REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **June 13, 2022** *which reads as follows*:

"G.R. No. 236672 (*John Christian G. Atienza v. Magsaysay Maritime Corporation, Carnival PLC Trading AS and/or Marlon Roño*). — This Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner John Christian G. Atienza (*Atienza*), assailing the Decision[2] dated June 29, 2017 and the Resolution[3] dated January 5, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 140978. The assailed CA Decision reversed the Resolution[4] dated November 28, 2014 of the National Labor Relations Commission (*NLRC*), which granted Atienza's claim for total and permanent disability benefits.

On April 29, 2013, respondent Magsaysay Maritime Corporation (*Magsaysay*), in behalf of its foreign principal, Carnival PLC Trading AS P&O Cruises Australia, hired the services of Atienza to work as a Utility F&B Steward on board the vessel "Pacific Pearl." Atienza was to receive a monthly salary of US$387.00 per month plus other benefits.[5]

Atienza left the Philippines on board Pacific Pearl on May 9, 2013. However, on May 17, 2013, he was admitted to the Auckland City Hospital for PEI Repair and Lensectomy due to an eye injury caused by a broken liquor bottle which hit his eye when the bottle hit the edge of the bin while he was throwing it out for disposal. After the required surgery, Atienza was medically repatriated on June 1, 2013.[6]

Upon arrival, Atienza immediately reported to the company-designated physician for medical evaluation. He was diagnosed to have "S/P Repair of Corneal Laceration with Extracapsular Cataract Extraction and Secondary Intra-Ocular Lens Implantation, Left Eye; Posterior Opacity, Left Eye." He underwent laser treatment at Cardinal Santos Hospital under the care of Dr.

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1 *Rollo*, pp. 19-65.
2 Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a member of this Court), concurring; CA *rollo*, pp. 282-289.
3 *Rollo*, pp. 66-69.
4 CA *rollo*, pp. 50-62.
5 *Rollo*, p. 71.
6 *Id.*

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Kent Wee (*Dr. Wee*), a Viteous and Retina Specialist. He was given several medications and went through the 15 follow-up check-ups from June 4, 2013 until November 28, 2013.[7]

In the Report[8] dated November 26, 2013 by Dr. Esther G. Go and Dr. Robert D. Lim, the Medical Coordinators of Marine Medical Services, they stated that:

> His visual acuity is 6/45 on the right eye while there is improvement with pinhole 6/15/[.]
>
> There is normal intra-ocular pressure on both eyes at 10 mmHg.
>
> There is also note of corneal scar on the left eye with intra-ocular lens in place.
>
> The specialist recommends observation first for the meantime and will re-evaluate patient **for refraction 2 weeks after discontinuation of his Pred Forte eyedrops.**
>
> He is to come back on November 28, 2013 for refraction and re-evaluation.[9]

Despite the indication in the above report that Atienza was due to undergo a re-evaluation "2 weeks after discontinuation of his Pred Forte eyedrops", a report was issued by Marine Medical Services on November 28, 2013 with a label on the header "Private & Confidential," citing the findings of Dr. Wee:

> This is regarding the case of F&B Steward John Christian G. Atienza who was initially seen here at Marine Medical Services June 4, 2013 and was diagnosed to have S/P Repair of Corneal Laceration with Extracapsular Capsular Extraction and Secondary Intra-Ocular Lens Implantation, Left Eye; Posterior Capsular Opacity, left Eye; S/P Yag Capsulotomy, Left Eye.
>
> His uncorrected visual acuity is 20/75 on the left eye while there is improvement with pinhole at 20/45/
>
> There is healed left corneal wound with residual scar.
>
> His intra-ocular pressure is presently within acceptable range at 8 mmHg on the left eye and 10 mmHg on the right eye.
>
> There is resolution of the Posterior Capsular Opacity, Left Eye after he underwent Yag capsulotomy.
>
> **The specialist opines that patient's prognosis for returning to sca duties is guarded due to high astigmatism secondary to the residual left corneal scar.**

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7 CA *rollo*, p. 52.
8 *Rollo*, p. 143.
9 *Id.* (Emphasis supplied)

> **If patient is entitled to a disability, his suggested disability grading is 75% of Grade 10 – 50% loss of vision of one eye.**[10]

Dissatisfied with the assessment of the company-designated physician, Atienza sought further medical evaluation from Dr. Eileen Faye Enrique-Olonan (*Dr. Olonan*), an independent medical specialist, who issued an Ophthalmological Report[11] on May 15, 2014 with the following findings:

> Mr. Atienza's work-related injury has caused permanent visual disability due to the presence of the corneal scar which has crossed the pupillary axis. Corneal transplantation may be revised to address the problem. Due to the unequal vision and permanent disability, he is, therefore, advised against returning to work as a seaman.[12]

Prior to this report, however, Atienza had already filed his Complaint[13] with the LA on April 23, 2014 for the payment of total and permanent disability benefits based on the alleged refusal of Magsaysay to grant his claims, with prayer for moral and exemplary damages, as well as attorney's fees.

In its Decision[14] dated October 10, 2014, the LA found that the assessment of Atienza's personal doctor, Dr. Olonan, should not be given evidentiary weight as it was obtained after a single consultation, and hence cannot overturn the weight accorded to the assessment of the company-designated physician. The LA likewise held that the number of days that lapsed is not controlling in determining total permanent disability. The LA held that Atienza is entitled only to $7,556.25 as disability compensation. Atienza's claims for damages and attorney's fees were dismissed for lack of merit.[15]

On appeal by Atienza, the NLRC reversed the LA Decision. In its Resolution[16] dated November 28, 2014, the NLRC found that a perusal of a Medical Report dated November 28, 2013 showed that it was interim in nature since it was qualified by the phrase "if he is entitled to disability." Thus, this suggested that additional medical treatment or procedure was still required before a final assessment could be issued.[17] The NLRC also noted that, after November 28, 2013, the company doctors no longer issued any assessment, nor was any confirmation made as to the suggested disability grading of Atienza.[18] The dispositive portion of the NLRC Decision states:

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10 *Id.* at 144-145. (Emphasis supplied)
11 *Id.* at 109-110.
12 *Id.* at 110.
13 CA *rollo*, pp. 63-64.
14 *Id.* at 42-49.
15 *Id.* at 49.
16 *Id.* at 50-59.
17 *Id.* at 56.
18 *Id.*

> WHEREFORE, premises considered, complainant-appellant's appeal is **GRANTED**. The decision of the Labor Arbiter is **VACATED** and **SET ASIDE**. Respondents-appellees Magsaysay Maritime Corporation, its corporate officer Marlon Roño and/or the foreign principal Carnival PLC Trading as P&O Cruises Australia are ordered to pay complainant John Christian G. Atienza the amount of SIXTY THOUSAND DOLLARS (**US$ 60,000.00**) or its Philippine peso equivalent at the time of actual employment, as total permanent disability benefits, and ten percent (10%) thereof as and for attorney's fees.
>
> SO ORDERED.[19]

In compliance with the executory nature of the NLRC Resolution, Magsaysay issued a check in the name of Atienza worth ₱3,014,880.00 as the peso equivalent of the $60,000.00 award. Such payment was acknowledged by Atienza in a Receipt of Payment and Affidavit stating that he understood that in case of reversal and/or modification of the NLRC's Resolution, he shall return whatever is due and owing to the shipowners without need of further demand.[20]

Respondents filed a petition for *certiorari* with the CA. In its Decision[21] dated June 29, 2017, the CA found that Atienza was only entitled to partial disability compensation since he was issued a final assessment with grade 10 disability, equivalent to partial disability, before the expiration of the maximum 240-day medical treatment. Anent the solidary liability of Marlon Roño (*Roño*), the Corporate Officer of Magsaysay, the CA deemed it improper to hold him personally liable for the monetary award given to Atienza. It stated that, as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties.[22] Absent any allegation or proof that Roño had acted beyond the scope of his authority or with malice, the general rule applies. The dispositive portion of the CA Decision states:

> **WHEREFORE**, with the foregoing disquisition, the Petition for Certiorari dated June 22, 2015 is hereby **GRANTED** and the NLRC Resolutions dated November 28, 2014 and May 18, 2015 are hereby **SET ASIDE**. Accordingly, the Decision dated October 10, 2014 of the Labor Arbiter which awarded John Christian Garcia Atienza the monetary equivalent for disability grade 10, is hereby **REINSTATED** but with **MODIFICATION** insofar as the solidary liability of co-petitioner MARLON RO[Ñ]O which is hereby deleted for lack of merit.
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> **SO ORDERED.**[23]

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19 *Id.* at 57-58.
20 *Id.* at 271.
21 *Rollo*, pp. 70-77.
22 *Id.* at 76.
23 *Id.* at 76-77.

In a Resolution[24] dated January 5, 2018, the CA denied Atienza's Motion for Reconsideration.

Hence, the Petition was filed before this Court.

The sole issue for the Court's resolution is whether the CA erred in finding that Atienza was entitled only to partial disability benefits, based on the assessment of the company-designated physician.

There is no dispute that petitioner is entitled to disability benefits, given the presence of all of the conditions for compensability of occupational diseases and resulting disabilities under Section 32-A of the 2010 Philippine Overseas Employment Administration - Standard Employment Conract (*POEA-SEC*), to wit:

> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer.

The records show that while petitioner was disposing a bottle, pieces of it broke at the edge of the bin and went into his left eye.[25] Such eye injury, therefore, was sustained as a result of and within the period of his exposure to the risks of his work. Nothing in the records would show notorious negligence on the part of petitioner.

The conflict here lies as to the characterization of such disability and the resulting monetary award petitioner is entitled to.

The case of *Jebsen Maritime, Inc. v. Ravena*[26] summarized the bases for a seafarer's disability claim as follows:

> **By law,** the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and regulations Implementing the Labor Code.

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24 *Id.* at 66-69.
25 CA *rollo*, p. 6.
26 743 Phil. 371 (2014).

> **By contract**, it is governed by the employment contract which the seafarer and his employer/local manning agency execute prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.
>
> Lastly, the **medical findings** of the company-designated physician , the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to POEA-SEC, govern.[27]

Petitioner bases his claim for total and permanent disability benefits on his inability to perform his work for more than 120 days.[28]

Indeed, the law provides that disability that is both permanent and total is defined as "temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided in the Rules."[29]

Meanwhile, Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code provides:

> Sec. 2. *Period of entitlement.* - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability** in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[30]

Nevertheless, jurisprudence clarifies that "the lapse of the 120-day or 240-day period does not automatically entitle the seafarer to a total permanent disability."[31] Rather, "if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties **and** the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises."[32]

In this case, the company-designated physicians, in consultation with a specialist, indeed issued an assessment on November 28, 2013, after 15 follow-up sessions with petitioner stating that:

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27 *Id.* at 385. (Emphasis supplied and citation omitted)

28 *Rollo*, p. 63.

29 Now Article 198 (c) (1) based on the renumbered Labor Code, per Department of Labor and Employment Department Advisory No. 01, Series of 2015. (Emphasis and underscoring supplied)

30 Amended Rules on Employees' Compensation, Rule X, Sec. 2 (1995). (Emphasis and underscoring supplied)

31 *Yialos Manning Services, Inc. v. Borja*, 835 Phil. 766, 777 (2018).

32 *Id.* at 778.

> The specialist opines that patient's prognosis for returning to sea duties is guarded due to high astigmatism secondary to the residual left corneal scar.
>
> If patient is entitled to a disability, his suggested disability grading is 75% of Grade 10 – 50% loss of vision of one eye.[33]

Section 20 (A)(3) of POEA-SEC provides that it is the responsibility of a company-designated physician to assess the degree of disability of the seafarer and to determine whether he/she is fit to work.

In *Gere v. Anglo-Eastern Crew Management Phils.*,[34] this Court expounded on the obligation of the company-designated physician to issue a medical certificate which should be personally received by the seafarer, or, if not practicable, sent to the seafarer by any other means sanctioned by present rules. The same case pronounced that proper notice is one of the cornerstones of due process, and the seafarer must be accorded the same especially in cases where his/her well-being is at stake.[35]

To be considered conclusive, however, the company-designated physicians' medical assessments or reports must be complete and definite.[36] The case of *Talaugon v. BSM Crew Service Centre Phils. Inc.* (*Talaugon*)[37] explained that a final and definite disability assessment is necessary in order to reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[38]

In this case, we find that the assessment stating that "the specialist opines that patient's prognosis for returning to sea duties is guarded due to high astigmatism secondary to the residual left corneal scar[;] [i]f patient is entitled to a disability, his suggested disability grading is 75% of Grade 10 – 50% loss of vision of one eye" is far from being final and definite.

This Court, in *Talaugon*,[39] already had the occasion to rule on a similarly worded assessment by a company-designated physician. In that case, the seafarer's medical report included these observations: "the prognosis of returning to (his) sea duties is guarded" and "if patient is entitled to a disability, his suggested disability grading is Grade 11 — slight rigidity or 1/3 loss of motion of lifting power of the trunk." This Court held therein that

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33 *Rollo*, p. 144.
34 830 Phil. 695 (2018).
35 *Id.* at 706.
36 *Talaugon v. BSM Crew Service Centre Phils. Inc.*, G.R. No. 227934, September 4, 2019, 918 SCRA 61, 68-69.
37 *Supra.*
38 *Id.* at 69.
39 *Supra.*

such assessment is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician for there was nothing on record showing that the company-designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover.[40]

The case of *Reyes v. Magsaysay Mitsui Osk Marine Inc.*,[41] on the other hand, summarized the cases where this Court set aside tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician:

> In *Libang, Jr. v. Indochina Ship Management Inc.*, the seafarer suffered from numbness on the left side of his face, difficulty in hearing, blurred vision, and speech impediments while aboard the vessel. Unfortunately, the company-designated physician, albeit the issuance of a medical certificate, likewise declared that it was difficult to state whether his illnesses were pre-existing conditions. Thus, this Court ruled that such medical certificate must be set aside as the "assessment was evidently uncertain and the extent of his examination for a proper medical diagnosis is incomplete."
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> In *Island Overseas Transport Corp. v. Beja*, a seafarer suffered a knee injury during his term of employment. Upon repatriation, he was referred to a company-designated physician who recommended an operation. Around a month after the operation, the company-designated physician rendered Grades 10 and 13 partial disability grading of his medical condition. Despite such assessment, the Court considered the same as tentative as the seafarer was still required to continue his physical therapy sessions. It further noted that the report did not even explain how he arrived at the disability assessment or provided any justification for his conclusion that the seafarer was suffering from Grades 10 and 13 disability.
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> In *Carcedo v. Maine Marine Phils. Inc.*, the seafarer figured in an accident involving his foot during his employment. Despite being issued a disability assessment of "8% loss of first big toe and some of its metatarsal bone," he was still required to seek further treatments and undergo amputation; eventually, he passed away. In ruling for the seafarer, the Court concluded that the company-designated physician's disability assessment was nowhere near definite, and having failed to issue a final assessment, the seafarer was certainly under permanent total disability.
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> Similarly, in *Multinational Ship Management, Inc. v. Briones*, respondent, while in the course of her tour of duty, experienced back pain, and was eventually diagnosed with a lumbar spine problem. Despite being cleared from the cause of her repatriation, she still continued to suffer from back pain. In finding for total disability, this Court concluded that the findings of the company-designated physician lacked substantiation on the medical condition of respondent. What was clear, however, was that she has

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40 *Talaugon v. BSM Crew Service Centre Phils. Inc., supra* at 69.

41 *Reyes v. Magsaysay Mitsui Osk Marine, Inc.*, G.R. No. 209756, June 14, 2021.

> not fully recovered from her injury as she was advised to continue home exercises and that "pain is foreseen to improve with time."[42]

Here, two days before the purported final assessment was given by the company-designated physician, petitioner's medical report indicated that "his visual acuity is 6/45 on the right eye while there is improvement with pinhole 6/15" and "[t]he specialist recommends observation first for the meantime and will re-evaluate patient for refraction 2 weeks after discontinuation of his Pred Forte eyedrops."[43] Similar to the line of jurisprudence discussed above, the condition of petitioner here necessitated a continuation of his medical evaluation beyond the date when assessment was issued on November 26, 2013. That a "final assessment" was released soon, or on November 28, 2013, does not change the fact that petitioner's condition still needed medical attention, especially since the supposed final assessment did not contain any determination of whether petitioner was already fit to work. Neither was there an indication in any of the 15 Medical Reports[44] whether full recovery was within the realm of possibilities, and if it was, what the timeline for the same will be.

Respondents' contention that petitioner did not comply with the conflict resolution procedure prescribed under Section 20 (A) (3) of the POEA-SEC holds no water.

Under Section 20 (A) (3) of the 2010 POEA-SEC, if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer and whose decision shall be final and binding on both parties.

The above conflict procedure, however, is premised on a final assessment from a company-designated physician and issued to a petitioner. Without a final medical assessment, there would be nothing for the seafarer to disagree with and there would be no reason for him/her to seek a third physician. Here, as discussed above, petitioner was not given a final medical assessment. Thus, the third-doctor rule does not apply.[45]

Indeed, a definite declaration by the company-designated physician is an obligation, the abdication of which indubitably transforms the temporary total disability to permanent total disability, regardless of the disability grade.[46]

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42 *Id.*
43 *Rollo*, p. 143.
44 *Id.* at 126-145.
45 See *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 406 (2018).
46 *Id.* at 403.

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For failure of respondents to provide petitioner a conclusive medical report and to inform him of his medical assessment within the prescribed period, his disability is, by operation of law, total and permanent.

We affirm, however, the findings of the CA that it was improper to hold Roño solidarily liable with the respondents. We agree that as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties.[47]

FOR THESE REASONS, premises considered, the petition is **GRANTED**. The Decision dated June 29, 2017 and the Resolution dated January 5, 2018 of the Court of Appeals in CA-G.R. SP No. 140978 are hereby **REVERSED** and the National Labor Relations Commission Resolution dated November 28, 2014 in NLRC Case No. OFW (M)04-04772-14 and NLRC LAC (OFW-M) No. 12-000964-14 is **REINSTATED** with the **MODIFICATION** that the solidary liability of co-petitioner Marlon Roño is hereby deleted for lack of merit.

With the payment made by Magsaysay Maritime Corporation to John Christian G. Atienza worth ₱3,014,880.00 as the peso equivalent of the US$60,000.00 award, following the National Labor Relations Commission Resolution, let this case be remanded to the Labor Arbiter to confirm the status of payment made by Magsaysay Maritime Corporation. In the event that John Christian G. Atienza has returned the amounts as a consequence of the Court of Appeals Decision, Magsaysay Maritime Corporation shall be ordered to pay the amount corresponding to US$60,000.00 or its peso equivalent at the time of John Christian G. Atienza's actual employment, and ten percent (10%) thereof as and for attorney's fees. The amounts owing to John Christian G. Atienza shall earn legal interest of six percent (6%) *per annum* from the date of finality of this Resolution until full payment.

The Court **NOTES** the letter dated October 26, 2021 of Ms. Jane G. Sabido, Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila transmitting the *rollo* of CA-G.R. SP No. 140978, in compliance with the Resolution dated June 21, 2021.

SO ORDERED." (**Gaerlan**, *J.*, designated additional Member vice **Lopez, M.** *J.*, per raffle dated October 27, 2021; **Lazaro-Javier**, *J.*, on official leave)

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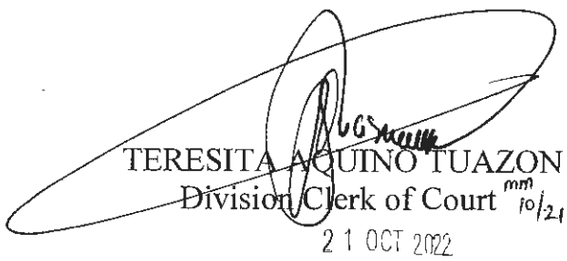
47 *Rollo*, p. 76.

By authority of the Court:



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*For this resolution only
Please notify the Court of any change in your address.
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