SUPREME COURT
SECOND DIVISION

SEAGULL SHIPMANAGEMENT AND TRANSPORT, INC., and DOMINION INSURANCE CORPORATION,
***Petitioners*,**

-versus-

G.R. No. 123619
June 8, 2000

NATIONAL LABOR RELATIONS COMMISSION and BENJAMIN T. TUAZON,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Petition for Review is Properly a Special Civil Action for *Certiorari* under Rule 65 and not Rule 45 of the Revised Rules of Court. In it, petitioners assail the Resolution dated November 24, 1995 of the National Labor Relations Commission (NLRC) which affirmed the Decision dated January 19, 1995 of the Philippine Overseas Employment Administration (POEA). The Resolution ordered petitioners to pay, jointly and severally, complainant Benjamin Tuazon, the amount of US$2,200 representing 120 days

sickness benefits and US$15,000 representing disability benefits as appended to the POEA Standard Contract.

On March 17, 1991, private respondent Benjamin T. Tuazon, now deceased, and represented in the instant case by her daughter, Mrs. Noelee Tuazon-Buenaventura,[1] was deployed by Seagull to work as radio officer on board its vessel, MV Pixy Maru. The contract was for 12 months commencing on March 7, 1991, with basic monthly salary of US$550.00 plus a fixed monthly overtime pay equivalent to thirty (30%) percent of the basic monthly salary.

Prior to his deployment and as a condition to final hiring, Tuazon was required to submit to a medical examination with the petitioner's accredited clinic which is the LDM Clinic and Laboratory. The medical examination consisted among others, of the standard X-ray exposure, and urine tests.

In 1986, complainant underwent a heart surgery for an insertion of a pacemaker.[2] Hence, the accredited clinic of Seagull, through Dr. Tordesillas,[3] required him to secure from his cardiologist a certification to the effect that he could do normal physical activities. Consequently, he was declared fit to work.

Sometime in December 1991, while on board the vessel, Tuazon suffered bouts of coughing and shortness of breathing. He was immediately sent to a hospital in Japan for medical check-up, and was confined at the Kagoshimashiritsu Hospital, Kagoshima City, from December 12 to 27, 1991.[4] Based on the doctor's diagnosis, an open heart surgery was needed. Due to this medical findings, on December 28, 1991, he was repatriated back in the Philippines. Upon arrival, Seagull referred him to its accredited physician, Dr. Villena.[5] An open-heart surgery was then performed on Tuazon. He shouldered all the costs and expenses.

Tuazon then filed a complaint asking for sickness and disability benefits with the POEA. On January 19, 1995, the POEA rendered a decision, the dispositive portion of which states:

> "WHEREFORE, foregoing premises considered, respondent Seagull Shipmanagement and Transport, Inc. and Dominion

Insurance Corporation are hereby ordered jointly and severally liable to pay complainant, Benjamin Tuazon, the following:

1. US$2,200 representing 120 days sickness benefits;

2. 100% for permanent disability in the amount of US$15,00[0].00 representing the disability benefits provided for under Appendix "A" of the POEA Standard Contract.

SO ORDERED."[6]

On appeal the NLRC affirmed the findings of the POEA and dismissed the appeal for lack of merit. In its Resolution dated November 24, 1995 the NLRC held in part:

> "It must be stated, at the outset that the appeal is not impressed with merit. The preponderance of evidence indicates that complainant was repatriated due to an illness sustained during the period of his employment with the respondent. Moreover, it was sufficiently established that respondent's physician already knew, as early as June 1989, of the existence of complainant's pacemaker. This is, indeed, precisely the reason why he was asked to submit a medical certificate to the effect that he could do normal physical activities." (p. 3 of Administrator's Decision; Rollo, p. 141)[7]

Dissatisfied, petitioners now claim before us that the NLRC erred:

I.

IN AFFIRMING THE FINDINGS OF POEA THAT IT WAS SUFFICIENTLY ESTABLISHED THAT PETITIONER'S PHYSICIAN KNEW OF THE EXISTENCE OF THE PACEMAKER INSERTED IN PRIVATE RESPONDENT.

II.

IN NOT FINDING THAT PRIVATE RESPONDENT MISREPRESENTED AND/OR DID NOT MAKE A FULL

DISCLOSURE OF HIS STATE OF HEALTH AND/OR MEDICAL HISTORY.

III.

IN FINDING THAT PRIVATE COMPLAINANT'S SICKNESS WAS SUSTAINED DURING THE PERIOD OF HIS EMPLOYMENT AND THEREFORE COMPENSABLE.

IV.

IN SUSTAINING THE POEA IN AWARDING SICKNESS AND PERMANENT DISABILITY BENEFITS.

V.

IN NOT FINDING THAT PRIVATE RESPONDENT SHOULD BE LIABLE FOR PAYMENT OF REPATRIATION EXPENSES AND ATTORNEY'S FEES.

In their Memorandum, petitioners admitted that they inadvertently stated that the instant petition is under Rule 45 but asked for consideration since they had substantially complied with the requisites of Rule 65 and that their petition be given due course for it had merit.

Private respondent countered that even if the instant petition could be considered under Rule 65, the petition should still not prosper for failure to exhaust administrative remedies and for not filing the required Motion for Reconsideration with the NLRC before going to the Supreme Court.

In the interest of justice, we have often treated as special civil actions for certiorari petitions erroneously captioned as petitions for review on certiorari.[8] Accordingly, we shall now consider the petition.

Firstly, with regard to the non-exhaustion of administrative remedies, we have long settled that the filing of a motion for reconsideration is a condition sine qua non to the institution of a special civil action for certiorari, subject to well-recognized exceptions. The law intends to

afford the tribunal, board or office, an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. However, in the case at bar, petitioners had not only failed to explain its failure to file a motion for reconsideration before the NLRC, it has also failed to show sufficient justification for dispensing with the requirement. Certiorari cannot be resorted to as a shield from the adverse consequences of petitioners' own omission to file the required motion for reconsideration.[9]

Secondly, petitioners argue mainly that the NLRC erred in affirming the POEA's holdings that petitioner's physician knew of the pacemaker of private respondent and that private respondent was liable for misrepresentation and non-disclosure of his true health condition.

But, on this and other points, we find no reason to disturb the findings of the NLRC. The records of the case do not clearly show that the NLRC committed any error in affirming the decision of the POEA, and in ordering the petitioners, jointly and severally, to pay Tuazon or his heirs sickness benefits and permanent disability benefits.

As succinctly observed by the NLRC —

> "The preponderance of evidence indicates that complainant was repatriated due to an illness sustained during the period of his employment with the respondent. Moreover, it was sufficiently established that respondent's physician already knew, as early as June 1989, or the existence of the complainant's pacemaker. This is, indeed, precisely the reason why he was asked to submit a medical certificate to the effect that he could do normal physical activities. (p. 3 of Administrator's Decision; Rollo, p., 141)"[10]

In our view, there is no merit in petitioners' suggestion that private respondent did not make a full disclosure of his medical history. The records reveal that private respondent was deployed by petitioners twice already. The first was in 1989. When his contract was completed, petitioners without any hitch again deployed him, despite of the fact that he had already undergone pacemaker surgery in 1986. Twice, private respondent underwent the required medical and

physical examination. Twice, he was certified physically fit by the petitioners' own accredited physician. Twice, too, he was hired and deployed by them. All these clearly belie the allegation of misrepresentation and non-disclosure. Petitioners cannot now deny the sickness and disability benefits private respondent deserves.

Petitioners aver that the illness of the private respondent was not contracted during his employment nor was it aggravated by his work. They relied on Kirit, Sr., et al. vs. GSIS, 187 SCRA 224, 226 (1990), which says that presumptions of compensability and aggravation have been abandoned under the compensation scheme in the present Labor Code.

It will be noted that the claim for sickness and permanent disability benefits of the private respondent arose from the stipulations on the standard format contract of employment between him and petitioner Seagull per Circular No. 2, Series of 1984 of POEA. This circular was intended for all parties involved in the employment of Filipino seamen on board any ocean going vessel. Significantly, under the contract, compensability of the illness or death of seamen need not depend on whether the illness was work connected or not.[11] It is sufficient that the illness occurred during the term of the employment contract. It will also be recalled that petitioners admitted that private respondent's work as a radio officer exposed him to different climates and unpredictable weather, which could trigger a heart attack or heart failure.[12]

Even assuming that the ailment of the worker was contracted prior to his employment, this still would not deprive him of compensation benefits. For what matters is that his work had contributed, even in a small degree, to the development of the disease and in bringing about his eventual death.[13] Neither is it necessary, in order to recover compensation, that the employee must have been in perfect health at the time he contracted the disease. A worker brings with him possible infirmities in the course of his employment, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is

unimportant, and recovery may be had for said death, independently of any pre-existing disease.[14]

WHEREFORE, the petition is **DISMISSED**. The assailed Decision of public respondent National Labor Relations Commission dated November 24, 1995, is **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Bellosillo, Mendoza, Buena and De Leon, Jr., JJ ., concur.

---

[1] Rollo, p. 95.
[2] Id., at 34.
[3] First name not in the records.
[4] Id. at 14.
[5] First name not indicated.
[6] Id. at 32.
[7] Id. at 35-36.
[8] Aurelio Salinas, Jr., et al. vs. NLRC and AG & P Co. of Manila, Inc., G.R. No. 114671, November 24, 1999, p. 11; Salazar vs. NLRC, 256 SCRA 273, 281 (1996).
[9] Alcosero vs. NLRC, 288 SCRA 129, 138 (1998); Phil. Airlines Employees Association vs. PAL, Inc., et al., 111 SCRA 215, 219 (1982).
[10] Rollo, pp. 35-36.
[11] Sealanes Marine Services, Inc. vs. NLRC, 190 SCRA 337, 346 (1190).
[12] Rollo, p. 25.
[13] Wallem Maritime Services, Inc. vs. NLRC, G.R. No. 130772, November 19, 1999, p. 8.
[14] More Maritime Agencies, Inc. vs. NLRC, G.R. No. 124927, May 18, 1999, pp. 8-9.