



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 6, 2022 - Part I which reads as follows:*

**“G.R. No. 233176 (Grieg Phils., Inc., Grieg Star As (Formerly Grieg Shipping As), and Capt. Romeo H. Bautista IV v. Dominador R. Enriquez).** – This is an appeal<sup>1</sup> by petitioners Grieg Phils., Inc., Grieg Star As (Formerly Grieg Shipping As) (petitioner company), and Capt. Romeo H. Bautista IV (petitioner Bautista) (collectively, petitioners) from the Decision dated 10 April 2017<sup>2</sup> and Resolution dated 28 July 2017<sup>3</sup> promulgated by the Court of Appeals (CA) in CA-G.R. SP. No. 146842. The CA reversed and set aside the decision of the National Labor Relations Commission (NLRC) and reinstated with modifications the ruling of the Labor Arbiter (LA), which awarded permanent and total disability benefits to respondent Dominador R. Enriquez (respondent).

**Antecedents**

The CA summarized the pertinent factual background of the case in the following manner:

Respondent Grieg Philippines, Inc. is a domestic corporation engaged in the business of hiring and deployment of workers and represented by respondent Capt. Romeo Bautista IV. Respondent Grieg Star AS is a foreign corporation involved in the maritime industry and owner of MV Star Livorno (collectively as respondents).

On 15 April 2014, petitioner was hired by respondents as fitter/motorman of a vessel named MV Star Livorno.

On 23 September 2014, petitioner was on duty and making repairs in the engine room. While petitioner and another engineer were carrying a

<sup>1</sup> Rollo, pp. 28-51

<sup>2</sup> Id. at 14-24; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Victoria Isabel A. Paredes.

<sup>3</sup> Id. at 25-26.

freon container, petitioner suddenly felt pain in his back which radiated from his shoulder and down to his waist and legs. Petitioner was taken to the Marine Healthcare Services in Beaumont, Texas, USA, and was diagnosed with kidney stones and muscle strain. Thereafter, petitioner was referred to Christus Hospital – St. Mary wherein he underwent another checkup and was diagnosed with “DI for Back Strain or Sprain, Kidney Stones (Alternative Therapy)”.

On 26 September 2014, petitioner went for another checkup at Central Healthcare Services where he was diagnosed with a back/right abdominal pain and was declared unfit for sea duties.

On 30 September 2014, petitioner was medically repatriated and was referred by respondents to their company-designated physician, Dr. Robert Lim (Dr. Lim) at the Marine Medical Center. Thereafter Dr. Lim, referred petitioner to Dr. William Chuasuan, Jr. (Dr. Chuasuan, Jr.), an orthopedic surgeon.

On 2 October 2014, Dr. Lim diagnosed petitioner with “Lumbar Spondylosis; Disc protrusion, Right L5-S1”. Petitioner was treated with medications and was sent to the Malolos Rehabilitation Medicine for physical rehabilitation.

On 5 December 2014, Dr. Lim sent a letter to respondents and informed the latter that Dr. Chuasuan, Jr. suggested the following disability grading:

“Suggested disability grading:

If patient is entitled to a disability, his suggested disability grading is Grade 11 – slight rigidity or one-third loss of motion or lifting power.”

Meanwhile, petitioner continued with his medications and rehabilitation. On 8 January 2015, the company-designated physician issued his last Medical Report which reiterated that petitioner needed to continue with his medications and rehabilitation. The said Report likewise stated a note which said, “pls. provide progress notes”. Petitioner's rehabilitation lasted until 29 January 2015.

On 17 February 2015, respondents invited petitioner for a conference and offered the latter the amount of Thirteen Thousand Four Hundred Thirty-Seven U.S. Dollars (US\$ 13,437.00), which was equivalent to the Grade 11 disability under the POEA Standard Employment Contract (POEA-SEC) and their Collective Bargaining Agreement. Petitioner declined respondents' offer and claimed that he needed time to think.

On 4 March 2015, petitioner went to another doctor, Dr. Misael Jonathan A. Ticman (Dr. Ticman), who requested petitioner to undergo an MRI exam. On 6 March 2015, Dr. Ticman issued a Disability Report which stated that:

“Based on the history and physical examination on the patient, in spite of the physical therapy done and the medications given the symptoms persist the prognosis is



not good. I am therefore recommending Permanent Disability and that he is unfit to work as a seaman in any capacity.”

On 16 March 2015, petitioner filed his Complaint for total and permanent disability benefits with the NLRC. In his Position Paper, petitioner claimed that he is entitled to total and permanent disability benefits because his injury prevents him from returning to his sea duties. Petitioner averred that his claims were substantiated by the Disability Report issued by Dr. Ticman. Petitioner further averred that the assessment made by the company-designated physician was merely an interim assessment and not a final assessment. Petitioner claimed that the company-designated physician continued with his medical treatments until the end of January 2015, and that the latter did not issue any assessment thereafter.

In its defense, respondents claim that the company-designated physician gave petitioner a disability grade of Grade 11, which was equivalent to their previous settlement offer to petitioner.<sup>4</sup>

### **Ruling of the Labor Arbiter**

The LA ruled in favor of respondent upon finding that his own physician rendered a more credible assessment on his injury. The LA also noted respondent’s failure to continue performing his duties as a seafarer for more than seven months thereby entitling him to an award for total permanent disability benefits as well as moral damages, exemplary damages, and attorney’s fees. Petitioner Bautista, as the owner of petitioner company, was held jointly and severally liable to respondent,<sup>5</sup> thus:

**WHEREFORE**, premises considered, all respondents are jointly and severally liable to pay complainant the following:

1. Total permanent disability benefit in accordance with the CBA in the amount of US\$90,000;
2. Sickwages equivalent to US\$3,348.00;
3. Moral Damages and Exemplary damages in the sum of Php500,000.00 each; and
4. 10% of all sums owing to complainant as attorney’s fees.

**SO ORDERED.**<sup>6</sup>

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<sup>4</sup> Id. at pp. 15-17.

<sup>5</sup> *CA rollo*, pp. 46-64. Penned by Acting Executive Labor Arbiter Mariano L. Bactin.

<sup>6</sup> Id. at 64.

### **Ruling of the National Labor Relations Commission**

In its Decision<sup>7</sup> dated 31 March 2016, the NLRC granted petitioners' appeal and declared respondent's award equivalent only to Grade 11 disability benefits, *viz.*:

**WHEREFORE**, the appeal is hereby **GRANTED**. The assailed Decision of Acting Executive Labor Arbiter Mariano L. Bactin dated December 2, 2015 is hereby **REVERSED and SET ASIDE**. A **NEW ONE** is entered finding respondent-appellants jointly and severally liable to pay complainant-appellee disability benefits corresponding to **Grade 11 (14.93%)** for slight rigidity or one-third loss of motion or lifting power in the amount of Thirteen Thousand Four Hundred Thirty Seven US Dollars (US\$13,437.00) or its peso equivalent at the time of payment.

SO ORDERED.<sup>8</sup>

The NLRC gave more weight to the assessment of the company-designated physician, who examined, treated, and closely monitored respondent's condition for months. It also deleted the award of damages and attorney's fees for lack of malice or bad faith on the part of petitioners, who promptly and adequately provided medical assistance and treatment to respondent.<sup>9</sup>

### **Decision of the Court of Appeals**

On 10 April 2017, the CA promulgated its Decision<sup>10</sup> reversing the decision of the NLRC and reinstating with modification the ruling of the LA, to wit:

**WHEREFORE**, the instant Petition is **GRANTED**. The Decision dated 31 March 2016 and Resolution dated 27 May 2016, issued by the National Labor Relations Commission in NLRC RAB-III-OFW-03-22619-15 and NLRC LAC NO. 02-000125-16-OFW, are **REVERSED and SET ASIDE**. The Decision dated 2 December 2015 of the Labor Arbiter is hereby **REINSTATED WITH MODIFICATIONS** in that the award of moral and exemplary damages are deleted.

SO ORDERED.<sup>11</sup>

The CA ruled that the Grade 11 disability rating issued to respondent was merely an interim assessment and suggestion coming from the attending doctor. Said assessment was not issued by the company-designated physician at the end of respondent's treatment. Since the company-designated physician failed to arrive at a definite and final assessment,

<sup>7</sup> Id. at 27-39; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Commissioners Grace E. Maniquiz-Tan and Dolores M. Peralta-Beley.

<sup>8</sup> Id. at 38-39.

<sup>9</sup> Id. at 34-38.

<sup>10</sup> *Rollo*, pp. 14-24.

<sup>11</sup> Id. at 23.

respondent is deemed totally and permanently disabled.<sup>12</sup> Therefore, the NLRC committed grave abuse of discretion when it reduced respondent's disability rating to Grade 11. Respondent should also be awarded attorney's fees equivalent to ten percent (10%) of his claim since he was forced to litigate and incur expenses to protect his right and interest.<sup>13</sup>

Hence, this appeal.<sup>14</sup>

### Issues

Petitioners argue that respondent is not entitled to total and permanent disability benefits since the company-designated physician, after competent and extensive treatment, was able to manage respondent's condition to the point where it only merits Grade 11 disability benefits. The assessment of the company-designated physician should also be upheld for being more credible. Respondent also failed to properly contest his findings in accordance with the procedure laid out in the POEA-SEC. Lastly, the award for damages and attorney's fees should be deleted for lack of merit.<sup>15</sup>

### Ruling of the Court

The petition lacks merit.

*The company-designated physician only issued an interim disability assessment*

In determining whether a seafarer is entitled to permanent and total disability benefits, the Court considers both the law and the contract governing a seafarer's overseas employment. Section 20 (A) (6) of the 2010 Philippine Overseas Employment Administration-Seafarer's Employment Contract (POEA-SEC) provides that "[t]he disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid." Nevertheless, the Court has repeatedly held that **before the disability grading under Section 32 of the POEA-SEC should be considered, the disability rating should be properly established and contained in a valid and timely medical report of a company-designated physician.** Thus, the foremost consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete, timely and appropriately issued; otherwise, the medical report shall be set aside, and the disability grading contained therein cannot be

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<sup>12</sup> Id. at 22.

<sup>13</sup> Id. at 20-23.

<sup>14</sup> Id. at 28.

<sup>15</sup> Id. at 36-37.

seriously appreciated.<sup>16</sup>

Moreover, while it is the primary responsibility of the company-designated physician to determine the disability grading or fitness to work of seafarers, the medical assessment or report must be complete and definite in order to be conclusive upon the courts. Indeed, 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.”<sup>17</sup> The Court has not hesitated to set aside tardy, doubtful, and incomplete assessments even if issued by a company-designated physician.<sup>18</sup>

In this case, We fully agree with the CA when it regarded the Grade 11 disability rating insisted on by petitioners as merely an interim assessment, to wit:

In the instant case, petitioner was medically repatriated on 30 September 2014. On 5 December 2014, Dr. Lim (company-designated physician) issued a letter to respondents informing the latter that Dr. Chuasuan, Jr. (attending physician) suggested a Disability Grade of 11 to petitioner. **After the said letter was issued, petitioner continued to undergo with his check-ups, medications, and rehabilitation until the end of January 2015. Thereafter, Dr. Lim did not issue an assessment as regards petitioner’s condition.**

Clearly, the letter issued by Dr. Lim was devoid of any definitive declaration as to petitioner’s capacity to return to work. A perusal of the letter shows that the disability was a merely a suggestion coming from the attending doctor (Dr. Chuasuan, Jr.) and not from the company-designated physician (Dr. Lim). Moreover, at the end of petitioner’s medication and rehabilitation, Dr. Lim did not issue a final assessment or final certification as regards petitioner’s fitness to work. It is noteworthy that while this case was still pending with the Labor Arbiter and the NLRC, respondents did not bother to follow-up with their company-designated physician as regards petitioner’s capacity to work. Such being the case, the letter issued by Dr. Lim, which merely forwarded Dr. Chuasuan, Jr.’s suggestion, is not the final assessment contemplated by the law. At the very least, the said assessment can only be considered as an interim assessment.<sup>19</sup> (Emphasis supplied)

The Grade 11 disability assessment given by the company-designated physician on 05 December 2014 cannot truly be considered definite and conclusive as respondent had to undergo further check-ups, medication and rehabilitation after such assessment. It must be noted that the last medical report by the company-designated physician was issued much later on 08 January 2015, and respondent’s rehabilitation lasted until 29 January 2015.

<sup>16</sup> *Tamin v. Magsaysay Maritime Corp.*, 794 Phil. 286, 296-297 (2016).

<sup>17</sup> *Magsaysay Mol Marine, Inc. v. Atraje*, 836 Phil. 1061, 1078 (2018).

<sup>18</sup> *Toquero v. Crossworld Marine Services, Inc.*, G.R. No. 213482, 26 June 2019.

<sup>19</sup> *Rollo*, p. 22.

The earlier issued disability rating, thus, cannot accurately account for the extent of sickness suffered by respondent.

Given the invalid disability assessment by the company-designated physician, it was unnecessary for respondent to even refer such findings to his doctor of choice, much less to a third doctor agreed upon by the parties. Such conflict resolution mechanism as outlined in Section 20(A)(3)<sup>20</sup> of the POEA-SEC only takes effect if the company-designated physician had issued a valid and definite medical assessment. Without such valid final and definitive assessment, the law already steps in to consider the seafarer's disability as total and permanent.<sup>21</sup>

*Respondent is entitled to attorney's fees and the payment of legal interest*

It must initially be noted that respondent no longer questioned the deletion of the awards of moral and exemplary damages in his petition for *certiorari* before the CA.<sup>22</sup> Neither did respondent raise the issue of his entitlement to these awards before the Court.<sup>23</sup> Hence, this matter need not be addressed in this case.

While respondent now prays for the award of sick wages, the Court notes in agreement with the NLRC that the same had already been paid as evidenced by the minutes of the conference hearing dated 14 May 2005.<sup>24</sup>

The Court sustains the award of attorney's fees equivalent to ten percent (10%) of his claim pursuant to Art. 2208<sup>25</sup> of the Civil Code of the Philippines, and since petitioners' act had compelled respondent to incur expenses to protect his interests. "Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award

<sup>20</sup> 3. x x x

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

<sup>21</sup> *Reasonable v. Maersk-Filipinas Crewing, Inc.*, G.R. No. 241674, 10 June 2020.

<sup>22</sup> *CA rollo*, pp. 22-23.

<sup>23</sup> *Rollo*, p. 113.

<sup>24</sup> *CA Rollo*, p. 38.

<sup>25</sup> Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x

In all cases, the attorney's fees and expenses of litigation must be reasonable.



of attorney's fees equivalent to [ten percent] of the award."<sup>26</sup>

Finally, the Court notes that both the labor tribunals and the CA failed to impose legal interest on the monetary awards. While unassigned, the failure to impose the correct legal interest amounts to plain error that the Court may still consider.<sup>27</sup> Thus, in keeping with prevailing jurisprudence,<sup>28</sup> all monetary awards shall earn legal interest at the rate of six percent (6%) per *annum* from finality of this Resolution until fully paid.

**WHEREFORE**, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated 10 April 2017 and Resolution dated 28 July 2017 promulgated by the Court of Appeals in CA-G.R. SP. No. 146842 are **AFFIRMED with MODIFICATION** in that the total monetary awards shall earn legal interest at the rate of six percent (6%) per *annum* from finality of this Resolution until fully satisfied.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**122-I**  
DEC 0 1 2022

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<sup>26</sup> *Marlow Navigation Phils., Inc. v. Quijano*, G.R. No. 234346, 14 August 2019 [Per J. Perlas-Bernabe].

<sup>27</sup> *See C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, 431 Phil. 11 (2002).

<sup>28</sup> *See Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013); *Lufthansa Technik Philippines, Inc. v. Cuizon*, G.R. No. 184452, 12 February 2020.



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