

## **EIGHTH DIVISION**

**[ CA-G.R. SP NO. 119565, October 31, 2014 ]**

### **PHILIPPINE TRANSMARINE CARRIERS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND COLITO PERNIS, RESPONDENTS.**

#### **DECISION**

##### **GARCIA-FERNANDEZ, J.:**

This is a petition for certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the Resolution<sup>[2]</sup> of respondent National Labor Relations Commission, Sixth Division, in NLRC LAC No. 11-000665-09 dated March 24, 2011, which denied the petition for relief from judgment filed by petitioner.

The factual antecedents of the case are as follows:

Private respondent Colito Pernis was employed as second cook on December 5, 2007 by petitioner Philippine Transmarine Carriers, Inc., a local manning agent of Croisimer-Belle-De-L Adriatique Dobbelenberg for its vessel MS Belle De Cadix. Private respondent's contract was for a period of eight (8) months with basic salary of US\$365.00 excluding overtime and other benefits. Private respondent joined the vessel on December 19, 2007.

Private respondent alleged that around 11:00 in the morning of June 28, 2008, while at work and after loading the provisions of the vessel, he felt numbness on the left side of his body; that he was given first aid but the numbness persisted until evening because he was unable to take the prescribed medicines; that he consulted a doctor the next day in Faro Hospital at the Port of Portugal where he was admitted and confined for one (1) week; that he was repatriated on July 10, 2008; that on July 15, 2008, he consulted the company-designated physician; that he was given a disability grade 10 by the company-designated physician; that he consulted another doctor in Philippine Heart Center on February 6, 2009 where he was diagnosed to be suffering from hypertensive cardiovascular disease; that he consulted a third doctor on July 20, 2009 who confirmed the previous doctors' findings and assessed a decrease sensation on the left side of his body with pain; that since his repatriation, he was not able to engage in any meaningful activity that would enable him to earn compensation commensurate to his skills and training; that he was not able to work for more than one hundred twenty (120) days or even two hundred forty (240) days; and that his illness is compensable and thus, he is entitled to permanent and total disability benefits, damages and attorney's fees.

Petitioner, for its part, denied liability for total and permanent disability pay in favor of private respondent; that the company-designated physician's assessment was correct; that private respondent should be compensated under disability grade 10 only; and that private respondent is not entitled to damages.

On September 24, 2009, Labor Arbiter Napoleon M. Menese rendered a decision<sup>[3]</sup>, the dispositive portion of which reads:

**"WHEREFORE, all foregoing premises considered, judgment is hereby rendered ordering respondents PHILIPPINE TRANSMARINE CARRIER, INC./CROISIMER-BELLE-DE-L-ADRIATIQUE DOBBELENBERG/CARLO SALINAS to jointly and severally pay complainant COLITO Q. PERNIS the amount of US\$10,075.00 or its Philippine Peso equivalent at the time of actual payment plus Ten Percent (10%) thereof as Attorney's fees.**

**All other claims are dismissed for lack of merit.**

**SO ORDERED."**

Not satisfied with the labor arbiter's decision, private respondent appealed<sup>[4]</sup> to respondent National Labor Relations Commission (NLRC).

On April 21, 2010, the NLRC rendered a decision<sup>[5]</sup>, the dispositive portion of which reads:

**"WHEREFORE, premises considered, judgment is hereby rendered finding the appeal impressed with merit. Respondents-appellees herein are found jointly and severally liable to pay complainant-appellant his disability pay amounting to US\$60,000.00 or its Philippine Peso equivalent at the prevailing exchange rate at the time of payment plus 10% thereof as attorney's fees. The decision of the Labor Arbiter dated September 24, 2009 is hereby VACATED and SET ASIDE.**

**SO ORDERED."**

Petitioner filed a motion for reconsideration<sup>[6]</sup> which was, however, denied in a Resolution<sup>[7]</sup> dated July 14, 2010.

The records of the case were remanded to the office of Labor Arbiter Quentin Cueto III for execution of the award. Private respondent filed a motion for execution. On January 10, 2011, Labor Arbiter Quentin Cueto III issued a writ of execution on the ground that the ruling of respondent NLRC has become final and executory and that an Entry of Judgment<sup>[8]</sup> has been issued.

In the meantime, petitioner filed a petition for relief from judgment<sup>[9]</sup> before the respondent NLRC. The petition was filed by petitioner in view of the gross negligence of Atty. Michael Paul Reysio-Cruz and his law firm in not filing a petition for certiorari with this Court. Petitioner also prayed that the implementation of respondent NLRC's decision dated April 21, 2010 and resolution dated July 14, 2010 be suspended.

Petitioner filed a Motion to Quash Writ of Execution<sup>[10]</sup> with Labor Arbiter Cueto III. Private respondent filed his Opposition<sup>[11]</sup> thereto. Petitioner filed its Reply to the Opposition.<sup>[12]</sup>

On March 24, 2011, respondent NLRC rendered a Resolution<sup>[13]</sup>, denying the petition for relief from judgment. Subsequently, petitioner filed a Motion for Reconsideration<sup>[14]</sup> of the denial. Private respondent filed his Reply<sup>[15]</sup> and a Manifestation<sup>[16]</sup> with Labor Arbiter Cueto III, praying that the motion to quash writ of execution be denied and the writ of execution be implemented.

Labor Arbiter Cueto III issued an Order<sup>[17]</sup> implementing the writ of execution. Subsequently, petitioner filed a Motion to Withdraw Petitioner's Motion for Reconsideration<sup>[18]</sup> in order that it can seek judicial relief with this Court to question the ruling of respondent NLRC.

Hence, the instant petition for certiorari. Petitioner assigns the following errors to the NLRC:

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITION FOR RELIEF FROM JUDGMENT ON PROCEDURAL GROUNDS THAT THE SAID PETITION IS NOT ACCOMPANIED BY AN AFFIDAVIT OF MERIT.

II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITION FOR RELIEF FROM JUDGMENT ON THE GROUND THAT ATTY. MICHAEL PAUL G. REYSIO-CRUZ AND THE UNDERSIGNED LAW FIRM DID NOT COMMIT GROSS NEGLIGENCE AND EXCUSABLE NEGLIGENCE RESPECTIVELY.

III.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITION FOR RELIEF FROM JUDGMENT ALTHOUGH PETITIONER HAS A GOOD AND MERITORIOUS DEFENSE WHICH MUST BE FULLY VENTILATED CONSIDERING THAT THE SUM INVOLVED IN THE CASE AT BAR AMOUNTS TO MORE THAN SIXTY THOUSAND US DOLLARS (\$60,000.00) PLUS TEN PERCENT (10%) ATTORNEY'S FEES.

Petitioner contends that the petition for relief from judgment which it filed with the NLRC without a separate affidavit of merit should have been given due course; that