

## SECOND DIVISION

[ CA-G.R. SP. NO. 136273, March 19, 2015 ]

**MARLOW NAVIGATION PHILIPPINES, INC./MARLOW NAVIGATION CO. LTD./ AND ANTONIO GALVEZ[, ]JR., PETITIONERS, VS. DESIDERIO CLAMUCHA CUTANDA AND NATIONAL LABOR RELATIONS COMMISSION, (FOURTH DIVISION), RESPONDENTS.**

### D E C I S I O N

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision<sup>[2]</sup> dated April 16, 2014 and the Resolution<sup>[3]</sup> dated May 23, 2014 of the National Labor Relations Commission (NLRC), Fourth Division, in NLRC LAC OFW Case No. (M) 03-000230-14, NLRC NCR OFW Case No. (M) 02-02505-13 entitled "DESIDERIO CLAMUCHA CUTANDA, *Complainant-Appellee*, versus MARLOW NAVIGATION PHILS., INC./MARLOW NAVIGATION CO. LTD. and ANTONIO GALVEZ(,) JR. (President), *Respondents-Appellants*.", the dispositive portions of which read:

***Decision dated April 16, 2014***

"**WHEREFORE**, the appeal filed by respondents is DISMISSED for lack of merit. The Decision of Labor Arbiter Cheryl M. Ampil dated January 14, 2014 is AFFIRMED.

**SO ORDERED."**<sup>[4]</sup>

***Resolution dated May 23, 2014***

"**WHEREFORE**, respondents-appellants' Motion for Reconsideration is DENIED for lack of merit.

No motion of similar nature shall hereafter be entertained.

**SO ORDERED."**<sup>[5]</sup>

The facts are:

On February 14, 2013, private respondent Cutanda (Cutanda for brevity) filed a Complaint for recovery of permanent total disability benefits, damages, attorney's fees, reimbursement of medical expenses and sickness allowance against petitioners Marlow Navigation Phils. Inc. (MNPI for brevity), Marlow Navigation Co. Ltd. (MNCL for brevity), and Antonio Galvez, Jr. (Galvez for brevity).<sup>[6]</sup>

In his Position Paper<sup>[7]</sup>, private respondent Cutanda averred that: on March 14, 2012, he was hired by petitioner MNPI for and in behalf of petitioner MNCL to work as a Key Able Seaman on board the vessel MV "Malte Rambow" (vessel for brevity) for a period of ten (10) months with a basic monthly salary of US\$680.00; he was subjected to pre-employment medical examination and was declared "fit to work" by the company- designated physicians; he was previously employed by petitioners using different employment contracts for a period spanning fifteen (15) years; on April 3, 2012, he departed from the Philippines to join the vessel pursuant to his contract with petitioners; his duties included planning, controlling, executing, and reporting all maintenance and repair works on deck in close coordination and under the supervision of the Chief Officer of the vessel, supervising the safety of the crew during working hours, taking charge of the tugboat line during mooring and unmooring operation, watching the bow of the vessel or wing of the bridge to look for obstructions along the path of the vessel to avoid accidents and collisions, supervising the junior ratings, steering the ship manually or automatically or with the use of emergency steering apparatus as directed by the navigating officer, Chief Mate, or the Ship Captain, breaking out rigs, overhauling and stowing of cargo-handling gears, stationary riggings and running gears, overhauling lifeboats, winches and falls, manually greasing the wire of the crane, chipping off rust and painting the deck and superstructure of the ship, as well as other duties as may be assigned by his superiors; on October 8, 2012, he had an accident aboard the vessel while performing his duties at the Port of Tanjung, Pelepas, Malaysia; his left index and middle fingers were severely injured and suffered laceration wounds when his left hand was caught and crushed by the tug's line (rope) when the tugboat started pulling the line while the tug's line was not yet free from the ship; immediately after the accident, he was brought to Puteri Specialist Hospital (Johor) SDN BHD in Malaysia for emergency medical treatment; a day after on October 9, 2012, he was medically repatriated and arrived in the Philippines the same day; he immediately reported to petitioner MNPI's office and was referred to Notredame Medical Clinic where he was diagnosed with "Lacerated Wounds 2<sup>nd</sup> & 3<sup>rd</sup> digits, Left Hand", after which he was treated and later referred for rehabilitation/physical therapy; the accident was supported by official records of the Social Security System (SSS); he underwent continuous physical therapy until April 3, 2013 or for a period of more than six (6) months from the time of the occurrence of the accident on October 8, 2012 and was still found to be unfit to work, as shown by medical certificates dated January 4, 2013, April 2, 2013, and April 3, 2013, all issued by the Panay Orthopedic and Rehabilitation Institute (PORI); despite medical intervention and months of therapy, his condition did not improve and he could not return to his work as Key Able Salesman because of his injuries; when he demanded from petitioners that he be paid his disability benefits, the latter refused to pay the same; and, to make matters worse, despite the recommendation of PORI that he undergo physical therapy, petitioners stopped providing medical attention to him after the lapse of 120 days, and refused to shoulder expenses incurred for the medicines by private respondent Cutanda.

Private respondent Cutanda further alleged<sup>[8]</sup> that: his injuries are work-related, resulted to a loss of his earning capacity, and rendered him unfit to return to work for more than 240 days; his continuing inability to pursue his usual work and earn therefrom constitutes permanent and total disability; since Dr. Gicos of PIRO certified on April 2, 2013 that he needed at least three (3) to six (6) months before the latter can improve his condition, and since he was repatriated back in the

Philippines on October 9, 2012, the disability is already 174 days plus another minimum period of three (3) months for therapy, the period of inability would already be 264 days; inevitably, the disability would be more than 240 days, making it permanent and total; he is entitled to the maximum or "grade 1" disability compensation under the POEA Standard Employment Contract (POEA-SEC for brevity) corresponding to US\$60,000.00 under Sec. 20(B)(6) thereof; he is also entitled to payment of his medical expenses and sickness allowance; petitioners' actions in denying to pay private respondent Cutanda's disability benefits is a gross violation of the POEA SEC; and, petitioners acted in bad faith and in an oppressive manner for which private respondent Cutanda should be awarded moral damages and attorney's fees.

For their part, petitioners filed their Position Paper<sup>[9]</sup> asserting that: they hired private respondent Cutanda under a standard POEA approved contract of employment; on October 8, 2012, private respondent Cutanda's left hand was injured by a tug boat rope; debridgment and suturing were done by an orthopedic surgeon at the Puteri Specialist Hospital in Malaysia; eventually, private respondent Cutanda was repatriated to the Philippines; he was referred to Dr. Orlino Hosaka, Jr. (Hosaka for brevity) for medical care and treatment on October 10, 2012; Dr. Hosaka referred to him an orthopedic surgeon and rehabilitation specialist; the treatment under the company-designated physician and the specialist lasted for months; private respondent Cutanda was regularly examined to check his recovery; Dr. Hosaka's February 11, 2013 medical report concluded that private respondent Cutanda is suffering from a disability "grade 10"; the disability grading of 10 is based on the POEA SEC Schedule of Disability Gradings where it is specified that the loss of grasping power for small objects between the fold of the finger of one hand corresponds to a grade 10 disability grading; since Dr. Hosaka is the company-designated physician, his finding of grade 10 disability should prevail; based on the POEA SEC, private respondent Cutanda's condition clearly does not fall under the category of grade 1 disability; petitioners are not guilty of bad faith since private respondent Cutanda was immediately given medical attention and care, and never faltered in fulfilling their responsibilities; private respondent Cutanda was even sent to reputable doctors for his treatment; petitioners cannot therefore be made liable for moral damages and exemplary damages; and, they also cannot be made liable for an amount contrary to that specified in the POEA SEC.

Thereafter, both parties filed their respective Replies.<sup>[10]</sup>

On January 14, 2014, Labor Arbiter Cheryl M. Ampil rendered a Decision<sup>[11]</sup> awarding US\$60,000.00 to private respondent Cutanda as permanent and total disability benefit, US\$6,000.00 in attorney's fees, and P50,000.00 in moral damages. According to the Labor Arbiter, contrary to the position of petitioners, the application of the provisions of the Labor Code to the contracts of seafarers has been passed upon and rejected by the Supreme Court. It also held that the wording and structure of the POEA SEC compel the company physician to match his diagnosis of the seafarer's condition with any of the grades provided therein and, in the process, downplay the latter's condition. Since the company physician declared private respondent Cutanda suffered a grade 10 disability 126 days after he signed-off from the vessel, while the Iloilo coordinating physician declared him to be unfit for work exactly 240 days after sign-off, then private respondent Cutanda is entitled to permanent and total disability. In addition, petitioners' refusal to pay private

respondent Cutanda's just claim smacks of bad faith and calls for the award of moral damages. Finally, since private respondent Cutanda was compelled to litigate and incur expenses to protect his interest due to petitioners' refusal to pay his disability benefits, he is also entitled to attorney's fees.

Aggrieved, petitioners filed a Notice of Appeal with Memorandum of Appeal.<sup>[12]</sup>

On April 16, 2014, public respondent NLRC rendered the assailed Decision<sup>[13]</sup> dismissing petitioners' appeal for lack of merit. Public respondent NLRC found untenable petitioners' contention that a seafarer's condition can be assessed only by the company-designated physician, especially since Section 20 (B), paragraph 3 of the POEA SEC is clear in that the determination of the company-designated physician pertains only to the entitlement of the seafarer to sickness allowance. The same provision also recognizes the right of the seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice, and even allows a third opinion in case his own physician's findings conflict with that of the company-designated physician. Public respondent NLRC stressed that under Section 32 of the POEA SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. Based on the foregoing, public respondent NLRC considered private respondent Cutanda permanently and totally disabled from performing his duties.

Unsatisfied, petitioners filed their Motion for Reconsideration<sup>[14]</sup> which was denied in the assailed Resolution dated May 23, 2014.<sup>[15]</sup>

Hence, this Petition for Certiorari based the following grounds:<sup>[16]</sup>

With All Due Respect, The Public Respondent NLRC Committed Grave Abuse of Discretion Amounting To Lack Or Excess Of Jurisdiction When It Upheld The Labor Arbiter's Award of Total and Permanent Disability Benefits In Favor Of Private Respondent, Considering That:

I.

THE LOWER LABOR TRIBUNALS GRAVELY ERRED IN DISREGARDING THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS FINDING THAT PRIVATE RESPONDENT SUFFERED DISABILITY WITH A DISABILITY GRADING OF GRADE 10 ONLY.

II.

THE PREVAILING RULINGS OF THE SUPREME COURT EXPRESSLY DECLARE THAT THE COMPANY-DESIGNATED PHYSICIAN'S DISABILITY GRADING SHOULD PREVAIL.

III.

THE POEA-SEC SPECIFICALLY PROVIDES THAT PRIVATE RESPONDENT'S INJURY ON HIS LEFT INDEX AND MIDDLE FINGERS IS EQUIVALENT ONLY TO DISABILITY GRADING OF GRADE 10 ONLY.

IV.

PRIVATE RESPONDENT IS OBVIOUSLY NOT SUFFERING ANY TOTAL PERMANENT DISABILITY, ESPECIALLY TAKING INTO CONSIDERATION HIS PRESENT CONDITION COMPARED TO OTHER SEAFARERS WHO SUFFERED MORE SEVERE DISABILITY BUT REMAINED WORKING AS SEAFARERS.

V.

PRIVATE RESPONDENT IS NOT ENTITLED TO MORAL DAMAGES CONSIDERING THE ABSENCE OF BAD FAITH ON THE PART OF PETITIONERS. MOREOVER, PRIVATE RESPONDENT SHOULD NOT HAVE BEEN AWARDED ATTORNEY'S FEES AS THE RECORDS SHOW THAT PETITIONERS ARE READY AND WILLING TO PAY HIM HIS DISABILITY BENEFITS EQUIVALENT TO THE DISABILITY GRADING OF GRADE 10 AS CORRECTLY ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN.

The petition is meritorious.

At the outset, it should be stressed that *certiorari* is a remedy narrow in its scope and inflexible in character. The Court does not assess and weigh the sufficiency of evidence upon which public respondent NLRC based their decisions, but rather limits its query to the determination of whether or not public respondent NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering the same.<sup>[17]</sup> Thus, while administrative findings of fact are accorded great respect, even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, the courts may reverse their findings.<sup>[18]</sup>

Verily, grave abuse of discretion exists when a court or tribunal exercises its power in an arbitrary or despotic manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[19]</sup> It also exists when an act is done contrary to the Constitution, law, or jurisprudence,<sup>[20]</sup> or when it is executed whimsically, capriciously, or arbitrarily out of malice, ill will, or personal bias.<sup>[21]</sup>

Under these parameters, this Court finds that the public respondent NLRC committed grave abuse of discretion in issuing the assailed Decision and Resolution. In considering private respondent Cutanda permanently and totally disabled, public respondent NLRC disregarded and ruled contrary to the law and jurisprudence pertaining to the determination of a seafarer's disability.

Preliminarily, this Court points out that it is the avowed policy of the State to give maximum aid and full protection to labor. To this end, the Court has applied the Labor Code concept of permanent total disability to Filipino seafarers.<sup>[22]</sup> This policy