

# FIRST DIVISION

[ G.R. No. 227419, June 10, 2020 ]

**HENRY ESPIRITU PASTRANA, PETITIONER, VS. BAHIA SHIPPING SERVICES, CARNIVAL CRUISE LINES, NORTH SEA MARINE SERVICES CORPORATION, V. SHIP LEISURE, INC., ELIZABETH MOYA AND FERDINAND ESPINO, RESPONDENTS.**

## DECISION

### CAGUIOA, J:

Assailed in this Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court are the Decision<sup>[1]</sup> dated May 5, 2016 and Resolution<sup>[2]</sup> dated September 5, 2016 of the Court of Appeals, Eighth Division (CA), in CA-G.R. SP No. 136109.

### Facts

Petitioner Henry Espiritu Pastrana (Pastrana) entered into a Contract of Employment dated September 6, 2012 with respondent Bahia Shipping Services (BSS) as an Environmental Team Leader on board the vessel Carnival Fascination.<sup>[3]</sup> He received a basic monthly salary of \$1,000.00 exclusive of overtime pay and other benefits.<sup>[4]</sup>

Prior to his engagement, Pastrana underwent the required pre-employment medical examination and was declared fit to work.<sup>[5]</sup>

Sometime in November 2012, while on board the vessel, Pastrana lifted a red bin full of food waste to free up space for other bins.<sup>[6]</sup> However, he miscalculated the weight of the bin and dropped it midway.<sup>[7]</sup> After said incident, Pastrana experienced lower back pain which radiated to his right buttock.<sup>[8]</sup> He visited the infirmary where he was injected with steroid and advised to take pain relievers.<sup>[9]</sup> However, he became alarmed of his condition when the pain extended from his right buttock down to his right leg, and it became difficult for him to get up from a sitting position.<sup>[10]</sup>

On November 7, 2012, Pastrana went back to the infirmary to consult his worsening condition.<sup>[11]</sup> He was examined by Dr. Edward Dees who diagnosed him with *sciatic pain/plantar fasciitis* and prescribed him medicines.<sup>[12]</sup> Despite the medication and physiotherapy, the pain persisted and even worsened.<sup>[13]</sup> Thus, on December 10, 2012, Pastrana was repatriated to the Philippines for medical treatment.<sup>[14]</sup>

Two days after his repatriation, on December 12, 2012, Pastrana reported to the company-designated physician, Dr. Robert Lim (Dr. Lim), and underwent magnetic resonance imaging (MRI) scan of his *lumbo sacral* spine.<sup>[15]</sup>

On December 18, 2012, Pastrana had his second consultation with Dr. Lim.<sup>[16]</sup> He was given medication and advised to undergo rehabilitation.<sup>[17]</sup> He underwent physical therapy sessions for almost four months, but this only resulted to minimal improvement.<sup>[18]</sup>

On April 2, 2013, Dr. Lim advised Pastrana that he is already fit to work.<sup>[19]</sup> Trusting the assessment of the company-designated physician and eager to resume sea duty, Pastrana signed the fit to work declaration.<sup>[20]</sup> However, the Medical Director of respondent Carnival Cruise Lines declared him unfit to return to his usual work on board the vessel after observing that he still has stiff trunk and painful gait.<sup>[21]</sup>

On April 11, 2013, the company-designated physician issued a final assessment which states as follows:

"This is regarding the case of Environmental Team Leader Henry E. Pastrana who was initially seen here at Metropolitan Medical Center on December 12, 2012 and was diagnosed to have Herniated Disc, L4-L5, L5-S1.

If patient is entitled to a disability, his suggested disability grading is Grade 11 - 1/3 loss of lifting power."<sup>[22]</sup>

In view of the foregoing medical assessment, respondents offered to pay Pastrana \$7,000.00 as disability benefit corresponding to a Grade 11 disability rating.<sup>[23]</sup> Pastrana refused the offer and instead sought the opinion of his personal doctor, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who declared him "permanently unfit in any capacity to resume his duties as a Seaman."<sup>[24]</sup>

On the basis of the medical assessment of Dr. Magtira, Pastrana demanded total and permanent disability benefits from respondents, but his demand went unheeded.<sup>[25]</sup> Thus, Pastrana filed a Complaint dated May 7, 2013 for payment of total and permanent disability benefits, moral and exemplary damages, and attorney's fees, with the Labor Arbiter (LA).<sup>[26]</sup>

### ***Ruling of the LA***

In a Decision<sup>[27]</sup> dated November 25, 2013, the LA ruled in favor of Pastrana. The dispositive portion of the Decision reads as follows:

**WHEREFORE**, responsive to the foregoing, judgment is hereby rendered declaring complainant's claim for disability benefits based on the permanent total disability compensation category meritorious. Accordingly, respondents are hereby ordered jointly and severally liable:

- 1) To pay complainant the amount of USD60,000.00, or its equivalent in Philippine Currency prevailing at the exchange rate at the time of payment, representing his payment and total disability benefits;
- 2) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.

Other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[28]</sup>

In so ruling, the LA disregarded the medical assessment and grading given by the company-designated physician. According to the LA, Pastrana is entitled to total and permanent disability benefits given that his condition "has rendered him unfit to continue working as a seafarer, which is his primary source of gainful employment."

<sup>[29]</sup> The LA further held that there is no evidence showing that Pastrana had already resumed his sea duties, or was declared fit to work.<sup>[30]</sup> Thus, he is considered to be suffering from a Grade 1 Disability and entitled to permanent and total disability benefits.<sup>[31]</sup>

The LA also awarded Pastrana attorney's fees in an amount equivalent to 10% of the total judgment award for securing the services of a counsel to protect his rights and interests.<sup>[32]</sup>

Aggrieved, respondents filed a Memorandum of Appeal with the National Labor Relations Commission (NLRC).<sup>[33]</sup>

***Ruling of the NLRC***

The NLRC dismissed respondents' appeal and affirmed the LA's ruling in a Decision<sup>[34]</sup> dated April 8, 2014, viz.:

**IN VIEW WHEREOF**, the respondents' appeal is **DISMISSED** for lack of merit. The Decision of the Labor Arbiter is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[35]</sup>

The NLRC held that Pastrana is deemed permanently and totally disabled considering that he could no longer return to his work as a seafarer on account of his medical condition.<sup>[36]</sup> After all, in disability compensation, it is the incapacity to work resulting in the impairment of one's earning capacity that is being compensated and not the injury.<sup>[37]</sup> In addition, while the diagnosis of the company-designated physician bears vital significance in claims for disability benefits, his assessment is not irrefutable and conclusive.<sup>[38]</sup> No less than the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) recognizes the right of seafarers to seek a second opinion from a physician of their choice.<sup>[39]</sup> Finally, the NLRC also applied the "120 day rule" which states that a seafarer who is unable to perform his job for 120 days is deemed permanently disabled.<sup>[40]</sup>

Respondents sought reconsideration of the NLRC Decision, but was denied in a Resolution<sup>[41]</sup> dated May 9, 2014. Thus, they filed a petition for *certiorari*<sup>[42]</sup> before the CA and prayed for the issuance of injunctive relief to enjoin the execution of the NLRC Decision.

Before the CA could act on respondents' application for injunctive relief, the NLRC issued a Writ of Execution dated September 24, 2014.<sup>[43]</sup> Thus, respondents moved for the inclusion of restitution as part of the reliefs prayed for before the CA.<sup>[44]</sup>

***Ruling of the CA***

In a Decision<sup>[45]</sup> dated May 5, 2016, the CA granted respondents' petition for *certiorari*. The dispositive portion of the CA Decision reads as follows:

**WHEREFORE**, premises considered, the Petition is **GRANTED**. The *Decision* dated 8 April 2014 and *Resolution* dated 9 May 2014 issued by the National Labor Relations Commission (NLRC) in NLRC Case No. LAC 02-000149-14 are hereby **SET ASIDE**. Private respondent is ordered to return to petitioners the amount of Two Million Nine Hundred Forty Three Thousand Six Hundred Pesos (Php2,943,600.00) less the equivalent of \$7,465.00 in Philippine currency as of 16 October 2014, the date of receipt of payment by private respondent, as compensation for Grade 11 disability.

**SO ORDERED.**<sup>[46]</sup>

The CA found grave abuse of discretion on the part of NLRC in issuing the assailed NLRC Decision and Resolution, and held that the conclusions of the NLRC are unsupported by substantial evidence and contrary to the provisions of the POEA-SEC.<sup>[47]</sup>

The CA found that Pastrana failed to observe the procedure outlined in Section 20(A)(3) of the POEA-SEC, which requires the referral to and appointment of a third doctor whose medical assessment shall be binding on both parties.<sup>[48]</sup> Thus, the complaint is dismissible for being premature, and the opinion of the company-designated physician becomes controlling.<sup>[49]</sup> The CA further noted that the company-designated physician timely issued a final disability grading on April 11, 2013, or 120 days from the date of the commencement of Pastrana's treatment. Based on the foregoing, the CA held that Pastrana's disability is only partial, and that he is only entitled to disability benefits corresponding to Grade 11 disability rating in the amount of \$7,465.00.<sup>[50]</sup>

Hence, this Petition.<sup>[51]</sup>

Pastrana invites the Court to revisit a piece of evidence — the April 11, 2013 medical assessment issued by the company-designated physician — which he claims was neither presented nor furnished to him at the time of the discontinuation of his treatment.<sup>[52]</sup> He contends that he was only verbally advised by the company-designated physician on April 2, 2013 that he is fit to return to his sea duties, and was later on offered disability benefits amounting to \$7,000.00.<sup>[53]</sup> At any rate, Pastrana argues that the medical assessment dated April 11, 2013 is not valid and binding for it lacked any categorical statement as to his fitness to return to work, and it failed to comply with guidelines on the assessment of seafarers issued by the Department of Health and the International Labor Organization.<sup>[54]</sup> Thus, in effect, there is failure to issue a final medical assessment within the periods provided by law.<sup>[55]</sup> It also follows that he is under no obligation to comply with the conflict-resolution procedure under Section 20(B)(3) of the POEA-SEC which mandates the referral of the matter to a third doctor.<sup>[56]</sup>

In their Comment,<sup>[57]</sup> respondents maintain that the company-designated physician timely issued a final medical assessment on April 11, 2013, and that it was misleading for Pastrana to claim otherwise.<sup>[58]</sup> Respondents also fault Pastrana for

his failure to move for the referral of the conflicting medical assessments to a third doctor, which militates against Pastrana's claim.<sup>[59]</sup> Thus, the medical assessment issued by the company-designated physician shall prevail, and accordingly, Pastrana is only entitled to partial disability benefit amounting to \$7,465.00.<sup>[60]</sup>

Petitioner reiterates his position in his Reply.<sup>[61]</sup>

### Issues

The issue for resolution of the Court is whether the CA erred in reversing the NLRC, and in holding that Pastrana is only entitled to partial disability benefit.

### The Court's Ruling

It is settled that a petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law.<sup>[62]</sup> As such, the Court will not review the factual findings of the lower tribunals, or re-examine the evidence already passed upon in the proceedings below. This is especially true when the findings of facts of the labor tribunals were affirmed by the CA.<sup>[63]</sup>

In this case, the labor tribunals and the CA consistently found that the company-designated physician issued a disability assessment on April 11, 2013, and this became the basis of the partial disability assessment that was offered by respondents to Pastrana. Thus, Pastrana cannot, for the first time and at this stage of the proceedings, assert that the April 11, 2013 disability assessment was not presented nor furnished to him prior to his filing of the complaint. The factual findings of the labor tribunals and the CA with respect to the issuance of said disability assessment shall remain undisturbed.

Nonetheless, the Court still finds merit in the Petition.

The seafarer's entitlement to disability benefits for work-related illness or injury is governed by the Labor Code, its implementing rules and regulation (IRR), the POEA-SEC, and prevailing jurisprudence.

In *Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*<sup>[64]</sup> (*Vergara*), the Court explained how the pertinent provisions in the Labor Code, its IRR, and the POEA-SEC operate, *viz.*:

In this respect and in the context of the present case, Article 192 (c)(1) of the Labor Code provides that:

x x x The following disabilities shall be deemed **total and permanent:**

(1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules;**

[x x x x]

The rule referred to — Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code — states: