Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **March 2, 2022**, *which reads as follows:*

"G.R. No. 253876 (*Bibby Ship Management Phils., Inc. [now named as AND Crew Management Phils., Inc.]/Red Sea Marine Management DMCC, and/or Jonathan M. Palma, petitioners v. Vianney L. Guimbangunan, respondent*). — The Court resolves a Petition for Review on *Certiorari*[1] assailing the November 8, 2019 Decision[2] and the September 30, 2020 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 158515, which affirmed the National Labor Relations Commission's (NLRC) June 29, 2018 Decision[4] and September 19, 2018 Resolution.[5] The NLRC modified the Labor Arbiter's (LA) Decision[6] by declaring that Vianney L. Guimbangunan (Vianney), is entitled to permanent and total disability benefits, sickness allowance, and attorney's fees.

ANTECEDENTS

Vianney was hired by Bibby Ship Management Phils., Inc. (Bibby Ship) as Chief Cook for the vessel *Al Mahroosah*, owned by Red Sea Marine Management DMCC (Red Sea) for a period of "10 +/–1 months."[7] After pre-employment medical examination, he was declared fit for sea duty, and joined the vessel on September 12, 2015.[8] Sometime in January 2016,

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1 *Rollo*, pp. 3–42.

2 Id. at 48–62. The Decision was penned by Associate Justice Edwin D. Sorongon (Chair) with the concurrence of Associate Justices Jhosep Y. Lopez (now a member of the Court) and Geraldine C. Fiel-Macaraig.

3 Id. at 64–66–A. Rendered by the same Division.

4 Id. at 115–131. The Decision in NLRC LAC OFW (M) 03-000178-18 and NLRC NCR Case No. OFW (M) 03–03308–07 was penned by Presiding Commissioner Gerardo C. Nograles with the concurrence of Commissioners Gina F. Cenit-Escoto and Romeo L. Go.

5 Id. at 148–149.

6 Id. at 100–113. The December 4, 2017 Decision in NLRC NCR Case No. (M) 03–03308–17 was penned by Labor Arbiter Laudinner I. Samar.

7 Id. at 101.

8 Id. at 49.

Vianney suffered a back injury after lifting a sack of sugar weighing approximately 50 kilograms. The incident was reported, and Vianney was referred to a medical facility at Fujairah, United Arab Emirates.

A Medical Report dated May 13, 2016 was issued finding Vianney with *acute lumbar strain,* and was subsequently, repatriated on July 6, 2016.[9] The following day, Vianney reported to Bibby Ship and was promptly referred to the company-designated physician at the De Los Santos Medical Center for Magnetic Resonance Imaging (MRI). His MRI results revealed the following impressions, *mild lumbar spondylosis* and *diffuse disc bulge with superimposed broad-based posterior disc extrusion and flaval hypertrophy, L4-L5 level, causing moderate spinal canal and bilateral neuroforaminal stenoses with indentation of thecal sac, bilateral descending L5 and bilateral exiting L4 nerve roots.*[10]

On October 3, 2016, Vianney was admitted for surgical procedures of laminotomy, foraminotomy and discectomy. He was discharged on October 7, 2016, although he claimed that he still felt pain on his back.[11] On October 14, 2016, Vianney reported back to the company-designated physician, who referred him to a rehabilitation clinic for physical therapy. He was also given an interim disability grading of Grade 11 – slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk.[12] Vianney underwent physical therapy and rehabilitation. However, Dr. Jose Emmanuel F. Gonzales, a company-designated physician, prematurely terminated his treatment after two sessions of physical therapy on the ground that he already reached the maximum period of treatment of 120 days.[13]

On November 22, 2016, the company-appointed doctor issued a Medical Report with a statement that Vianney confided that "he does not want to go back to his previous sea duties and that he wanted to discontinue his Physical Therapy treatment[.]"The report also mentioned that "[i]f [Vianney] is entitled [to] any compensation, his current Disability Grade, based on the Amended [Philippine Overseas Employment Administration] (POEA) Contract falls under Grade 11 xxx."[14]

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9 Id.
10 Id. at 49–50.
11 Id. at 116.
12 Id. at 104.
13 Id. at 116.
14 Id. at 177.

Vianney then sought the second opinion of Dr. Francis R. Pimentel (Dr. Pimentel). Dr. Pimentel, in a Medical Report dated January 17, 2017, declared Vianney not fit for work with permanent disability. Vianney also consulted with Dr. Rogelio P. Catapang Jr., who similarly found him unfit for further sea duties.[15] Thus, on March 7, 2017, Vianney filed a Complaint[16] against Bibby Ship, Red Sea, and/or Jonathan M. Palma (collectively, petitioners) for disability benefits, sickness allowance, damages, and attorney's fees.

In his Position Paper, Vianney claimed that he was entitled to permanent and total disability benefits in view of the absence of a disability assessment from the company-designated physicians despite the lapse of the 120-day and the 240-day periods set by law. He was repatriated on July 6, 2016, but as of the filing of his complaint, his back injury had not been medically resolved, and neither Bibby Ship nor Red Sea had summoned him to return to work.[17]

For their part, petitioners countered that Vianney was not entitled to permanent total disability benefits. When he returned to the company-appointed doctor on November 22, 2016 for his third set of physical therapy, he received a Disability Grade 11 – slight rigidity or one-third (1/3) loss of motion or lifting power of the trunk. He also disclosed that he intended to discontinue his treatments. Thus, petitioners posited that it was Vianney who abandoned and prematurely terminated his medical treatments.[18]

On December 4, 2017, the LA rendered its Decision[19] granting Vianney permanent partial disability benefits equivalent to Grade 11 impediment, amounting to US$7,465.00, and attorney's fees. The LA ruled that the assessment was justifiably given after the 120-day period because Vianney required further medical treatment. The company-designated physicians' assessment were given credence over Vianney's independent doctors, who only examined him on January 17, 2017, and February 4, 2017, and their conclusions were based on the medical reports made by the company-designated physicians. The LA denied sickness allowance because Vianney was not medically repatriated.[20] The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing, this Office finds the Respondent solidarily liable to the Complainant for disability benefits

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15 Id. at 117.
16 Id. at 97–98.
17 Id. at 50–51.
18 Id. at 51.
19 Id. at 100–113.
20 Id. at 108–113.

corresponding to Grade 11, or US$7,465.00, or its peso equivalent at the time of payment.

Attorney's fees equivalent to ten [percent] (10%) of the monetary award is likewise granted.

Other reliefs are dismissed for lack of merit.

SO ORDERED.[21]

On appeal, the NLRC modified the LA's ruling by granting permanent and total disability benefits and sickness allowance to Vianney.[22] The NLRC held that the November 22, 2016 Medical Report was not a final and definite assessment of Vianney's medical condition. Petitioners even stopped Vianney's treatment after they did not set a schedule for further physical therapy,[23] and neither tried to contact Vianney to report to them nor the company-designated doctor. Petitioners' claim that Vianney wanted to discontinue treatment was unsubstantiated.[24] Thus, Vianney cannot be deemed to have abandoned his medical treatment. Finally, the CA held that the end of Vianney's contract did not absolve petitioners from liability for payment of sickness allowance.[25] Petitioners moved for reconsideration,[26] but was denied.[27]

Petitioners then sought recourse through a Petition for *Certiorari*,[28] which the CA dismissed.[29] The NLRC's ruling – that Vianney is entitled to

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21 Id. 112.

22 Id. at 115–131. The *fallo* of the NLRC Decision states:
WHEREFORE, premises considered, complainant's appeal is GRANTED while respondents' appeal is DISMISSED for lack of merit.
The Decision of Labor Arbiter Laudimer I. Samar dated December 4, 2017 is MODIFIED.
Respondents are ordered to jointly and severally pay complainant the increased amount of US$60,000.00 representing his permanent total disability benefits, plus US$2,692.00 as sickness allowance.
The award for attorney's fees equivalent to ten percent (10%) of the total monetary award is AFFIRMED.
SO ORDERED.

23 Id. at 127.

24 Id. at 122–124.

25 Id. at 130.

26 Id. at 132–146.

27 Id. at 148–149. In a Resolution, the NLRC resolved petitioners' Motion for Reconsideration as follows:
Acting on the Motion for Reconsideration filed by respondents dated August 1, 2018, relative to the Decision of the Commission dated June 29, 2018, We resolve to **DENY** the same as the motion raised no new matters of substance which would warrant reconsideration of the Decision of this Commission.
SO ORDERED.

28 Docketed as CA-G.R. SP No. 158515.

29 *Rollo*, p. 61. The dispositive portion reads:
WHEREFORE, the petition is **DISMISSED.** The June 29, 2018 *Decision* and September 19, 2018 *Resolution* of the public respondent National Labor Relations Commission in *NLRC LAC OFW (M) 03-000178-18/NLRC NCR Case No. OFW (M) 03-03308-17* are hereby **AFFIRMED.**
SO ORDERED.

permanent and total disability benefits because the company-designated physicians failed to issue a categorical medical assessment within the 120-day period provided by law, and there was no sufficient justification to extend the period to 240 days – was affirmed. The CA confirmed that the November 22, 2016 Medical Report was merely an interim assessment and was incomplete and inadequate.[30]

Failing to secure a reconsideration,[31] petitioners now seek review before the Court. They maintain that Vianney is not entitled to permanent and total disability benefits since he abandoned his medical treatments.[32] Even assuming that Vianney is entitled to disability compensation, it may only be equivalent to Grade 11 disability benefits because the company-designated physicians did not have the opportunity to issue a final disability rating.[33] Likewise, Vianney is not entitled to sickness allowance and attorney's fees because he was not medically repatriated, but was repatriated due to his finished contract.

In his Comment,[34] Vianney counters that the CA correctly affirmed the NLRC's award of total and permanent disability benefits and sickness allowance. He points out that the determination of whether he abandoned medical treatment provided by the company-designated physicians is a question of fact, which is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Besides, petitioners failed to prove that he intended to abandon his medical treatment.

Petitioners filed a Reply[35] reiterating the allegations in their petition.

RULING

We find the petition bereft of merit.

At the outset, we stress that a petition for review on *certiorari* under Rule 45 of the Rules of Court, involving labor cases, does not delve into factual questions, or in evaluation of the evidence submitted by the parties.[36] As an exception, however, the Court may look into the facts of the case

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30 Id. 56–61.
31 Id. at 66.
32 Id. at 14–30.
33 Id. at 30–35.
34 Id. at 158–195.
35 Id. at 203–227.
36 *Magsaysay Mol Marin, Inc. v. Atraje*,836 Phil. 1061, 1074 (2018).

when the findings of fact of the CA and the labor tribunals are conflicting,[37] as in this case. The exception applies in this case on account of the LA's lapse to rule on the factual issue of medical abandonment on the part of Vianney, and the conflicting findings of the LA, on the one hand, and the NLRC and the CA, on the other, pertaining to the nature of the November 22, 2016 Medical Report of the company-designated physicians.

Vianney did not commit medical abandonment.

A seafarer commits medical abandonment when he fails to complete his treatment before the lapse of the 240-day period, which then prevents the company physician from declaring him fit to work or assessing his disability. Differently stated, a seafarer is duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability rating by the company-designated physician.[38] Here, in an effort to escape liability, petitioners contend that Vianney abandoned his medical treatments in breach of his duty under the 2010 POEA - Standard Employment Contract (POEA-SEC).[39] To prove abandonment on the part of Vianney, petitioners presented the Affidavit of the Crewing Manager,[40] which states:

> 7. On 22 November 2016, the company doctor informed me that [Vianney] confided to them that he did not want to go back to his previous sea duties and that he wanted to discontinue the physical treatment already despite his prognosis being good;
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> 8. Upon obtaining this information, we have tried again contacting [Vianney] several times but still to no avail.[41] (Citation omitted)

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37 *Torreda v. Investment and Capital Corporation of the Philippines*, G.R. No. 229881, September 5, 2018.

38 *Lerona v. Sea Power Shipping Enterprises, Inc.*,G.R. No. 210955, August 14, 2019, citing *C.F. Sharp Crew Management, Inc. v. Orbeta*, 818 Phil. 710, 726–727 (2017).

39 AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS, or POEA Memorandum Circular No. 10 dated October 26, 2010. The relevant portion of which reads:
SEC. 20. COMPENSATION AND BENEFITS
A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
x xxx
3. x xxx
x xxx
[T]he 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.** (Emphases and underscoring supplied)

40 *Rollo*, p. 16.

41 Id. at 15–16.

Petitioners also submitted the November 22, 2016 Medical Report of the company-designated physician, which reads in part as:

> This is a follow up medical progress report on the case of C/Cook Vianney Guimbangunan, who was diagnosed and operated last October 4, 2016 for his Disc Herniation L4-L5 with Neuroforaminal Stenoses.
>
> This is his 137th day, post repatriation.
>
> He reported this morning after he completed his 3rd set of Physical Therapy treatment.
>
> Our Physiatrist had re-evaluated him today and physical examination findings showed no more post[-]operative pain but still with para lumbar and right inguinal pain with numbness.
>
> Mr. Guimbangunan had confi[d]ed [with] us today that he does not want to go back to his previous sea duties and that he wanted to discontinue his Physical Therapy treatment anymore, despite of our explanation that his prognosis is good. With his current symptoms of numbness and inguinal pain of 3/10, we just have to wait for 4-6 more weeks of Physical Therapy, before we can issue him his surgical clearance.
>
> We told him that he has to talk to his agency, regarding his decision.
>
> If he is entitled [to] any compensation, his current Disability Grade, based on the Amended POEA Contract falls under Grade 11 – Slight Rigidity or one third (1/3) loss of motion or lifting power of the trunk.[42]

The crewing manager's statement as to Vianney's wish to terminate his employment, as well as treatments, is hearsay since the crewing manager obtained the information from the company-designated doctors, and not from Vianney himself. Meanwhile, the company-designated doctors' declarations in the Medical Reports on the matter are speculative.

Under paragraph (3), Section 20(A) of the POEA-SEC, the seafarer shall submit himself to post-employment medical examination by a company-designated physician within three working days from repatriation. Thereafter, the seafarer shall regularly report on the dates prescribed by the company-designated physician for treatment. Failure of the seafarer to comply with the mandatory reporting requirement shall result in the forfeiture of his right to claim benefits. Accordingly, Vianney's obligation to report regularly to the company-designated physician entails the doctor's correlative duty to advise and schedule Vianney's subsequent medical consultation and treatment. As may be gleaned from the Medical Reports, the company-designated doctors no longer arranged for Vianney's next

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42 Id. at 177.

treatment schedule and merely relied on his supposed intent to end his employment and treatment. When the company-designated doctors did not set Vianney's next physical therapy session, they deprived Vianney of the opportunity to avail continued treatment, and, in effect, justified Vianney's failure to report back to them. Without a clearly laid treatment plan, there is no medical care for Vianney to abandon. The crewing manager's affidavit and the company-designated doctor's statements in the November 22, 2016 Medical Report, without more, fail to convince the Court that Vianney abandoned his medical treatment with the company-appointed doctor.

The November 22, 2016 Medical Report issued by the company-designated physician is not a final and definite assessment.

In *Corcoro, Jr. v. Magsaysay Mol Marine, Inc.*,[43] the Court synthesized the rules on the periods for the company-designated physician to render a final medical assessment on a seafarer's condition, *viz.*:

> 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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> 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. (Emphasis and citation omitted.)

To recall, Vianney was repatriated on July 6, 2016; thus, the 120-day period ended on November 3, 2016, and the extended period of 240 days ended on March 3, 2017. When the 120-day period ended on November 3, 2016, there was no final and definite assessment issued by the company-designated physician. Notably, the disability grading of Grade 11 – slight

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[43] G.R. No. 226779, August 24, 2020.

rigidity or one-third (1/3) loss of motion or lifting power of the trunk, issued on October 14, 2016 was an interim one. Also, worthy to note is that Vianney was still undergoing post-operative physical therapy in November 2016. Thus, there is sufficient justification to extend the period of diagnosis and treatment to 240 days. However, no final and definite medical assessment was released by the company-appointed doctor within the extended 240-day period that ended on March 3, 2017. This is because the November 22, 2016 Medical Report hardly passes as the final and definite assessment required by the POEA-SEC.

A final, conclusive, and definite assessment must clearly state whether the seafarer is fit to work, or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician, and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods mandated by law.[44] Here, the company-designated physician opined that Vianney still suffered with "*para lumbar and right inguinal pain with numbness,*" which necessitates another four to six weeks of physical therapy. In the alternative, the company-appointed doctor pronounced that, "[i]f [Vianney] is entitled [to] any compensation, his current Disability Grade, based on the Amended POEA Contract falls under Grade 11 – Slight Rigidity or one third (1/3) loss of motion or lifting power of the trunk."[45] On this point, the CA aptly found:

> To the mind of this Court, the supposed assessment leaves much to be desired. There was no forthright declaration that [Vianney] was fit to work again as a chief cook. Such lack of clarity can only militate again the cause of [petitioners]. The POEA-SEC clearly provides the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. Corollary, 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.[46]

Without a final and definite medical assessment rendered within the prescribed periods, Vianney's disability became permanent and total. In *Chan v. Magsaysay Corporation*,[47] the company-designated physician's medical assessment was not considered as complete, final and definite as it did not show how the disability assessment was arrived at. The assessment

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44 *Corcoro, Jr. v. Magsaysay Mol Marine, Inc.*, G.R. No. 226779, August 24, 2020.
45 *Rollo*, p. 57.
46 Id.
47 G.R. No. 239055, March 11, 2009.

merely stated that Chan attained maximum medical treatment and declared his disability at Grade 10.

We stress that the duty of the company-designated physician to issue a final and definitive assessment of the seafarer's disability within the prescribed periods is imperative. Failure to do so will render the doctor's findings nugatory and transform the disability suffered by the seafarer to one that is permanent and total.[48] This conclusive presumption of permanent and total disability consequently entitles the seafarer to the corresponding benefits.[49]

In addition to permanent total disability benefits, Vianney is entitled to the sickness allowance and attorney's fees awarded by the CA.

We affirm the NLRC and the CA's award of sickness allowance. Section 20(A)(3) of the POEA-SEC[50] does not inquire into the seafarer's reason for repatriation before sickness allowance may be awarded; it merely requires that the seafarer had been repatriated and that further medical attention is required on the injury or illness suffered during the term of his contract. In this case, there is no dispute that Vianney suffered his injury during the term of his employment aboard the vessel *Al Mahroosah*. After his repatriation, he underwent surgery under the care of the company-designated doctors. Clearly, petitioners are liable for the treatment of Vianney's injury.

Likewise, Vianney was properly awarded attorney's fees pursuant to Article 2208 (8) of the Civil Code,[51] which allows the award in actions for indemnity under workmen's compensation and employer's liability laws.[52]

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48 *Pastrana v. Bahia Shipping Services*, G.R. No. 227419, June 10, 2020.

49 Id., citing *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019.

50 SEC. 20. COMPENSATION AND BENEFITS. —
A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
x xxx
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.
x xxx

51 ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x xxx
(8) In actions for indemnity under workmen's compensation and employer's liability laws.
x xxx

52 *Salas v. Transmed Manila Corporation*,G.R. No. 247221, June 15, 2020.

Further, all monetary awards specified shall earn legal interest at the rate of 6% annually from the finality of the Resolution until fully paid.[53]

FOR THE STATED REASONS, the petition is **DENIED**. The Court of Appeals' November 8, 2019 Decision and the September 30, 2020 Resolution in CA-G.R. SP No. 158515 are**AFFIRMED** with **MODIFICATION** in that an interest at the rate of 6% *per annum* is imposed upon all monetary awards computed from the date of the finality of this Resolution until fully paid.

SO ORDERED." (Lopez, J., *J.*, no part. Inting, *J.*, designated additional member *per*Raffle dated September 22, 2021.)

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

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53 *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).