



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 27, 2022** which reads as follows:*

“G.R. No. 238275 (BIENVENIDO D. OBERIO, *petitioner* v. C.F. SHARP CREW MANAGEMENT, INC., REEDEREI CLAUS-PETER OFFEN GMBH & CO. AND/OR ROBERTO DAVANTES, *respondents*). — Under the Philippine Overseas Employment Administration Standard Employment Contract, the company-designated physician must determine the fitness to work or degree of disability of the seafarer within 120 or 240 days from repatriation. To be conclusive, its assessment must be complete, final, and definite to show the true extent of the injury suffered by the seafarer and their capacity to resume work as such. Failing this, the assessment of the company-designated physician shall be disregarded.

This Court resolves the Petition for Review¹ against the Court of Appeals’ Decision² and Resolution³ which reversed and set aside the voluntary arbitrator’s Decision⁴ granting Bienvenido D. Oberio’s (Oberio) complaint for disability benefits.

On February 12, 2015, Oberio was hired as able seaman by C.F. Sharp Crew Management, Inc. (C.F. Sharp) for its principal, Reederei Claus-Peter Offen GMBH & Co. to work on board the vessel MV Anl Waratah. The employment contract was for eight months, plus or minus two months option upon the parties’ mutual consent, with a basic salary of US\$736.00 monthly, exclusive of overtime pay and other benefits.⁵ Prior to this contract, Oberio

¹ *Rollo*, pp. 24–64. Filed under Rule 45.

² *Id.* at 8–15; The September 28, 2017 Decision in CA-G.R. SP No. 149107 was penned by Associate Justice Rosmari D. Carandang (now a retired Member of this Court) with the concurrence of Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela of the Second Division, Court of Appeals, Manila.

³ *Id.* at 17–18. The March 22, 2018 Resolution in CA-G.R. SP No. 149107 was penned by Associate Justice Rosmari D. Carandang (now a retired Member of this Court) with the concurrence of Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela of the Former Second Division, Court of Appeals, Manila.

⁴ *Id.* at 243–251. The September 28, 2016 Decision in MVA-093-RCMB-NCR-036-01-03-2016 was penned by Voluntary Arbitrator Romeo A. Young.

⁵ *Id.* at 9.

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has worked for C.F. Sharp⁶ for a continuous period of five years.⁷

Oberio boarded the vessel on March 6, 2015.⁸

On May 17, 2015, while working, Oberio's right forearm was accidentally hit by a steel foot.⁹ He was immediately brought to a hospital in Singapore and was diagnosed with "[r]ight forearm (radius) midshaft fracture with displacement and angulation of fracture fragments." Oberio was repatriated the following day.¹⁰

Upon his arrival in Manila, Oberio immediately reported to the office of C.F. Sharp and was referred to the Marine Medical Services for further evaluation and management.¹¹ Dr. Esther G. Go (Dr. Go), the company-designated physician and the assistant medical coordinator of Marine Medical Services, stated in her First Report that Oberio was diagnosed to have "Fracture, Right Radial Shaft,"¹² and that immediate surgery was recommended by the orthopedic surgeon.

On May 23, 2015, Oberio underwent an open reduction and internal fixation with plates and screws surgery at the Cardinal Santos Medical Center.¹³ He was discharged on May 25, 2015. On his post-operation checkup on June 9, 2015, the orthopedic surgeon advised Oberio to undergo rehabilitation in his home province in Iloilo to bring his right forearm function back to normal.¹⁴

Oberio underwent physical therapy from June 6, 2015 to November 9, 2015, under the care of a physiatrist, Dr. Minda Marie S. Cabrera of St. Paul's Hospital Iloilo.¹⁵

On November 12, 2015, or the 179th day of Oberio's treatment, Dr. Go issued her 12th and Final Report stating that:

Patient has full range of motion of the right forearm, wrist and fingers without difficulty. Manual Muscle Test is 5/5. He was able to make a closed fist with his right hand with ease. His right forearm post-op wound is well healed and non-tender.

⁶ Id.

⁷ Id. at 35.

⁸ Id. at 9.

⁹ Id. at 84.

¹⁰ Id. at 9.

¹¹ Id. at 141-142. First report of Dr. Esther G. Go.

¹² Id. at 142.

¹³ Id. at 9.

¹⁴ Id. at 145. Fourth report of Dr. Go.

¹⁵ Id. at 9-10, 109-116 (PT Progress Reports dated June 27, July 18, August 4 & 25, September 16, October 7 & 26, November 10, 2015).

EMG-NCV study of the upper extremities showed the ulnar sensory and motor nerve conduction studies are within normal limits. His bone fracture segments are already healed due to presence of callus formation.

He is now fit to work from orthopedic standpoint effective as of November 12, 2015.¹⁶

Dr. Go's report was purportedly based on the medical evaluation of Dr. William Chuasuan, Jr. (Dr. Chuasuan), the orthopedic surgeon who operated on Oberio,¹⁷ which stated thus:

Follow-up on 41 y/o male with Fracture, Right Radial Shaft – Healed; S/P Open Reduction and Internal Fixation with Plates and Screws; Right Radial Shaft.

Full range of motion of the right forearm, wrist, and fingers.

Cleared from orthopedic standpoint.

Fit to work.¹⁸

On November 17, 2015, Oberio consulted another orthopedic surgeon, Dr. Manuel Fidel F. Magtira (Dr. Magtira),¹⁹ who issued a medical report, stating:

Range of motion of the right hand cannot fully assess (sic) because of pain. He cannot appose his thumb and tips of the fingers of his right hand. Minimal swelling of the wrist joints of the right forearm noted. There is numbness of the fingers of the right hand.

.....

Mr. Oberio continues to complain of hyperesthesia of the right forearm. He cannot appose his thumb and tips of the fingers of his right hand. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation. Mr. Oberio is now permanently disabled."²⁰

On December 10, 2015, Oberio, through his lawyer, sent a November 23, 2015 letter²¹ to C.F. Sharp requesting the referral of his case to a third doctor for final determination, given the conflicting opinions of his doctor and the company-designated doctor. Oberio also requested for copies of his final medical assessment and all medical reports pertaining to his treatment.²²

¹⁶ Id. at 147.

¹⁷ Id. at 108.

¹⁸ Id. at 275.

¹⁹ Id. at 10.

²⁰ Id. at 123.

²¹ Id. at 124.

²² Id.

When he did not receive a reply,²³ Oberio filed a complaint before the National Conciliation and Mediation Board for payment of disability benefits.²⁴ During the mandatory conciliation conference on June 8, 2016, C.F. Sharp expressed that they want a third opinion regarding Oberio's condition. However, Oberio's counsel refused, contending that the third doctor opinion should have been sought before the filing of the complaint.²⁵

In its September 28, 2016 Decision,²⁶ the voluntary arbitrator granted Oberio full disability benefits in the amount of US\$96,909.00 plus 10% attorney's fees. The voluntary arbitrator deemed Oberio's disability to be permanent and total, as there was no final medical assessment issued within the 240-day period from Oberio's repatriation and his condition remained unresolved.²⁷ The voluntary arbitrator rejected Dr. Go's November 12, 2015 medical report declaring Oberio fit to work because: (1) it was not supported by comments or certifications coming from any specialist;²⁸ and (2) Oberio was not given a copy of the same.²⁹ In addition, the voluntary arbitrator found that no definite final medical certificate of fitness for work was issued by Oberio's attending physiatrist.³⁰

The dispositive portion of the voluntary arbitrator's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents **C.F. Sharp Crew Management, Inc., Reederei Claus-Peter Offen, and Roberto B. Davantes**, to pay complainant Bienvenido D. Oberio, jointly and severally by virtue of R.A. No. 8042, as amended by R.A. No. 10022, the amount of **NINE-SIX (sic) THOUSAND, NINE HUNDRED NINE DOLLARS (US\$96,909.00)**, representing his permanent and total disability benefits plus *ten percent (10%)* thereof by way of attorney's fees or its equivalent in Philippine Peso at the time of actual payment.

All other claims are dismissed, for lack of legal and factual basis.

SO ORDERED.³¹ (Emphasis in the original)

C.F. Sharp filed a Motion for Reconsideration,³² but it was denied in the voluntary arbitrator's December 19, 2016 Resolution.³³

C.F. Sharp then filed a Petition for Review before the Court of

²³ Id. at 39.

²⁴ Id. at 11, 81-101.

²⁵ Id. at 11.

²⁶ Id. at 243-251.

²⁷ Id. at 247.

²⁸ Id. at 246-247.

²⁹ Id. at 249.

³⁰ Id. at 247.

³¹ Id. at 251.

³² Id. at 252-274.

³³ Id. at 279-280.

Appeals,³⁴ which was granted in its September 28, 2017 Decision.³⁵ The Court of Appeals reversed the decision of the voluntary arbitrator and dismissed Oberio's complaint.³⁶ It gave credence to Dr. Go's medical assessment that Oberio was already fit to work. It also held that Dr. Go was able to closely monitor Oberio's condition from the day he was repatriated up to the time he underwent surgical operation and rehabilitation. In contrast, Dr. Magtira examined Oberio only once and did not conduct diagnostic tests or medical procedures other than a physical examination of Oberio.³⁷

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, premises considered, the Decision dated September 28, 2016 of the Voluntary Arbitrator in Voluntary Arbitration Case No. MVA-093-RCMB-NCR-036-01-03-2016 is **REVERSED** and **SET ASIDE**. The Complaint of respondent Bienvenido B. Oberio is **DISMISSED** for lack of merit.

SO ORDERED.³⁸ (Emphasis in the original)

The Court of Appeals also denied Oberio's subsequent motion for reconsideration.³⁹

Oberio thus filed a Petition for Review⁴⁰ before this Court assailing the Decision and Resolution of the Court of Appeals.

Petitioner contends that the company-designated physician intentionally downgraded the medical assessment,⁴¹ and declared that he was "fit to return to work from [an] orthopedic standpoint" in order to conceal his actual medical condition.⁴² According to petitioner, the company-designated physician's medical assessment does not comply with the categorical declaration required by law and jurisprudence.⁴³

Petitioner submits that his chosen physician categorically declared in his November 17, 2015 medical certificate that:

- [T]here is hyperesthesia of the right forearm;
- Complainant cannot appose his thumb and tips of the fingers of his right hand;
- Range of motion of the right hand cannot be fully assessed because of

³⁴ Id. at 281-319.

³⁵ Id. at 8-15.

³⁶ Id. at 14.

³⁷ Id. at 13.

³⁸ Id. at 14.

³⁹ Id. at 17-18.

⁴⁰ Id. at 24-64.

⁴¹ Id. at 45.

⁴² Id. at 42.

⁴³ Id. at 48.

- pain;
- Swelling of the wrist joints of the right forearm noted;
- There is numbness of the fingers of the right hand; and,
- Petitioner lost his pre-injury capacity and is [unfit to work back at his previous occupation.]⁴⁴

Petitioner adds that his chosen physician stated that the fracture to his radius made him prone to develop traumatic osteoarthritis of the wrist joint, resulting in limitation of motion of his right hand.⁴⁵

Petitioner points out that even the October 26, 2015 and November 10, 2015 progress reports of the company-designated physical therapist showed that he was still in pain even until the end of the physical therapy and his strength is affected by pain upon movement.⁴⁶ Given the pain in his forearm and his limited motion, he could not go back to his work as a seafarer, which primarily involved heavy manual labor.⁴⁷

Petitioner further contends that on account of his physician's opinion that he was permanently unfit for sea duty, he, through counsel, relayed his intention to respondents to request for a third doctor's medical opinion under the Conflict Resolution Procedure of the Philippine Overseas Employment Administration Standard Employment Contract.⁴⁸ On November 23, 2015, respondents were served with the letter-correspondence regarding the request.⁴⁹ Despite receipt, however, respondents neither acted on his request nor communicated with his counsel despite the latter's contact numbers indicated in the letter.⁵⁰ This forced him to file the complaint before the National Conciliation and Mediation Board.⁵¹ Petitioner adds that the failure to refer him to a binding third medical opinion prior to the filing of the complaint was due to respondent's failure to take positive action on his request.⁵²

In their Comment,⁵³ respondents counter that petitioner's condition was resolved as early as November 12, 2015 and he was categorically declared fit to work. This negates petitioner's claim for permanent and total disability benefits.⁵⁴

Respondents further contend that the Court of Appeals correctly upheld the findings and assessment of the company-designated physician because the

⁴⁴ Id. at 43.

⁴⁵ Id.

⁴⁶ Id. at 44-45.

⁴⁷ Id. at 46-47.

⁴⁸ Id. at 58-59.

⁴⁹ Id. at 59.

⁵⁰ Id.

⁵¹ Id. at 61.

⁵² Id. at 60.

⁵³ Id. at 492-518.

⁵⁴ Id. at 495.

latter treated petitioner for a reasonable period of time.⁵⁵ They add that under the Philippine Overseas Employment Administration Standard Employment Contract, it is the company-designated physician who must determine the disability grading or fitness to work of the seafarer⁵⁶ and absent any showing of bias, malice or bad faith in the findings, the same is binding.⁵⁷ Moreover, the assessment issued by petitioner's private doctor is not credible because it was not based on objective medical examination and observation, as opposed to the company-designated physician.⁵⁸

Finally, respondents contend that petitioner "slept on his right to contest the company-designated physician's assessment when he did not [avail] of a third medical opinion."⁵⁹

The issues for this Court's resolution are:

First, whether or not the Court of Appeals correctly upheld the fit-to-work certification issued by the company-designated physician; and,

Second, whether or not petitioner Bienvenido D. Oberio is entitled to permanent and total disability benefits.

We grant the Petition.

I

Generally, this Court does not review factual questions, because it is not a trier of facts. However, in instances where the voluntary arbitrator and the Court of Appeals came up with conflicting findings⁶⁰ or when there is a showing that the Court of Appeals manifestly overlooked facts which would justify a different conclusion,⁶¹ or its judgment is based on a misapprehension of facts,⁶² as in this case, a review of the facts by this Court is warranted.⁶³

II

Under the Philippine Overseas Employment Administration Standard

⁵⁵ Id. at 500.

⁵⁶ Id. at 501.

⁵⁷ Id. at 508.

⁵⁸ Id. at 509.

⁵⁹ Id. at 516.

⁶⁰ *Esguerra v. United Philippines Lines, Inc.*, 713 Phil. 487, 497 (2013) [Per J. Reyes, First Division].

⁶¹ *Castillon v. Magsaysay Mitsui Osk Marine, Inc.*, G.R. No. 234711, March 2, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66406>> [Per J. Leonen, Third Division].

⁶² *Toquero v. Crossworld Marine Services, Inc.*, G.R. No. 213482, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65333>> [Per J. Leonen, Third Division].

⁶³ *Esguerra v. United Philippines Lines, Inc.*, 713 Phil. 487, 497 (2013) [Per J. Reyes, First Division].

Employment Contract, the determination of the seafarer's fitness for sea duty or the degree of disability is the primary responsibility of the company-designated physician, subject to the 120 or 240-day periods prescribed by law.⁶⁴ Section 20(A)(2) and (3) of the 2010 Philippine Overseas Employment Administration Standard Employment Contract provides:

2. . . . However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until *such time he is declared fit or the degree of his disability has been established by the company-designated physician.*
3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until *he is declared fit to work or the degree of disability has been assessed by the company-designated physician.* The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.⁶⁵ (Emphasis supplied)

Jurisprudence nonetheless provides that to be conclusive, the company-designated physician's medical assessment must be complete⁶⁶ and definite "in order to *truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.*"⁶⁷ Otherwise, the disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered by the seafarer.⁶⁸

Furthermore, in *Monana v. MEC Global Shipmanagement and Manning Corporation*,⁶⁹ this Court stressed that the assessment must have scientific basis and be supported by medical records:

Regardless of who the doctor is and his or her relation to the parties, the overriding consideration by both the Labor Arbiter and the National Labor Relations Commission should be that *the medical conclusions are based on (a) the symptoms and findings collated with medically acceptable diagnostic tools and methods, (b) reasonable professional inferences anchored on prevailing scientific findings expected to be known to the physician given his or her level of expertise, and (c) the submitted medical findings or synopsis, supported by plain English annotations that will allow the Labor Arbiter and the National Labor Relations Commission to make the proper evaluation.*⁷⁰ (Emphasis supplied)

⁶⁴ *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 187 (2015) [Per J. Carpio, Second Division].

⁶⁵ *Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships*, POEA Memorandum Circular No. 010-10, October 26, 2010.

⁶⁶ *Olidana v. Jepsens Maritime, Inc.*, 772 Phil. 234, 245 (2015) [Per J. Mendoza, Second Division].

⁶⁷ *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 400 (2018) [Per J. Leonen, Third Division]. Emphasis supplied.

⁶⁸ *Id.*

⁶⁹ 746 Phil. 736 (2014) [Per J. Leonen, Second Division].

⁷⁰ *Id.* at 752-753.

The labor tribunals and the courts are thus not automatically bound by the medical assessment of the company-designated physician because the latter's report would still have to be weighed and duly considered.⁷¹

Here, the voluntary arbitrator did not give credence to the company-designated physician's fit-to-work declaration because: (1) it was not supported by comments, medical reports, or certifications coming from any specialist;⁷² and (2) petitioner was not given a copy of the same.⁷³ The voluntary arbitrator further found no definite final medical certificate of fitness for work issued by petitioner's attending physiatrist.⁷⁴ Thus:

Complainant in this case, arrived in Manila on 18 May 2015, and he was allegedly declared fit to work, by the company-designated physician, effective on 12 November 2015; however, the alleged opinion by the company doctor, was not supported by comments or certifications coming from any of respondents' specialists, as adverted to in respondents' pleadings. It gives rise then to the presumption that something is actually adverse to them.

Complainant's attending Physiatrist failed to issue a definite final medical certificate of fitness for work or disability considering that on 10 November 2015, she expressly noted the following restrictions, due to continuing on and off pain upon waking up in the morning with pain scale of 6/10 (PS 0 – no pain, 5 – moderate pain, 10 – severe pain) and strength is affected by pain. Since there was no definite final medical certificate of fitness for work issued by Dr. Cabrera from 18 May 2015 to 12 November 2015 and onwards, complainant's condition remains unresolved for a period of more than 120 or 240 days.⁷⁵

The Court of Appeals, on the other hand, gave credence to Dr. Go's fit-to-work declaration reasoning that it was Dr. Go who closely monitored and observed the condition of petitioner from repatriation until he was medically cleared. According to the Court of Appeals, Dr. Go's assessment had solid basis in arriving at her conclusion.⁷⁶

We disagree. We find that the Court of Appeals reversibly erred in setting aside the decision of the voluntary arbitrator.

It was Dr. Cabrera, not Dr. Go, who supervised the physical therapy of petitioner in Iloilo from June 6 to November 9, 2015. Significantly, the October 26, 2015 progress report on petitioner's physical therapy showed that

⁷¹ *Licayan v. Seacrest Maritime Management, Inc.*, 773 Phil. 648, 661 (2015) [Per J. Mendoza. Second Division].

⁷² *Rollo*, pp. 244, 246–247.

⁷³ *Id.* at 249.

⁷⁴ *Id.* at 247.

⁷⁵ *Id.* at 246–247

⁷⁶ *Id.* at 13.

petitioner has pain on distal forearm, difficulty lifting objects due to pain, feels numbness of right hand, and his strength is affected by pain upon movement.⁷⁷ Subsequently, the November 10, 2015 report of the physiatrist shows that petitioner still experienced recurring pain, which affected his grasping ability. In direct conflict with the foregoing observations is Dr. Go's November 12, 2015 fit-to-work certification stating, among others, that petitioner "could make a closed fist with his right hand with ease."

The previous observations of the physiatrist issued just 17 days and 2 days prior to Dr. Go's November 12, 2015 fit-to-work certification and the lack of medical test results – such as the electromyography and nerve conduction velocity, as well as the comments of the specialist supposedly enclosed in the report – to back up Dr. Go's assessment, renders obscure and unreliable her declaration that petitioner is "fit to work from an orthopedic standpoint." It necessarily casts doubt on the true nature of petitioner's condition, particularly on his capacity to return to work as seafarer. Dr. Go's final assessment is not the categorical declaration required by law and jurisprudence, and thus cannot be appreciated.

In the same vein, Dr. Chuasuan's medical evaluation⁷⁸ hardly complies with the parameters enunciated in *Monana*, as it does not provide sufficient basis for its medical conclusion. It simply states: "[f]ull range of motion of the right forearm, wrist, and fingers. Cleared from orthopedic standpoint. Fit to work."⁷⁹

The company-designated physician's duty to make a final assessment of the seafarer's condition includes the duty to discuss how the assessment was arrived at and its implication on the seafarer's capacity to work on board the vessel.⁸⁰

In *Palada v. Crossworld Marine Services Kapal (Cyprus) Ltd.*,⁸¹ the company-designated doctor's medical report declaring the seafarer fit to work from an orthopedic standpoint was not considered to be *complete, final, and definite* because it did not show how the assessment was arrived at. Thus:

As for Dr. Bergonio's medical report, it should be pointed out that the supposed Functional Assessment of petitioner's medical condition by a certain Dr. Basuil referenced therein was *not* attached to the report. The Functional Assessment is also *not* in the records of the case which, in itself, renders the existence of the medical assessment *doubtful*.⁸² (Emphasis in

⁷⁷ Id. at 115.

⁷⁸ A perusal of the attachments to the Petition reveals that Dr. Chuasuan's medical evaluation was submitted by respondents as an attachment to their motion for reconsideration of the Voluntary Arbitrator's Decision.

⁷⁹ *Rollo*, p. 275.

⁸⁰ See *Maunlad Trans., Inc. v. Camoral*, 753 Phil. 676 (2015) [Per J. Reyes, Third Division].

⁸¹ *Palada v. Crossworld Marine Services Kapal (Cyprus), Ltd.*, G.R. No. 247778, February 17, 2021. <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67212>> [Per J. Inting, Third Division].

⁸² Id.

the original).

It must be stressed that while petitioner may have been cleared from an orthopedic standpoint, he has not yet been cleared from the physiatrist standpoint. The physiatrist did not issue a final medical assessment on his condition.

On the other hand, the October 26, 2015 and November 10, 2015 progress reports of the company-designated physiatrist are more consistent with Dr. Magtira's observations in his November 17, 2015 report. The latter declared petitioner unfit to resume sea duty after his physical examination showed "hyperesthesia of the right forearm" and that he "cannot appose his thumb and tips of the fingers of his right hand." The medical report also showed that the "[r]ange of motion of [his] right hand cannot [be] fully assess[ed] because of pain." There was also "swelling of the wrist joints of the right forearm."⁸³ The foregoing reports show that despite several sessions of therapy, petitioner's right hand grip has not returned to normal, he still feels pain, and he has not regained his pre-injury capacity.

The voluntary arbitrator aptly held:

[Petitioner] being a right-handed person, resuming further service would tremendously affect work efficiency due to limitation of grasping, lifting, pulling heavy loads, manipulati[ng] various common shipboard tools requiring 90° range of motion. In addition, he has impairment or disease that can prevent normal movement and physical activity, which renders him permanently unfit for further sea service.⁸⁴

III

In the absence of a valid and categorical certification from the company-designated physician within the 240-day⁸⁵ maximum period, the seafarer's temporary disability becomes permanent.⁸⁶ In *Pastor v. Bibby Shipping Philippines, Inc.*:⁸⁷

⁸³ *Rollo*, p. 123.

⁸⁴ *Id.* at 247.

⁸⁵ The 2010 Philippine Overseas Employment Administration Standard Employment Contract is read in conjunction with Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code (Amended Rules on Employees Compensation), which 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. (Emphasis supplied)

⁸⁶ *Belchem Philippines, Inc. v. Zafra, Jr.*, 759 Phil. 514 (2015) [Per J. Mendoza, Second Division]; *Jebsens Maritime, Inc. v. Babol*, 722 Phil. 828 (2013) [Per J. Mendoza, Third Division]; *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717 (2013) [Per J. Reyes, First Division]; *Fair Shipping Corporation v. Medel*, 693 Phil. 516 (2012) [Per J. Leonardo-De Castro, First Division].

⁸⁷ G.R. No. 238842, November 19, 2018,

Failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed period shall transform the latter's temporary total disability into one of total and permanent by operation of law. As aptly ruled in the case of *Orient Hope Agencies, Inc. v. Jara*, **without a valid final and definitive assessment** from the company-designated physician **within the prescribed periods**, the law already steps in to consider the seafarer's disability as total and permanent.⁸⁸ (Emphasis in the original, citation omitted)

At this point, we emphasize that disability compensation under labor laws is related to loss or impairment of earning capacity:

[P]ermanent total disability does not mean a state of absolute helplessness but the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.⁸⁹

Petitioner has remained in a state of disability that has become permanent and total considering that no certification, compliant with the Philippine Overseas Employment Administration Standard Employment Contract and the Labor Code, was issued within 120 or 240 days from repatriation.

IV

Finally, non-referral of the case to a third doctor was attributable to respondents.

First, petitioner was not given a copy of Dr. Go's November 12, 2015 medical report.⁹⁰

Further, we note that petitioner has consistently argued⁹¹ before the voluntary arbitrator, then to the Court of Appeals, and finally to this Court, that prior to his complaint he had requested from the company for referral of his condition to a third doctor, but respondents did not answer despite receipt of petitioner's letter-request. This contention of petitioner has never been directly disputed by respondents in their pleadings.⁹² Rather, during the conciliation conference before the voluntary arbitrator on June 8, 2016, that

<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64848>> [Per J. Perlas-Bernabe, Second Division].

⁸⁸ Id.

⁸⁹ *Olidana v. Jepsens Maritime, Inc.*, 772 Phil. 234, 244 (2015) [Per J. Mendoza, Second Division].

⁹⁰ *Rollo*, p. 249.

⁹¹ Id. at 82, 160–164, 230–234, 348–353, 376–380, 438–442, 470–473.

⁹² Id. at 125–138, 217–223, 237–242, 252–274, 281–314, 383–412, 442–451.

is, beyond the 240-day period from repatriation, which had lapsed on January 18, 2016, respondents insisted that a third opinion regarding petitioner's condition be secured but petitioner's counsel refused.⁹³

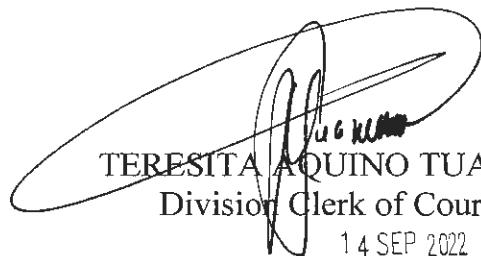
This Court has ruled that upon request of the seafarer, "the company must itself respond by setting into motion the process of choosing a third doctor who, as the Philippine Overseas Employment Administration Standard Employment Contract provides, can rule with finality on the disputed medical situation."⁹⁴ Here, respondent failed to heed petitioner's request for a third doctor opinion. Moreover, their attempt to comply with the third-doctor rule was already late.

Thus, non-referral to a third doctor will not prejudice petitioner's claim.

FOR THESE REASONS, the Petition is **GRANTED**. The September 28, 2017 Decision and March 22, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 149107 are **REVERSED** and **SET ASIDE**. Accordingly, the September 28, 2016 Decision of the voluntary arbitrator in MVA-093-RCMB-NCR-036-01-03-2016 awarding petitioner Bienvenido D. Oberio the amount of US\$96,909.00 representing his total and permanent disability benefits and 10% attorney's fees is hereby **REINSTATED**. These are subject to legal interest at the rate of 6% per annum⁹⁵ from finality of this Resolution until full payment.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *by 9/14*
14 SEP 2022

⁹³ Id. at 11.

⁹⁴ *Bahia Shipping Services, Inc. v. Constantino*, 738 Phil. 564, 576 (2014) [Per J. Brion, Second Division].

⁹⁵ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

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