



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **July 27, 2022** which reads as follows:*

“G.R. No. 252168 – (C.F. Sharp Crew Management, Inc., and Norwegian Cruise Line, Ltd. v. Audwin E. Nanong) – This petition¹ for review on *certiorari* seeks to reverse the Decision² dated November 4, 2019 and Resolution³ dated February 26, 2020 of the Court of Appeals in CA-G.R. SP No. 157946 which granted Audwin E. Nanong’s (*Nanong*) claim for disability benefits and denied C.F. Sharp Crew Management, Inc. (*CF Sharp*) and Norwegian Cruise Line, Ltd.’s (*Norwegian*) motion for reconsideration, respectively.

Respondent Nanong filed a complaint for total and permanent disability benefits, sick wages, and hospital and medical expenses against CF Sharp and Norwegian before the Panel of Voluntary Arbitrators.⁴

Respondent essentially alleged that he worked for Norwegian as an Assistant Refrigeration Engineer for twelve years, under its Philippine-based agency, CF Sharp. On September 10, 2015, he again got hired by CF Sharp as an Assistant Refrigeration Engineer for Norwegian. His employment was governed by the contract executed between them and the Norwegian Seafarers Union-CBA (NSU-CBA).⁵ In October 2015, he got deployed on board M/S Norwegian Escape.

His work entailed him to operate and maintain the heat ventilation air-conditioning system of the cruise ship; regularly clean the galley greased duct twice a week using oven blaster chemical; overhaul the reefer plant sea water pumps; tighten pipes and nuts while saddling sea water pipes; repair all types of fridges, blast chillers, ice machines, cold rooms, and freezers; service all air-conditioning units and regularly clean air filters in the guest cabin rooms (sometimes occupied by ailing passengers); and regularly clean the intake air

¹ *Rollo*, p. 3–26.

² *Id.* at 56–69. Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Fernanda Lampas Peralta and Ronaldo Roberto B. Martin.

³ *Id.* at 91–93.

⁴ *Id.* at 306–333.

⁵ *Rollo*, pp. 56–57.

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filters of the ship. His work exposed him to harmful chemicals though he was usually equipped with protective gears.⁶

On May 15, 2016, while on board M/S Norwegian Escape, respondent suffered chills and experienced fever. He noticed a lump in his right perianal body and numbness on his left lower extremity. He took antibiotics as prescribed by the ship doctor but his condition did not improve. He suffered diarrhea, scrotal swelling, and difficulty in urination. He felt moisture in his buttocks and started to feel extreme pain. The abscess worsened to the point that it started to emit foul odor.⁷

The ship doctor eventually found him to be suffering from Necrotizing Fasciitis, a flesh-eating disease and an infection that kills the soft tissues of the body. The ship doctor referred him to the Larkin Community Hospital in Miami, Florida for treatment.⁸

He underwent an emergency surgery to control the spread of Necrotizing Fasciitis in his body. But his condition worsened and the infection had already spread to his scrotum and perineum. He underwent another surgery and the doctor discovered that he had extensive erythema and necrotic tissues in the perineum surrounding his anus and scrotum. All necrotic tissues and skin were excised but respondent had to undergo a reconstructive surgery. Skin grafting was performed to cover the exposed area of his perineum, scrotum, and penis.⁹

On July 6, 2016, respondent got transferred to the West Gables Rehabilitation Hospital where he was diagnosed with Fournier Gangrene, Disuse Myopathy, Urinary Retention, Acute Kidney Injury, Anemia, Severe Sepsis, Perineal Scrota and Penile Gas Cellulitis, Perirectal Abscess and Hypertension.¹⁰

After another skin grafting, he was billeted in a hotel to recuperate. On September 8, 2016, he was again readmitted to the hospital for closure and reversal of colostomy. On September 12, 2016, he experienced intermittent fever, chills, and sweating. He could no longer tolerate the pain around his perineum. Unfortunately, his perirectal abscess recurred. On October 4, 2016, he underwent a pelvic Magnetic Resonance Imaging (MRI) which showed anal fistula connective to the distal sigmoid colon. Rectal examination revealed that he had exquisite tender redding and fluctuant mass over his perirectal area. The mass was drained and sigmoid colectomy was performed to remove the fistula.¹¹

⁶ Id. at 57.

⁷ Id.

⁸ Id. at 57–58.

⁹ Id at 58.

¹⁰ Id.

¹¹ Id. at 58–59.

On November 3, 2016, the doctor at Larkin Community Hospital cleared him for repatriation. The doctor advised though that he be referred to the company's occupational therapist for disability assessment due to Fournier Gangrene with Peripheral Neuropathy.¹²

On **November 10, 2016**, respondent got repatriated. CF Sharp referred him to Shiphealth, Inc. where the doctor merely physically checked his scrotum. On **November 15, 2016**, the Shiphealth Medical Team/LCJ immediately declared him fit to work. But respondent still complained of the following: (1) intolerable pain when sitting on hard objects; (2) perianal pain when doing squat movements; (3) lower back pain on prolonged standing; (4) poor control of bowel movement; (5) difficulty in erection or no erection at all; (6) frequent urination; and (7) persistent numbness on the inner aspect of his left thigh. He thus sought the medical opinion of Dr. Amado San Luis (*Dr. San Luis*), a Neurologist.¹³

Dr. San Luis opined that he was totally and permanently disabled considering the lasting disability he continuously suffers as a result of Fournier Gangrene, *viz.*:¹⁴

Mr. Nanong had a rare and dreadful anaerobic infection in and around the pelvic area which could have happened only in a milieu or predisposition that allowed the organism to proliferate and cause havoc to his body. **Fournier's (sic) gangrene** is a severe, rapidly progressing and **life-threatening** anaerobic (gas passing) bacterial infection that spreads along and between fascias of the pelvic floor. The infection elicited biochemical reactions that injured the blood vessels and the nerves resulting to necrosis of the skin and muscular tissues. The uncontrolled infection spread in the blood and to cause life threatening sepsis.

Predisposing factors for the occurrence of this dreadful disease are poorly controlled diabetes, steroids, immune disturbances, trauma to the perineal areas and infection somewhere else. In Mr. Nanong's case the frequent squatting and saddling of pipes could have caused local trauma that weakened the ability of the pelvic muscles to contain infection. The physical stresses related to his work and exposure to chemicals might have weakened his immune system and predisposed him to this severe infection. **He cleaned up air filters and galley grease duct which are sources of bacteria that caused the infection.** The combination of these factors could very well have contributed to the occurrence of this overwhelming gangrenous infection making this horrifying disease work related. xxx

¹² Id at 59.

¹³ Id.

¹⁴ Id. at 59-60

The infection and the surgical procedures in the management could have injured the nerve and caused the pudendal neuralgia, bowel and bladder disturbances and the numbness in the inner aspect of the left thigh, scrotum and graft sites. These distressing manifestations are most likely permanent and will not allow him to go back to his usual work. He is therefore permanently disabled from pursuing his job.¹⁵

xxxx [M]ain complaints¹⁶ are:

- a. **He cannot tolerate sitting on hard objects because of perineal pain.**
- b. **He is unable to squat because this maneuver elicits perianal pain.**
- c. **On prolonged standing he experiences lower back pain.**
- d. **Bowel movement is disturbing xxx.**
- e. **He exerts much effort to elicit a partial and irregularly sustained erection and noted delayed ejaculation and flow of semen.**
- f. **Frequent urination.**
- g. **There is persistent numbness from the inner aspect of the left thigh up to the scrotum and the graft area.**

xxxx

Neurological examination:

xxx

There is 30% decreased sensation along the medial aspect of the left thigh. 50% decreased over the scrotum and graft. Allowing the scrotum to dangle freely elicited pain at the base (he claimed that he needed to wear a contraption that "carries" the scrotum).¹⁷
(Emphasis supplied)

xxx

Respondent, thus, sought compensation for his total and permanent disability.¹⁸

¹⁵ Id. at 60.

¹⁶ Id. at 183.

¹⁷ Id.

¹⁸ Id. at 60.

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For its part, CF sharp admitted that respondent suffered illness on board M/S Norwegian Escape. It countered though that he was given proper medical attention by the doctors abroad.¹⁹

It maintained that respondent was not entitled to total and permanent disability benefits for the following reasons:

First. Respondent underwent extensive medical treatment under the company designated doctor before he was declared fit to work. The findings of respondent's personal doctor were based solely on unverified allegations.²⁰

Second. Respondent failed to comply with the mandatory conflict resolution procedure (*i.e.*, referral to a third doctor) under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).²¹

Ruling of the Panel of Voluntary Arbitrators

By Decision²² dated December 28, 2017 the Panel of Voluntary Arbitrators denied respondent's claim for total and permanent disability benefits. It held that his failure to ask for referral to a third doctor, prior to filing the case, barred him from claiming any disability benefits.²³

Respondent moved for reconsideration. The Panel of Voluntary Arbitrators, for humanitarian consideration, granted him ₱200,000.00 financial assistance.²⁴

Ruling of the Court of Appeals

In its assailed Decision dated November 4, 2019, the Court of Appeals reversed, *viz.*:

FOR THESE REASONS, the petition is **GRANTED**. The December 28, 2017 Decision of the Panel of Arbitrators [of the Panel of Voluntary Arbitrators] is hereby **VACATED AND SET ASIDE**. Respondents C.F. Sharp Crew Management and Norwegian Cruise Line, Ltd., are **ORDERED TO PAY**, joint and severally, the Philippine Peso equivalent at the time of actual payment of the sum of **SIXTY THOUSAND US DOLLARS (US\$60,000.00)** representing total permanent disability benefits plus ten percent (10%) thereof as and for attorney's fees.

¹⁹ Id. at 61.

²⁰ Id.

²¹ Id.

²² Id at 95-107.

²³ Id. at 7-8.

²⁴ Id. at 108-109.

SO ORDERED.²⁵(Emphases in the original)

It held that the assessment of respondent's personal doctor Dr. San Luis prevails though he failed to ask for referral to a third doctor. The supposed final and definite assessment of the Shiphealth Medical Team/LCJ was hastily issued only five days after respondent's repatriation. The assessment merely enumerated the medical reports issued by the doctors abroad. No actual post-employment medical examination, test, or treatment was conducted at all. The assessment issued by Dr. San Luis, on the other hand, was based on some physical and neurological examinations. It held that Dr. San Luis' specific diagnosis of respondent's medical condition sufficiently established his total and permanent disability - he can no longer resume his duties as an Assistant Refrigeration Engineer.²⁶

It also noted that the Shiphealth Medical Team/LCJ disregarded the recommendation of the doctor abroad for respondent to undergo occupational therapy upon repatriation.²⁷

The appellate court clarified though that respondent is entitled to disability benefits granted under the POEA-SEC, not by the NSU-CBA, considering that his disability, though work related, did not result from an accident.²⁸

Lastly, the appellate court awarded respondent attorney's fees but denied his other monetary claims for lack of basis.²⁹

CF Sharp's motion for reconsideration was subsequently denied.³⁰

The Present Appeal

Petitioners CF Sharp and Norwegian now seeks affirmative relief via Rule 45 of the Rules of Court. It argues that the assessment issued by the company-designated medical team should be made to prevail over that of respondent's personal doctor. It posits that the supposed final and definite assessment issued by Shiphealth Medical Team/LCJ was based on the findings of the doctors abroad and in the Philippines. Dr. San Luis' assessment, on the other hand, was based solely on allegations. Lastly, it maintains that respondent's failure to ask for referral to a third doctor effectively barred him from claiming any disability compensation.³¹

²⁵ Id. at 69.

²⁶ Id. at 63-68.

²⁷ Id. at 65-66.

²⁸ Id. at 68.

²⁹ Id.

³⁰ Id. at 91-93.

³¹ Id. at 12-24.

Our Ruling

As a rule, the Court, not being a trier of facts, will not take cognizance of factual issues raised in a petition for review on *certiorari* under Rule 45. For Section 1 thereof ordains that such petition shall only raise questions of law. As an exception though, the Court may proceed to resolve both factual and legal issues, when the factual findings of the Court of Appeals are contrary to the findings of the Panel of Voluntary Arbitrators, as here.

Respondent's employment is governed by the contract he executed with CF Sharp and Norwegian on September 10, 2015, the POEA-SEC, and the Collective Bargaining Agreement (CBA) between them.

A final and definite disability assessment is necessary in order to reflect the true extent of the seafarer's sickness or injuries and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not commensurate with the prolonged effects of the injuries suffered. Before the disability ratings from the company-designated doctor may be considered, they should first be properly established and contained in a valid and timely medical report. Thus, the foremost consideration of the courts should be to determine whether the company-designated doctor's medical assessment or report was complete and appropriately issued; otherwise, the medical report shall be set aside, and the disability grading contained therein cannot be seriously appreciated.³²

To be conclusive, the company-designated doctors' medical assessments or reports must be complete and definite to give the proper disability benefits to seafarers.³³

The definiteness of a medical report pertains to the company-designated doctors' assessment of the seafarers' fitness to work or permanent disability within the period of 120 or 240 days. The company doctor must declare the seaman fit to work or assess the degree of his permanent disability. Without which, the characterization of a seafarer's condition as total and permanent will ensue because the ability to return to one's accustomed work before the applicable periods elapse cannot be shown.³⁴

Here, it is undisputed that the company-designated medical team issued an assessment within the 120/240-day period provided by law. We now proceed to determine whether this assessment qualifies as a final and definite assessment.

³² *Calera v. Hoegh Fleet Services Philippines, Inc.*, G.R. No. 250584, June 14, 2021.

³³ *Id.*

³⁴ *Id.*

The Shiphealth Medical Team/LCJ issued the alleged final medical assessment dated November 15, 2016, *viz.*:

Final Diagnosis:

- Fournier's (sic) Gangrene, resolved
- s/p Repeated Debridement of perineal and scrotal wounds (May 21, 24 and 31, June 14 and 24, 2016)
- s/p Loop colostomy formation and debridement (May 25, 2016 – Miami, Florida)
- s/p Cystostocopy and Cystostomy with suprapubic catheter placement and repeat debridement (May 25, 2016 – Miami, Florida)
- s/p Partial wound closure with wound VAC attachment (June 3, 2016 – Miami, Florida)
- s/p Skin Flap operation and gracilis myocutaneous flap closure (June 8, 2016 – Miami, Florida)
- s/p Autologous Tissue Skin Graft placement (June 24, 2016 – Miami, Florida)
- s/p Partial Thickness Skin Graft (June 27, 2016 – Miami, Florida)
- s/p Comprehensive In-patient Rehabilitative Treatment (July 6, 2016 to July 28, 2016 –Miami, Florida)
- s/p Partial Sigmoidorectal Colectomy with Primary side-to-side Functional Anastomosis, Lysis of Adhesion, Ligation of Sigmoid Fistula and Repair of Parastomal Hernia (October 7, 2016 – Miami Florida)

Given the patient's stable condition, that the surgical wounds have healed and no recurrence of infection was noted, no further treatment intervention was indicated for the patient. Mr. Nanong was deemed maximally (sic) medically improved and is fit to resume sea duty.

Prepared by:
(Sgd.)
Shiphealth Medical Team/LCJ.³⁵

As aptly observed by the Court of Appeals, the Shiphealth Medical Team/LCJ's alleged final and definite assessment was not based on any treatments or examinations in the Philippines. The medical team merely enumerated the procedures and operations performed on respondent by the doctors abroad. Thereafter, it concluded that he was fit to resume sea duties given his supposed stable condition, healed surgical wounds, non-recurrence of any infection, and that it appeared no further treatment was required for him.

Clearly, the Shiphealth Medical Team/LCJ failed to indicate the basis (*i.e.* whether tests or examinations were conducted) for its conclusion.

³⁵ Id. at 256.

CF Sharp cannot validly claim that it rightfully took into consideration the findings and medical reports of the doctors abroad in concluding that respondent was already fit to resume sea duties. Consider:

First. None of the medical reports issued abroad indicated that respondent was already fit to resume sea duties. On the contrary, the same doctor who cleared him for repatriation even recommended that he undergo “occupational therapy for disability assessment due to Fournier’s Gangrene with Peripheral Neuropathy.”³⁶

Second. Section 20(A)(3) of the 2010 POEA-SEC requires that a seafarer who got repatriated for medical reasons must, within three working days from his disembarkation, submit himself to a **post-employment medical examination** to be conducted by the company-designated doctor. The purpose of this three-day mandatory reporting requirement is **to allow the employer’s doctors a reasonable opportunity to assess the seafarer’s medical condition in order to determine whether his illness is work-related or not.**³⁷

A medical examination independent of those conducted abroad is therefore mandatory in order to arrive at a final and definite assessment of respondent’s medical condition for purposes of determining his entitlement to disability benefits.

In fine, the fit to work assessment issued by the Shiphealth Medical Team/LCJ on November 15, 2016 fell short of the parameters for a final and definite assessment.

In *Oberio v. C.F. Sharp*,³⁸ the Court ordained that for the assessment to be considered final and definite, it must have a scientific basis and be supported by medical records.

Further, in *Chan v. Magsaysay Maritime Corp.*,³⁹ the Court held that the medical assessment issued by the company-designated doctor cannot be considered complete, final, and definite as it did not show how the disability assessment was arrived at. The assessment merely stated that petitioner had attained maximum medical treatment and declared petitioner’s disability at Grade 10. A declaration of disability in the medical assessment, without more, cannot be considered complete, final, and definite.⁴⁰

³⁶ Id. at 181.

³⁷ *OSG Shipmanagement Manila, Inc. v. De Jesus*, G.R. No. 207344, November 18, 2020.

³⁸ See G.R. No. 238275, June 27, 2022.

³⁹ See G.R. No. 239055, March 11, 2020.

⁴⁰ Id.

The Court gives credence to the assessment of Dr. San Luis, respondent's personal doctor, that respondent remains unfit for sea duties. His assessment contains a detailed explanation of the causes and effects of Fournier Gangrene, a life-threatening infection. He explained that in the case of respondent, Fournier Gangrene left him with lasting disability which manifests in the form of neural autonomic dysfunction, erectile dysfunction, 30% decreased sensation along the medial aspect of his left thigh, 50% decreased sensation over the scrotum and graft area, pain in the scrotum, and frequent urination. Contrary to CF Sharp's claim, Dr. San Luis' assessment was actually based on physical and neurological examinations of respondent.⁴¹

In *Magsaysay Maritime Corp. v. Cruz*,⁴² the Court decreed that the company-designated doctor is expected to arrive at a definite assessment of the fitness of the seafarer to work or to determine the degree of his disability within a period of 120 or 240 days from repatriation, as the case may be. **If after the lapse of the 120/240-day period the seafarer remains incapacitated and the company designated doctor has not yet declared him fit to work or determined his degree of disability, the seafarer is deemed totally and permanently disabled.**

Thus, without a valid final and definite assessment from the company-designated doctors within the mandatory 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent. By operation of law, therefore, respondent is already totally and permanently disabled.⁴³

As for respondent's failure to observe the mandatory conflict resolution procedure, suffice it to state that referral to a third doctor is required only when the company-designated doctor issued a valid final and definite assessment and the seafarer's personal doctor disagrees with such assessment. When there is no valid final and definite assessment from the company designated doctor, as here, the mandatory referral to a third doctor does not apply.

Considering that respondent's disability did not result from an accident, he is entitled to the benefits granted under the 2010 POEA-SEC, not under the NSU-CBA which only covers disability arising from accidents.

⁴¹ *Rollo*, p. 183

⁴² 786 Phil. 451, 453 (2016).

⁴³ See *Carandan v. Dohle Seafarers Crewing Manila, Inc.*, G.R. No. 252195, June 30, 2021.

An award of attorney's fees of 10% of the total monetary award is warranted as he was compelled to litigate to satisfy his claim for disability benefits.⁴⁴

Lastly, the monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this Resolution until fully paid.⁴⁵

FOR THESE REASONS, the petition is **DENIED**. The Decision dated November 4, 2019 and Resolution dated February 26, 2020 of the Court of Appeals in CA-G.R. SP No. 157946 are **AFFIRMED with MODIFICATION**. Petitioners C.F. Sharp Crew Management, Inc. and Norwegian Cruise Line, Ltd. are held jointly and severally liable to respondent Audwin E. Nanong the following:

1. US\$ 60,000.00 or its Philippine Peso equivalent at the time of payment as total and permanent disability rating in accordance with the 2010 Philippine Overseas Employment Administration Standard Employment Contract;
2. Ten percent (10%) of the total monetary award as attorney's fees;
3. Six percent (6%) interest *per annum* of the total monetary award from the finality of this Resolution until fully paid.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

14 MAR 2023

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⁴⁴ *Calera v. Hoegh Fleet Services Philippines, Inc.*, G.R. No. 250584, June 14, 2021.

⁴⁵ See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

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*with copy of CA Decision dated November 4, 2019
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