Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **June 15, 2022** *which reads as follows:*

"G.R. No. 249276 ***(United Philippine Lines, Inc., Carnival Cruise Lines and/or Eduardo B. San Juan, Petitioners vs. Ramil R. Dereza, Respondent).*** – This resolves the petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the April 1, 2019 Decision[1] and the September 5, 2019 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 157392. The CA affirmed the May 28, 2018 Decision[3] and the June 28, 2018 Resolution[4] of the National Labor Relations Commission *(NLRC)*, which reversed the March 21, 2018 Decision[5] of Labor Arbiter *(LA)* Marcial Galahad T. Makasiar.

Antecedents

On July 13, 2016, Carnival Cruise Lines, through its local manning agency, United Philippine Lines, Inc. *(petitioners)*, hired Ramil R. Dereza *(respondent)* as a team waiter for a period of seven months, with a basic monthly salary of US$350.00. Respondent's duties on board the cruise ship "M/V Carnival Fantasy" included serving food at the restaurant, and cleaning and arranging tables, mats, and chairs. He worked for 8 to 16 hours a day.[6]

- over - thirteen (13) pages...

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[1] *Rollo*, pp. 84-95; penned by Associate Justice Manuel M. Barrios, with Associate Justice Japar B. Dimaampao and Associate Justice Maria Filomena D. Singh (now Members of this Court), concurring.
[2] Id. at 127-128.
[3] Id. at 138-148; penned by Commissioner Cecilio Alejandro C. Villanueva, with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.
[4] Id. at 150-151.
[5] Id. at 131-136; penned by Labor Arbiter Marcial Galahad T. Makasiar.
[6] Id. at 85.

On January 17, 2017, there was a surge of passengers on the ship which meant respondent's workload became heavier and lasted longer. Respondent felt so exhausted that he had to go to the ship's clinic. His blood pressure was found to be elevated at 180/120 mmHg. The ship doctor gave him anti-hypertensive medicines and advised him to rest. After recovering normal strength, he resumed his usual work routine.[7]

On February 27, 2017, respondent's contract expired and he asked to be relieved from duty. However, he stayed on and continued working onboard the ship upon the request of his superior as there was yet no available crew to replace him.[8]

On March 30, 2017, a Captain's Night was held with numerous guests and passengers crowding the buffet tables. Consequently, respondent had to attend to multiple chores. At around 9:30 p.m., when respondent was in the kitchen getting replenishments for the salad bar, he suddenly felt dizzy and experienced chest pains and difficulty in breathing. He later lost consciousness and was again brought to the clinic. The ship doctor's initial examination showed that respondent suffered a severe stroke or cardiac arrest. The next day, respondent was sent ashore to be examined at the Centro Medico Bournigal S.A., a hospital at the Dominican Republic of Congo, where he was diagnosed with "*ACV Isquemic Crisis Hypertensive Type Emergency (Controlled)*."[9] He was confined at said hospital for four days. When his condition stabilized, he was repatriated.[10]

On April 8, 2017, respondent arrived in Manila and immediately reported to the company-designated physician at Marine Medical Services. He was diagnosed with "*Hypertension: To Consider Cerebrovascular Disease, Left Middle Cerebral Artery.*"[11] For his illness, respondent underwent extensive medical tests and treatment. Initial medical tests revealed that there was "Small subacute infarct involving the left corona radiata."[12] On July 14, 2017, the company-designated physician, Dr. Evelyn Chua-Ley *(Dr. Ley)*, gave the following medical assessment on respondent: "suggested disability grading is Grade 10 – slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient."[13]

[7] Id.
[8] Id.
[9] CA *rollo*, pp. 177-178.
[10] *Rollo*, pp. 85-86.
[11] CA *rollo*, p. 235.
[12] Id. at 185.
[13] Id. at 236.

Respondent continued with his therapy and took oral medications to control his blood pressure. Upon follow-up examination on August 4, 2017, the doctor informed him that it would be his last checkup; he was, nevertheless, advised to continue his medication. On August 7, 2017, he went to petitioner manning agency to appeal for the continuation of his medical assistance but his request was denied.[14] Thereafter, he went to another physician, Dr. Nerio C. Zabala *(Dr. Zabala)*, a cardiologist at V. Luna Hospital, who gave his medical opinion that respondent had suffered from "infarction of the brain" which "placed him at mortality risk after 1 year from cardiovascular disease of 28%." He was thus declared "physically unfit for work of higher risk of stroke and with decreased motor function."[15] Accordingly, respondent demanded total and permanent disability compensation from petitioner manning agency, which denied the same.

On December 8, 2017, respondent filed a complaint against petitioners praying for total and permanent disability compensation, damages, and attorney's fees.

Petitioners, on the other hand, asserted that the company-designated physician had already assessed respondent's disability rating at Grade 10. They claimed that after the filing of the complaint before the Labor Arbiter *(LA)*, they offered compensation equivalent to such disability rating to respondent but the latter refused and insisted on a Grade 1 disability benefit.[16]

The Labor Arbiter's Ruling

In the March 21, 2018 Decision, the LA upheld the diagnosis and findings of the company-designated physician since respondent failed to comply with Section 20 of the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC)*, which requires that if the doctor appointed by the seafarer disagrees with the assessment made by the company-designated physician, the matter may be referred to a third doctor agreed upon by both seafarer and the employer, and whose decision shall be final and binding on both parties. The LA noted that the medical certificate issued by Dr. Zabala shows that he only had a short review of the

[14] *Rollo*, p. 86.
[15] CA *rollo*, p. 195.
[16] *Rollo*, p. 87.

history of respondent's illness. There was no statement of the duration of medical examination nor the date of its termination and, hence, no basis for determining the extent of medical examination made by the said doctor.[17]

The LA, however, granted respondent's claim for sickness allowance for the four months he was under medical treatment, but denied his claim for attorney's fees, moral, and exemplary damages.[18] The *fallo* of the said decision reads:

> ACCORDINGLY, respondents United [Philippine] Lines, Inc. and Carnival Cruise Lines are ordered to pay complainant, in *solidum*:
>
> a) GRADE 10 DISABILITY BENEFIT of US$10,075.00 or its Peso equivalent at the rate of exchange prevailing at the time of payment or execution whichever occurs first, and
>
> b) SICKNESS ALLOWANCE of US$1,400.00 or its Peso equivalent at the rate of exchange prevailing at the time of payment or execution whichever occurs first.
>
> The foregoing awards aggregate to US$11,475.00. Complainant is an Overseas Filipino Worker.
>
> All the other claims are DENIED for lack of merit.
>
> Respondents' counterclaim is DENIED for lack of merit.
>
> Respondent Eduardo B. San Juan is EXONERATED from all liabilities.
>
> SO ORDERED.[19]

Dissatisfied, respondent appealed to the NLRC.

The NLRC Ruling

On May 28, 2018, the NLRC rendered its decision granting respondent's appeal and reversing the LA's ruling, as follows:

> **WHEREFORE**, premises considered, complainant's Appeal is hereby **GRANTED**. Respondents United Philippines Lines, Inc., and Carnival Cruise Lines are ordered to solidarily pay

[17] Id. at 133-134.
[18] Id. at 134-135.
[19] Id. at 135-136.

> complainant total and permanent disability benefits of [US$60,000.00] or its Peso equivalent at the rate of exchange prevailing at the time of payment or execution whichever comes first; sickness allowance of [US$1,400.00] or its Peso equivalent at the rate of exchange prevailing at the time of payment or execution whichever comes first; and attorney's fees equivalent to 10% of the total amount awarded herein.
>
> **SO ORDERED.**[20]

Petitioners filed a motion for reconsideration which was denied under NLRC Resolution dated June 28, 2018.

Petitioners then elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court ascribing grave abuse of discretion on the part of the NLRC in awarding total and permanent disability benefits, sickness allowance, and attorney's fees in favor of respondent.

The CA Ruling

In its assailed decision, the CA sustained the grant of total and permanent disability compensation, sickness allowance, and attorney's fees in favor of respondent. It held that in the absence of a final and definitive disability assessment made by the company-designated physician, respondent is entitled to total and permanent disability compensation for the serious illness he suffered while performing his work/duties on board petitioners' cruise ship.[21]

The CA likewise upheld the grant of sickness allowance pursuant to Sec. 20(A)(3) of the POEA-SEC, as well as the award of attorney's fees, considering that respondent was compelled to litigate on account of petitioners' unjustified denial of his monetary claims.[22]

Petitioners' motion for reconsideration was likewise denied by the CA. Unfazed, petitioners filed the present petition.

Issue

Whether or not the CA erred in not finding grave abuse on the part of the NLRC when it reversed the LA's ruling and instead awarded respondent total and permanent disability benefits, sickness allowance, and attorney's fees.

[20] Id. at 147-148.
[21] Id. at 90-93.
[22] Id. at 93-94.

Petitioners' Arguments

Petitioners argue that based on Sec. 20(A)(2) of the POEA-SEC, a seafarer's disability must be primarily assessed by the company-designated physician; hence, respondent is bound by the findings of the company-designated physician that he is merely suffering from a Grade 10 disability.[23] Such finding is supported by medical evidence consisting of several tests and laboratory procedures throughout the four months of respondent's treatment under the care of the company-designated physician. In contrast, the opinion of respondent's private doctor cannot be given credit as it was based merely on a single consultation several months after his repatriation.[24]

Petitioners contend that the July 14, 2017 medical opinion issued by the company-designated physician is not an interim assessment but a result of several examinations and treatment leading to the definitive and final diagnosis that respondent is suffering from a Grade 10 disability. As to the continuation of respondent's treatment thereafter, petitioners assert that such is a testament to their commitment to cure respondent.[25] They stress that substantial evidence in the form of medical reports from medical experts must be provided to support a substantial award of Grade 1 disability compensation.[26] Also, the degree of disability of the seafarer should be classified on the basis of the Schedule of Disability enumerated in accordance with Sec. 30 of the POEA-SEC, and not on the mere "loss of earning capacity," nor the lapse of the 120-day or 240-day period.[27]

Lastly, petitioners assail the CA's affirmance of the award of attorney's fees, there being no evidence of bad faith on the part of petitioners who had provided adequate medical attention to respondent.[28]

Respondent's Arguments

Respondent argues that jurisprudence on disability compensation established the rule that the Court can disregard a disability assessment from the company-designated physician if it is proven that the seafarer is already incapacitated to work again. He

[23] Id. at 40.
[24] Id. at 46.
[25] Id. at 47.
[26] Id. at 40.
[27] Id. at 49-50.
[28] Id. at 68.

submits that having suffered a stroke and brain injury, he had become incapacitated for his usual work. The company-designated physician had even admitted that his condition interfered with his work; while the opinion of the second doctor categorically stated that he was totally and permanently incapacitated to return to sea duty.[29]

As to petitioners' insistence that respondent should present a Grade 1 disability assessment based solely on the POEA-SEC enumerated injuries categorized as such, respondent contends that the Court has already clarified the matter. Thus, while only those categorized under Grade 1 are considered as total and permanent disability, if 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. Respondent maintains that despite the company-designated physician's disability assessment, he was incapacitated to perform his usual sea duties even beyond the 240-day period.[30]

The Court's Ruling

The petition has no merit.

The Court finds that the CA correctly determined that the NLRC did not gravely abuse its discretion when it reversed the LA's ruling that respondent is entitled only to a Grade 10 disability benefit due to said seafarer's failure to comply with the third-doctor referral procedure provided in the POEA-SEC.

An employee who sustains an injury or contracts an illness in relation to the conduct of his work may be entitled to three types of disability benefits under the Labor Code: temporary total disability (Article 197 [191]); permanent total disability (Art. 198 [192]); and permanent partial disability (Art. 199 [193]).

In the case of Filipino seafarers, the POEA-SEC sets forth the following obligations of the employer upon the seafarer's medical repatriation:[31]

[29] Id. at 179.
[30] Id. at 179-180.
[31] *Rodelas v. MST Marine Services (Phils.)*, G.R. No. 244423, November 4, 2020.

> In fact, in *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, the Court ruled that the POEA-SEC contemplates three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in case the seafarer is not declared fit to work after being treated by the company-designated physician.[32] (citation omitted)

The employer is given a 120-day or 240-day period within which to make a final and definite assessment as to the extent of a seafarer's disability and fitness to return to work. During this period, a seafarer is entitled to receive sickness allowance and obligated to report to the company-designated physician.[33]

In *Talaroc v. Arpaphil Shipping Corporation*,[34] the Court summarized the following guidelines to be observed when a seafarer claims permanent and total disability benefits:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

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[32] Id., citing *Cariño v. Maine Marine Phils., Inc.*, G.R. No. 231111, October 17, 2018, 884 SCRA 56, 70, citing *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374, 387-388 (2014).

[33] POEA-SEC, Sec. 20(3), reads:

> 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.

[34] 817 Phil. 598 (2017).

> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[35]

In this case, the company-designated physician, Dr. Ley, issued a medical report within the 120-day period. Thereafter, respondent continued his treatment until August 4, 2017, or just a few days over the 120-day period. But since respondent disagreed with the Grade 10 disability rating given by said doctor, he sought the opinion of a cardiologist, Dr. Zabala, who, in his December 6, 2017 Medical Report, opined that in view of respondent's "infarction of the brain" which placed him "at mortality risk after 1 year from cardiovascular disease of 28%," he was "physically unfit for work of higher risk of stroke and with decreased motor function."

Sec. 20(A) of the POEA-SEC provides the guidelines in case of the seafarer's disagreement with the findings and recommended disability rating of the company-designated physician, to wit:

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** (emphasis supplied)

The Court has recognized the right of the seafarer to seek the opinion of an independent physician of his choice. Thus, while it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion.[36] But when the seaferer's doctor disagrees with the assessment of the company-designated physician, referral to a third doctor is mandatory.[37]

[35] Id. at 612.
[36] *Rodelas v. MST Marine Services (Phils.)*, supra note 31.
[37] *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, G.R. No. 225899, July 10, 2019, 908 SCRA 403, 421, citing *INC Navigation Co. Philippines, Inc. v. Rosales*, 744 Phil. 774, 787 (2014).

In this case, the NLRC as affirmed by the CA, disagreed with the LA's ruling that respondent's noncompliance with the third-doctor referral requirement is fatal to his claim for total and permanent disability compensation. We sustain the CA and the NLRC in reversing the LA's conclusion that respondent is already bound by the Grade 10 disability rating given by the company-designated physician.

In *Kestrel Shipping Co., Inc. v. Munar*,[38] this Court held:

> In addition, that it was **by operation of law** that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. **A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day [period]. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.**[39] (emphases supplied)

In this light, respondent's failure to comply with the requirement of third-doctor referral will not prejudice his claim for total and permanent disability benefits. Without a final and definitive assessment from the company-designated physician, a seafarer's temporary and total disability, by operation of law, becomes permanent and total.[40]

Under the POEA-SEC, it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. "To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits."[41] As the Court explained in *Magsaysay Mol Marine, Inc. v. Atraje*:[42]

[38] 702 Phil. 717 (2013).
[39] Id. at 737-738.
[40] *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 407 (2018).
[41] *Toquero v. Crossworld Marine Services, Inc.*, G.R. No. 213482, June 26, 2019, 906 SCRA 113, 139.
[42] 836 Phil. 1061 (2018).

> A **final and definite disability assessment** is necessary 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. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[43] (emphasis in the original)

In *Carcedo v. Maine Marine Philippines, Inc.*,[44] the Court declared that a partial and permanent disability could, by legal contemplation, become total and permanent when a company-designated physician fails to arrive at a definite assessment within the 120-day or 240-day period prescribed under Art. 198 [192](c)(1) of the Labor Code and the Amended Rules on Employee Compensation, implementing Book IV, Title II of the Labor Code.[45]

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

In this case, the Medical Report dated July 14, 2017 of Dr. Ley reads:

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>
> If patient is entitled to a disability, his suggested disability grading is Grade 10 – slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient.[47]

While the above one-sentence assessment mentions a supposed general effect of respondent's medical condition on his capacity to work, it leaves out much of the important details of the cerebrovascular disease earlier indicated by previous doctors who examined respondent, and fails to factor in possible complications, considering that physical exhaustion from one night of heavier- than-usual work duties as waiter onboard petitioners' ship had already caused him to suffer a stroke. Consequently, We cannot agree with petitioners' assertion that the medical assessment made by its

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[43] Id. at 1078, citing *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 519 (2017).
[44] 758 Phil. 166 (2015).
[45] Id. at 183.
[46] *Chan v. Magsaysay Corporation*, G.R. No. 239055, March 11, 2020, citing *Tamin v. Magsaysay Maritime Corporation*, 794 Phil. 286, 301 (2016).
[47] CA *rollo*, p. 236.

physician was final, complete, and definitive. We quote, with approval, the CA's observations regarding this brief medical assessment, *viz.*:

> Notably, the medical report dated 14 July 2017 issued by company-designated physician Dr. Evelyn Chua-Ley on the 100th day from repatriation, though within the 120-day period, did not contain any conclusive and definitive assessment of the ailment of private respondent. The said report – which was reflected in a letter addressed to attending doctor, Dr. Robert Lim – only suggested that if private respondent was entitled to a disability grading, the same would be Grade 10, but without any definitive declaration of private respondent's fitness or capacity to return to work. Although private respondent's cardiovascular condition has been stabilized, the medical certificates on record indicated that he still needed to continue medication indefinitely. In this regard, it is jurisprudentially recognized that cardiovascular disease, cerebrovascular disease and other heart ailments are serious conditions that could be fatal. Without a doubt, private respondent necessitated extended therapy and/or treatment and medication. It is averred that even at this time, there is no indication that his condition has considerably improved or that he has obtained gainful employment elsewhere. In this instance, the 240-day period lapsed on 04 December 2017, and there being no definitive disability assessment of his ailment, private respondent's disability is deemed permanent and total, and he is, therefore, entitled to the corresponding disability benefits.[48]

The Court has repeatedly held that disability is intimately related to one's earning capacity. It is the inability to substantially do all material acts necessary to the pursuit of an occupation he was trained for without any pain, discomfort, or danger to life.[49] Indeed, a total disability does not require that the seafarer be completely disabled or totally paralyzed. What is necessary is that the injury incapacitates an employee from pursuing his or her usual work and earning from it. A total disability is considered permanent if it lasts continuously for more than the 120 days.[50]

The Court likewise finds the award of attorney's fees proper. It was established that respondent was compelled to litigate because his appeal for continuation of medical treatment was rejected by petitioners despite the fact that his condition had not improved and he was clearly incapacitated to return to sea duties.

[48] *Rollo*, p. 92.
[49] *Tamin v. Magsaysay Maritime Corporation,* supra note 46 at 303.
[50] Id.

Finally, the total and permanent disability benefits shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until full satisfaction.[51]

WHEREFORE, the petition is **DENIED.** The April 1, 2019 Decision and the September 5, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 157392 are hereby **AFFIRMED.** The award of total and permanent disability benefits shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until full satisfaction.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
112
JUL 0 6 2022

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[51] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).