



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **October 17, 2022** which reads as follows:

“G.R. No. 246768 (Jerald Gonzaga Ganarias, petitioner, vs. Magsaysay MOL Marine, Inc., and/or Magsaysay MOL Ship Management, Inc., and/or Captain Teodorico* F. De Guzman, respondents). — For this Court’s resolution is the Petition for Review on *Certiorari*¹ dated June 14, 2019 assailing the Decision² dated February 13, 2019 and Resolution³ dated April 22, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 157494, which reversed the Decision⁴ dated July 16, 2018 and Resolution⁵ dated August 17, 2018 of the National Conciliation and Mediation Board (NCMB). The NCMB directed respondent Magsaysay MOL Marine, Inc. (*Magsaysay MOL Marine*) and Captain Teodorico F. De Guzman (*Capt. De Guzman*) to jointly and severally pay petitioner Jerald Gonzaga Ganarias (*Ganarias*) total and permanent disability benefits amounting to US\$60,000.00 and attorney’s fees.

Magsaysay MOL Marine is a domestic corporation engaged in the manning business, with Capt. De Guzman as its president, while Magsaysay MOL Ship Management, Inc. is its foreign principal for the vessel “RMC ALTAIR.”⁶ Ganarias is a Filipino seafarer by profession.⁷

On October 13, 2015, Magsaysay MOL Marine engaged Ganarias to work as messman on board the vessel “RMC ALTAIR” for a period of nine months.⁸ The employment contract was also covered by a Collective Bargaining Agreement (CBA) called “IBF-JSU/AMOSUP-IMMAJ CBA”

* Also spelled as “Teodirico” in some parts of the *rollo*.

¹ *Rollo*, pp. 39-76.

² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Rodil V. Zalameda and Henri Jean Paul B. Inting (now members of this Court), concurring; *id.* at 8-29.

³ *Id.* at 31-32.

⁴ Penned by Chairperson Hector L. Hofileña, with Members Rosario C. Cruz and Allan S. Montaño, concurring; *id.* at 312-318.

⁵ *Id.* at 414-415.

⁶ *Id.* at 9.

⁷ *Id.*

⁸ *Id.*

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providing for certain disability benefits.⁹ Prior to Ganarias' deployment, he was subjected to pre-employment medical examination and was found physically fit.¹⁰ Ganarias was eventually deployed on board "RMC ALTAIR."¹¹

Eventually, Ganarias complained of productive coughs with night sweats and weight loss of 12 kilograms over a period of six weeks.¹² Thus, on March 29, 2016, Ganarias was brought to the Emergency Department of Nickol Bay Hospital, Karratha, Western Australia, where he was initially diagnosed with tuberculosis.¹³

On March 30, 2016, Ganarias was transferred to the Respiratory Unit of Royal Perth Hospital, where he was diagnosed with "*Pulmonary Mycobacterium Tuberculosis*" and placed under an antibiotic regime with anti-tuberculosis medications.¹⁴ He was confined for 45 days until May 13, 2016, when he was discharged with the advice to continue all tuberculosis antibiotics and attend outpatient follow-up at Anita Clayton Centre on May 18, 2016 for assessment for fitness to fly, among others.¹⁵

While awaiting his follow-up medical treatment, Ganarias stayed at the Mission to Seafarers, Fremantle, Western Australia.¹⁶ On June 8, 2016, the foreign doctor noted that respondent's three sputum specimens were positive for "Acid Fast Bacilli (Tuberculosis)."¹⁷ The foreign doctor informed him that until three negative sputum microscopy specimens can be obtained, the treating doctor is unable to certify that Ganarias is fit for air travel.¹⁸ On July 6, 2016, Ganarias' laboratory results showed that the three cultured samples have been reported as negative, which satisfied the fitness to fly criteria.¹⁹ Therefore, he was certified fit for repatriation and was medically repatriated on July 8, 2016.²⁰

On July 9, 2016, Ganarias reported to Magsaysay MOL Marine's office and was referred to Shiphealth, Inc. (*Shiphealth*) for post-employment medical examination, where he was diagnosed with "*Pulmonary Tuberculosis, class III.*"²¹ Shiphealth revised his medications and stepped his

⁹ Id.
¹⁰ Id. at 10.
¹¹ Id.
¹² Id.
¹³ Id.
¹⁴ Id.
¹⁵ Id.
¹⁶ Id.
¹⁷ Id.
¹⁸ Id.
¹⁹ Id.
²⁰ Id.
²¹ Id. at 11.

treatment regimen up to prevent drug resistance and progression of the disease.²²

For several months, the Pulmonary Services of Shiphealth subjected Ganarias to regular check-up and gave him medications for his treatment.²³ He returned to Shiphealth for work-up monitoring and treatment on July 14, July 19, August 6, August 22, September 1, September 16, October 14, November 14, December 14, 2016 and January 30, 2017.²⁴ On January 30, 2017, Shiphealth issued a Final Medical Report declaring that Ganarias has reached maximum medical improvement for his pulmonary tuberculosis and was already fit to work.²⁵ Thus:

Final Diagnosis:

- Pulmonary Tuberculosis, class IV, completed 9 months of anti-Koch's treatment

Recommendations:

- FIT TO WORK FOR THE CONDITION REFERRED, PER POEA CONTRACT
- CASE CLOSURE²⁶

Ganarias argued that while he was religiously and regularly attending the medical treatment and physical therapy sessions administered by the company-designated physician at Shiphealth, Magsaysay MOL Marine did not apprise him of his medical condition and did not give any copy of his medical records.²⁷ When Shiphealth discontinued his medical treatment, Ganarias asked for a copy of the Final Medical Assessment from them but they refused to furnish him with one and told him to inquire from Magsaysay MOL Marine instead.²⁸

To ascertain his true medical condition, Ganarias consulted an independent physician, Dr. Aileen V. Guzman-Banzon (*Dr. Guzman-Banzon*), Internal Medicine and Pulmonary Medicine specialist.²⁹ On March 16, 2017, Dr. Guzman-Banzon declared that Ganarias was noted to be positive on TB expert test and was recommended to undergo Pulmonary Tuberculosis Category II regimen.³⁰

22 Id.
 23 Id.
 24 Id. See also p. 222.
 25 Id.
 26 Id.
 27 Id. at 12.
 28 Id.
 29 Id.
 30 Id.

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In a letter dated March 28, 2017, Ganarias informed Magsaysay MOL Marine of the findings of Dr. Guzman-Banzon and requested for a “third medical opinion” for purposes of computing his disability benefits.³¹ Subsequently, in another letter dated April 18, 2017, Ganarias requested for assistance from AMOSUP Seaman’s Center for him to avail of the grievance procedure, in accordance with the provisions of the POEA-Standard Employment Contract (*SEC*) and IBF-JSU/AMOSUP-IMMAJ CBA.

Having elicited no response from Magsaysay MOL Marine, Ganarias filed a complaint for total and permanent disability benefits as well as moral and exemplary damages and attorney’s fees before the NCMB.³² In his position paper, he alleged the following:

- (i) While on board “RMC ALTAIR,” Ganarias suffered from pulmonary tuberculosis, which was initially treated at Nickol Bay Hospital and Royal Perth Hospital in Western Australia;
- (ii) On July 8, 2016, Ganarias was medically repatriated and referred to the company-designated physician, Shiphealth, Inc.;
- (iii) On January 30, 2017, after several months of medical treatment and physical therapy, Shiphealth, Inc. informed Ganarias that the medical treatment was to be discontinued, without informing him of the medical assessment on his condition;
- (iv) Ganarias thus consulted with Dr. Aileen Guzman-Banzon, who declared him to be still suffering from pulmonary tuberculosis;
- (v) In a letter dated March 28, 2017, Ganarias informed Magsaysay MOL Marine of the findings of Dr. Guzman-Banzon and requested for a third medical opinion as well as for copies of Shiphealth, Inc.’s medical reports, but to no avail; and
- (vi) On April 18, 2017, Ganarias sent another letter to Magsaysay MOL Marine as he wanted to avail of the grievance procedure, but Magsaysay MOL Marine still failed to heed the demand.³³

In sum, Ganarias prayed that his disability be declared total and permanent, entitling him to permanent total disability benefits under the POEA-SEC and CBA.³⁴

³¹ Id.

³² Id. at 13.

³³ Id.

³⁴ Id.

Meanwhile, Magsaysay MOL Marine alleged in their position paper that Ganarias was not entitled to disability benefits because his attending physicians declared him fit to work as of January 30, 2017, as evidenced by the medical report issued by Shiphealth on said date.³⁵ Moreover, the certification of Shiphealth as the company-designated physician, should be used as a primary, if not exclusive, source in determining the real state of Ganarias' condition.³⁶

On July 16, 2018, the NCMB rendered a Decision declaring Ganarias' disability as total and permanent. The NCMB ordered Magsaysay MOL Marine and Capt. De Guzman to jointly and solidarily pay Ganarias' disability benefits amounting to \$60,000.00 and attorney's fees.³⁷ On August 2, 2018, Magsaysay MOL Marine filed a Partial Motion for Reconsideration,³⁸ which the NCMB denied in a Resolution dated August 17, 2018.³⁹

Thus, Magsaysay MOL Marine filed a Petition for Review⁴⁰ before the CA. In a Decision⁴¹ dated February 13, 2019, the CA reversed the NCMB and favored Shiphealth's fit to work assessment over Dr. Guzman-Banzon's handwritten certification, which did not contain any categorical declaration that Ganarias was unfit to work.⁴² Moreover, the CA found that the record is bereft of proof to show that Magsaysay MOL Marine received Ganarias' letter dated March 16, 2017 and that Ganarias requested for a third medical opinion, considering that the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.⁴³ For failing to comply with the requirement of referral to a third-party physician, the CA concluded that Shiphealth's fit to work certification must prevail.⁴⁴

Aggrieved, Ganarias filed a Motion for Reconsideration,⁴⁵ which the CA denied in a Resolution⁴⁶ dated April 22, 2019.

Hence, this Petition.⁴⁷

In sum, Ganarias insists how Dr. Guzman-Banzon has declared him unfit to engage in his previous profession.⁴⁸ He also contends that Shiphealth

³⁵ Id. at 14.
³⁶ Id.
³⁷ Id.
³⁸ Id. at 319-335.
³⁹ Id. at 14.
⁴⁰ Id. at 416-462.
⁴¹ Id. at 8-29.
⁴² Id. at 23.
⁴³ Id. at 25.
⁴⁴ Id. at 26.
⁴⁵ Id. at 535-550.
⁴⁶ Id. at 31-32.
⁴⁷ Id. at 39-76.
⁴⁸ Id. at 52.

did not give him a copy of his medical condition's Final Assessment, which is a violation of his right to due process and fair play.⁴⁹ By operation of law, Ganarias posits that he suffers from a total and permanent disability as a legal consequence of failure of Magsaysay MOL Marine to furnish him a Final Assessment despite the lapse of 240 days.⁵⁰ Moreover, he contends that by Shiphealth's Medical Report dated September 5, 2016, it is apparent how he is still suffering from the same medical condition.⁵¹ Yet, on January 30, 2017, Shiphealth suddenly declared his illness to have been resolved.⁵² Finally, he maintains that the Final Assessment issued by Shiphealth was incomplete, as it did not contain a categorical statement that he was already fit to return to his work as a seafarer.⁵³

The sole issue before this Court is whether the CA correctly ruled that Ganarias is not entitled to total and permanent disability benefits and attorney's fees.

The Petition is unmeritorious.

A seafarer's right to disability benefits is a matter governed by law, contract, and medical findings. The relevant legal provisions are Articles 197 to 199 of the Labor Code and Section 2, Rule X of the Amended Rules on Employee Compensation (*AREC*). Likewise applicable are the POEA-SEC, the CBA, if any, and the employment agreement between the seafarer and the employer.⁵⁴

Here, the records show that the parties are covered by the CBA entitled IBF-JSU/AMOSUP-IMMAJ CBA. Article 28 thereof governs the disability compensation of seafarers covered by the agreement. We quote:

Article 28.1	A seafarer who suffers permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to wilful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. ⁵⁵
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⁴⁹ Id. at 55.

⁵⁰ Id. at 58.

⁵¹ Id. at 65.

⁵² Id.

⁵³ Id. at 66.

⁵⁴ *C.F. Sharp Crew Management, et al. v. Taok*, 691 Phil. 521, 533 (2012).

⁵⁵ *Rollo*, p. 185.

Indeed, for a seafarer to be entitled to disability compensation under the CBA, he must have suffered from an accident while in the employment of the company or while travelling to or from the ship. As a result of the accident, the seafarer's ability to work must have been reduced.

Here, it is readily apparent that petitioner's claim for disability benefits does not fall under the afore-quoted provision of the CBA. In the first place, no accident occurred.

Yet, we find that he is still entitled to total and permanent disability benefits.

In *Marlow Navigation Philippines, Inc. v. Osias*,⁵⁶ citing *Elburg Shipmanagement Phils, Inc. v. Quioge, Jr.*,⁵⁷ we laid down the following rules that shall govern if there is a claim for total and permanent disability benefits by a seafarer:

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
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.⁵⁸

The determination of a seafarer's fitness for sea duty is within the province of the company-designated physician, who has an initial period of

⁵⁶ 773 Phil. 428 (2015).

⁵⁷ 765 Phil. 341 (2015).

⁵⁸ *Marlow Navigation Philippines, Inc. v. Osias*, supra at 442.

120 days to determine the seafarer's fitness or disability.⁵⁹ The period may be extended to 240 days upon a showing of sufficient justification – when further medical treatment is required or when the seafarer is uncooperative.⁶⁰ As can be gleaned from the foregoing, two requisites must concur for a determination of a seafarer's medical condition: (1) the assessment must be issued within the 120/240 window, and (2) the assessment must be final and definite.⁶¹

Here, Shiphealth declared petitioner fit to work on January 30, 2017, or 206 days after his repatriation. Although 120 days had already elapsed then, there was a sufficient justification for Shiphealth to extend petitioner's period of medical treatment and assessment to 240 days. The Medical Report issued on October 19, 2016, or less than three weeks before the expiry of the 120-day period, shows that petitioner still required further medical treatment as the following actions were recommended: repeat Chest X-ray PA (FOR APPROVAL), clinical re-evaluation on October 28, 2016, re-evaluation with the pulmonary service on November 14, 2016, and continuous medication.⁶² To be sure, the period for medical treatment was properly extended to 240 days.

*The company-designated physician's
Medical Report was not final and
definitive*

Unfortunately, Shiphealth's Medical Report fell short of the final and definitive assessment required by law and jurisprudence to be issued by the company-designated physician.

Section 20(A)(3) of the 2010 POEA-SEC provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers.⁶³ To be conclusive, however, the reports made by company-designated physicians must be complete and definite.⁶⁴ 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 their capacity to resume work as such.⁶⁵ Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.⁶⁶

In the case at bench, while the company-designated physician determined petitioner's disability on the 206th day – well within the 240-day

⁵⁹ Id. at 443.

⁶⁰ Id.

⁶¹ *Magadia v. Elburg Shipmanagement, Inc. et al.*, G.R. No. 246497, December 5, 2019.

⁶² *Rollo*, p. 215.

⁶³ *Magadia v. Elburg Shipmanagement, Inc. et al.*, supra.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

period – the medical assessment is not such as to qualify it as a final and definitive assessment required by law and jurisprudence. The company-designated physician issued a disability assessment on January 30, 2017, which states:

Mr. Ganarias regularly followed up with the Pulmonology service during his treatment. He returned on the following dates: July 14, July 19, August 6, August 22, September 1, September 16, October 14, November 14, December 14, 2016 and January 30, 2017. Work up for monitoring was also done regularly.

On his latest re-evaluation, patient completed 9 months of treatment. He claimed to have gained weight with good appetite. He denied cough, fever and chills. Chest auscultation showed clear breath sounds. The rest of the physical examination findings was unremarkable. Recent chest x-ray showed stable lung findings. No further treatment intervention was warranted at this time. Pulmonology service deemed that the patient has reached maximum medical improvement for the condition referred.

Final Diagnosis:

- Pulmonary Tuberculosis, class IV, completed 9 months of anti-Koch's treatment

Recommendations:

- FIT TO WORK FOR THE CONDITION REFERRED, PER POEA CONTRACT
- CASE CLOSURE⁶⁷

The foregoing finding merely declared petitioner to have “completed nine months of anti-Koch's treatment” and that he “reached maximum medical improvement,” without specifying if petitioner has been cured of his tuberculosis. Clearly, petitioner still has the same condition, as confirmed by petitioner's independent physician:

To whom it may concern:

This is to certify that Jerald Ganarias came for pulmonary consult. He has chronic cough and CxR showed PTB both upper lobes. He has been treated for PTB for 6 months last year. On TB expert test he was noted to be positive hence he is recommended to undergo PTB Category II regimen. He is being referred to a TB DOTS clinic for treatment and follow-up.⁶⁸

In *Magadia v. Elburg Shipmanagement, Inc. et al.*,⁶⁹ this Court concluded that a medical report containing a similar observation as in the present case - “The specialist opines that [the] patient [had] already reached maximum medical treatment.” Thus:

⁶⁷ *Rollo*, p. 222.

⁶⁸ *Id.* at 144.

⁶⁹ *Supra* note 61.

Here, the Medical Report dated October 3, 2014 contained the following observations: “The specialist opines that [the] patient [had] already reached maximum medical treatment. If [the] patient is entitled to disability, his final disability grading is Grade 11 -loss of 1/3 lifting power of the trunk.”

There was nothing on record showing that the company-designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover. Instead, the medical report merely stated that petitioner suffered a disability grading of 11 *and that he had reached maximum medical care*. Clearly, this is hardly the “definite and conclusive assessment of the seafarer's disability or fitness to return to work” required by law from the company-designated physician because petitioner, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until January 6, 2015.

x x x x.

In *Tamin v. Magsaysay Maritime Corporation*, the Court held that the company-designated physician likewise failed to give a definitive rating on petitioner's disability *because the seafarer still experienced recurring pain in his left hand and was required to undergo further therapy sessions which extended beyond the 240 day window*.⁷⁰

In the same manner, petitioner in this case still suffered from tuberculosis. As Dr. Guzman-Banzon noted, he was still noted to be positive on TB expert test. To be sure, this Court cannot simply accept – hook, line, and sinker – the tenor of Shiphealth’s Medical Report to the extent that it declared petitioner fit to work, especially when petitioner’s ailment subsists.

Needless to say, the final medical assessment issued by Shiphealth on January 30, 2017 was hardly the definite and conclusive assessment of the seafarer’s disability or fitness to return to work because petitioner’s condition has not fully improved. In the absence of a final and definitive assessment from the company-designated physician, petitioner’s disability is deemed permanent and total by operation of law.

In *Barko International, et al. v. Alcayno*,⁷¹ the company-designated physician declared the seafarer fit to work after completion of the anti-Koch’s medication for six months. Despite said findings, this Court still awarded the seafarer with total and permanent disability benefits as the said seafarer

⁷⁰ Id. (Emphasis supplied, citations omitted).

⁷¹ 733 Phil. 183 (2014).

incapacitated him to work within the 120-day period. This is in addition to the fact that pulmonary tuberculosis is an occupational disease. Hence:

In the instant case, the respondent went through the PEME. While there was a notation of "pulmonary fibrosis right lower lung with calcified benign nodules cleared by the pulmonary specialist" in said report, he was declared fit for sea duties. The respondent was able to board the vessel on December 1, 2005. On February 8, 2006, he was repatriated to Manila on medical grounds. He was diagnosed to be suffering mainly from *tuberculous adenitis* and was treated thereof. The respondent asserted that he contracted the illness while on board the vessel. Notwithstanding the medical treatment he underwent, he was unable to go back to his sea duties for a period of more than one hundred twenty (120) days.

The Court finds merit in the respondent's contention regarding the suspicious gesture of the petitioners in having a medical certification declaring him as "fit to work" despite apparent clear knowledge that he has been subjected to a long period of medical treatment. Both the company-designated physician and the respondent's private physician had similar findings that the respondent is suffering from *tuberculous adenitis* which is occupational in character and compensable under the attendant circumstances. The CA's disquisition on the matter reads:

Under Section 32-A (18) of the POEA Memorandum Circular No. 09, Series of 2000, "Pulmonary Tuberculosis" shall be considered as an occupational disease in "any occupation involving constant exposure to harmful substances in the working environment in the form of gases, fumes, vapors and dust." It is well to point out that *among*[respondent's] daily tasks as an able bodied seaman were to paint and chip rust on deck or superstructure of ship and to give directions to crew engaged in cleaning wheelhouse and quarterdeck, which constantly exposed him to different types of hazardous chemicals, such as paints, thinners, and other forms of cleaning agents and harmful substances, that may have invariably contributed to the aggravation of his illness. (Citations omitted)

Indeed, the fact that a certification declaring the respondent as fit to work contrary to a prior finding of tuberculosis can be considered as a ploy to circumvent the law intended to defeat the respondent's right to be compensated for a disability which the law considers as permanent and total.

Permanent total disability means "disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do." And, as aptly observed by the LA and affirmed by the CA:

While [the respondent] may have pulmonary fibrosis [right] lower lung with calcified benign as per PEME, it must be noted that he was declared fit for work x x x. Hence, he was able to board the vessel.

The sickness that complainant now seeks for disability benefit is tuberculosis adenitis and diabetes mellitus.

'Tuberculosis is a contagious infection caused by the airborne bacterium *Mycobacterium tuberculosis*. It is usually transmitted by inhaling air contaminated by the bacterium. Active tuberculosis usually begins in the lungs (pulmonary tuberculosis). Tuberculosis that affects other part of the body (extrapulmonary tuberculosis) usually comes from pulmonary tuberculosis that has spread through the blood. Tuberculosis adenitis is a form of tuberculosis which affects the lymph nodes. The diagnosed illness Tuberculosis Adenitis is considered as work-related under Section 32-A, No. 18 of the Amended POEA Contract.'

This was found in the June 15, 2006 findings of Dr. Nicomedes Cruz, the company[-]designated physician.

Clearly, the sickness is work[-]related and regarded as an occupational disease. Thus, the same is compensable.

Again, what is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability, and not the actual injury itself. Undoubtedly, the illness of the respondent which incapacitated him to work more than 120 days after repatriation is considered as work-related which entitles him to disability benefits.⁷²

While the aforementioned case made a reference to the 120-day period and not the allowable extension of up to 240 days, the guideline followed was whether the seafarer would be able to perform their customary work for more than the allowable period by law. In this case, despite the lapse of the 240-day period, petitioner remained unable to perform his customary work despite the completion of the anti-Koch's treatment. Similar to the case of *Alcayno*, the completion of this treatment does not automatically mean that the seafarer is already fit to work. To the contrary, upon examination with another physician, petitioner was still found to be suffering from tuberculosis. More than the completion of sessions of treatment, it is the seafarer's condition and response to said treatment that must be considered especially when the illness involved is an occupational disease.

Thus, respondents cannot simply declare petitioner as fit to work on the basis alone of the completion of his treatment. Without a proper assessment of his actual condition, respondents cannot be said to have fulfilled their duty of issuing a final and definitive assessment. Correspondingly, non-compliance with the third-doctor-referral provision should not prejudice petitioner's claim. When there is no valid final and definitive assessment from a company-designated physician, the third-doctor rule does not apply.⁷³

Time and again, this Court has ruled that in disability compensation, it is not the injury which is compensated but rather, it is the incapacity to work

⁷² Id. (Citations omitted)

⁷³ *Orient Hope Agencies, Inc., et al. v. Jara*, 832 Phil. 380, 406 (2018).

resulting in the impairment of one's earning capacity.⁷⁴ Considering the persistence of petitioner's illness, it is highly improbable for him to perform his usual tasks as a messman in any vessel, which effectively disabled him from earning wages in the same kind of work or similar nature for which he was trained. Petitioner's disability resulted in his loss of earning capacity and, therefore, entitles him to total and permanent disability benefits.

Finally, since petitioner was compelled to litigate due to respondents' denial of his claims, the award of attorney's fees was proper.⁷⁵

FOR THESE REASONS, the Petition is **GRANTED**. The Decision dated February 13, 2019 and Resolution dated April 22, 2019 of the Court of Appeals in CA-G.R. SP No. 157494 are **REVERSED** and the Decision of the National Conciliation and Mediation Board dated July 16, 2018 is **REINSTATED**. Respondents Magsaysay MOL Marine, Inc., and/or Magsaysay MOL Ship Management, Inc., and/or Captain Teodorico F. De Guzman are hereby ordered to jointly and severally pay petitioner Jerald Gonzaga Ganarias disability benefit in the amount of US\$60,000.00 plus 10% thereof as attorney's fees, or the equivalent of the total amount in Philippine currency, at the rate of exchange prevailing on the date of payment.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

23 JUN 2023

⁷⁴ *Magadia v. Elburg Shipmanagement, Inc. et al.*, supra note 61.

⁷⁵ *Id.*

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