Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PAULINO M. ALDABA, Petitioner,	**G.R. No. 218242**
	Present:
- versus -	CARPIO,* *J., Chairperson,* PERALTA,** MENDOZA, LEONEN,*** and MARTIRES, *JJ.*
CAREER PHILIPPINES, SHIP-MANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT LTD., and/or VERLOU CARMELINO, Respondents.	**Promulgated:** 21 JUN 2017

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DECISION

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated June 4, 2015 of petitioner Paulino M. Aldaba that seeks to reverse and set aside the Decision[1] dated November 19, 2014 of the Court of Appeals (*CA)* in CA-G.R. SP No. 127057 reversing the Decision dated July 16, 2012 and Resolution dated August 31, 2012 of the National Labor Relations Commission (*NLRC*), 2nd Division granting petitioner total and permanent disability benefits in the amount of US$60,000.00.

The facts follow.

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* On wellness leave.

** Acting Chairperson, per Special Order No. 2445 dated June 16, 2017.

*** On leave. Internal Rules of the Supreme Court, Rule 12, Sec. 4. – *Leaving a vote.* – A Member who goes on leave or is unable to attend the voting on any decision, resolution, or matter may leave his or her vote in writing, addressed to the Chief Justice or the Division Chairperson, and the vote shall be counted, provided that he or she took part in the deliberation.

[1] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Melchor Quirino C. Sadang and Pedro B. Corales.

Petitioner Paulino M. Aldaba was hired by respondents Career Philippines Shipmanagement Incorporated, and Verlou Carmelino, in behalf of their foreign principal, petitioner Columbia Shipmanagement Ltd., as *Bosun* for work on board the vessel M/V Cape Frio with a basic monthly salary of US$564.00.

In the course of the performance of his duties, on April 4, 2011, petitioner was accidentally hit by twisted chains made of heavy metal causing him to fall and eventually resulted to a back injury.

Thus, on April 7, 2011, when the vessel was at the Port of Hongkong, petitioner was examined at the Quality Health Care Medical Center by Dr. Thomas Wong, with the examination showing that petitioner suffered a fractured back and was declared unfit to work. As such, he was immediately repatriated.

On April 11, 2011, upon his arrival in Manila, petitioner was referred by respondents to the company-designated physician at NGC Medical Specialist, Inc. for treatment and rehabilitation. The x-ray examination on his back showed a "misalignment of distal sacrum that may suggest fracture." In addition, the x-ray examination on his thoracic spine revealed an "anterior wedging deformity, T11 Osteopenia and early degenerative osseus changes."

The company-designated physician, after the continuing evaluation and medical treatment for 163 days, issued a Medical Report dated September 29, 2011 that reads as follows:

> 1. The patient has reached maximum medical cure.
> 2. The final disability grading under the POEA schedule of disabilities is Grade 8 – moderate rigidity or two thirds (2/3) loss of Thereafter, (sic) motion or lifting power of the trunk.

Petitioner, on the other hand, consulted Dr. Misael Jonathan A. Ticman, an Orthopedic Surgeon and Diplomate, Philippine Board of Orthopedics, for an independent assessment of his medical condition and came out with findings showing that petitioner's injury resulted to his permanent disability, thus, making him unfit to work as a seafarer in any capacity.

As a result, petitioner demanded for total disability compensation, but respondents did not heed such demand. Respondents, however, expressed willingness to compensate petitioner the amount corresponding to Grade 8

disability rating based on the medical findings of the company-designated physician.

Aggrieved, petitioner filed a complaint for payment of total and permanent disability benefits, as well as medical expenses, with prayer for damages and attorney's fees against respondents with the Arbitration Board of the NLRC.

The Labor Arbiter, on April 27, 2012, decided in favor of respondents in a Decision[2] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to jointly and severally pay complainant Paulino M. Aldaba disability benefits in the amount of US$16,795.00 which is equivalent to Grade 8 disability under the POEA Contract, or its peso equivalent at the time of payment.
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> All other claims are dismissed for lack of merit.
>
> SO ORDERED.

On appeal, the NLRC, in its Decision[3] dated July 16, 2012 reversed the Decision of the Labor Arbiter and ruled that petitioner is entitled to a permanent total disability compensation, thus:

> WHEREFORE, the Decision dated April 27, 2012 of Labor Arbiter Pablo A. Gajardo is hereby reversed. Respondents, jointly and severally, are hereby ordered to pay Complainant-Appellant, by way of permanent and total disability compensation, the amount of US$60,000.00, pursuant to the POEA Standard Contract and to pay attorney's fees of 10% of the total award.
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> SO ORDERED.

After respondents' motion for reconsideration was denied by the NLRC, they elevated the case to the CA. On November 19, 2014, the CA reversed the Decision of the NLRC and reinstated the Decision of the Labor Arbiter, thus:

> **WHEREFORE**, premises considered, the present Petition for *Certiorari* is **GRANTED**. The assailed Decision dated July 16, 2012 and the Resolution dated August 31, 2012 of the National Labor Relations Commission (NLRC)-2nd Division in LAC NO. 05-000486-12 are hereby **REVERSED** and **SET ASIDE**. The Decision dated April 27, 2012 of

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2 CA *rollo*, pp. 67-79.

3 *Id.* at 50-60.

the Labor Arbiter in NLRC-NCR-OFW (M) 12-19022-11 is hereby **REINSTATED**.

SO ORDERED.[4]

Hence, the present petition wherein the petitioner assigns the following errors:

> The Honorable Court of Appeals committed REVERSIBLE ERROR CONTRARY TO EXISTING JURISPRUDENCE in promulgating the assailed decision and resolution
>
> I.
> WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS
>
> II.
> WHEN IT SOLELY GAVE CREDENCE TO THE CERTIFICATION OF THE COMPANY PHYSICIAN WITHOUT CONSIDERING THE FINDINGS OF PETITIONER'S DOCTOR OF CHOICE.[5]

Petitioner insists that he is entitled to permanent and total disability benefits because of his inability to perform his job for more than 120 days, citing a litany of cases decided by this Court. He further argues that the fact that he had been evaluated by respondents' company physicians is substantial compliance with the provision of the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels" imposed by the Philippine Overseas Employment Administration (*POEA*) and does not preclude him from seeking medical attention to a physician of his own choice, more so, if the purpose of which is to provide an independent medical assessment of his true condition. According to him, the law does not exclusively vest to the company-designated physician the sole authority to assess and certify the extent of the injury/sickness for purposes of payment of compensation and disability benefits. Lastly, petitioner asserts that he is entitled to the award of damages because the act of respondents in failing to pay what is due him shows utter disregard for public policy to protect labor, which is a clear indication of bad faith and attorney's fees as respondents' act has compelled him to incur expenses to protect his interest.

Respondents, on the other hand, in their Comment dated September 3, 2015, contend that the 240-day rule enunciated in *Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*,[6] and subsequent rulings of this Court, should govern, considering that the complaint of petitioner was

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4 *Rollo*, p. 41. (Emphasis in the original)
5 *Id.* at 10.
6 588 Phil. 895 (2008).

filed on December 28, 2011. In the said decision of this Court, it was ruled that a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. They also aver that the failure of petitioner to follow the procedure of submitting conflicting assessments to the opinion of an independent third doctor bars his claim for disability benefits. Finally, they insist that the claim for damages and attorney's fees is bereft of any factual and legal basis as there can be no malice, bad faith or ill-motive that can be imputed against petitioner.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court[7] are reviewable by this Court.[8] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[9] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;'

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7 Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. *Filing of petition with Supreme Court.* A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

8 *Philippine Transmarine Carriers, Inc. v. Cristino*, G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

9 *Id.*, citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[10]

Whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, however, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC. Thus, this Court shall now proceed to resolve the issue raised in the petition for review.

The petition is meritorious.

In *Jebsen Maritime, Inc. v. Ravena*,[11] the Court summarized the applicable provisions that govern a seafarer's disability claim, thus:

> The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.[12]
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> By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.
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> By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[13]
>
> Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.
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> Pertinent to the resolution of this petition's factual issues of compensability (of *ampullary* cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC[14] (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:
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> SECTION 20. COMPENSATION AND BENEFITS

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10 *Id.* at 127-128, citing *Co v. Vargas*, 676 Phil. 463, 471 (2011).

11 G.R. No. 200566, September 17, 2014, 735 SCRA 494, 507-510. (Emphasis in the original).

12 *Vergara v. Hammonia Maritime Services, Inc., et al., supra* note 6, at 908; *C.F. Sharp Crew Management, Inc., et al. v. Taok*, 691 Phil. 521, 533 (2012); *Jebsen Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*, 678 Phil. 938, 944 (2011).

13 *Vergara v. Hammonia Maritime Services, Inc., et al., supra* note 6.

14 POEA Memorandum Circular No. 09, Series of 2000. Note that per the POEA Memorandum Circular No. 10, Series of 2010, the POEA amended amending for the purpose the 2000 POEA-SEC.

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage **until he is declared fit to work by the company-designated physician or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall it exceed one hundred twenty (120) days.

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. 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.

4. **Those illness not listed in Section 32 of this Contract are disputably presumed as work related.**

x x x x

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the

> rates and the rules of compensation applicable at the time the illness or disease was contracted.
>
> x x x
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> As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.
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> Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions. (Emphasis supplied)

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[15]

It is beyond dispute that petitioner suffered an illness that is work-related during the term of his employment contract and such is compensable. The issue now is whether or not petitioner is entitled to permanent and total disability benefits because of his inability to perform his job for more than 120 days, which respondents counter as not being the case since the 240-day rule should govern.

This Court, in *Marlow Navigation Philippines, Inc. v. Osias,*[16] thoroughly discussed the120-day and 240-day periods, thus:

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15 *Jebsen Maritime, Inc. v. Ravena, supra* note 11, at 511-512.

16 G.R. No. 215471, November 23, 2015, 775 SCRA 342, 352-359. (Emphasis ours).

As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil*,[17] in this wise: "[permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."[18]

The present controversy involves the permanent and total disability claim of a specific type of laborer—a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

ART. 192. Permanent Total Disability.

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(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for **more than one hundred twenty days**, except as otherwise provided in the Rules; [Emphasis supplied]

The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [Emphasis and Underscoring Supplied]

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*)[19] whose Section 20 (B) (3) states:

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17 150-C Phil. 133 (1972).

18 *Id.* at 139.

19 Note that there is already a 2010 POEA-SEC. The present case, however, is still governed by the 2000 POEA-SEC as the employment contract was entered into before 2010.

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but **in no case shall this period exceed one hundred twenty (120) days.**[Emphasis Supplied]

In *Crystal Shipping, Inc. v. Natividad,*[20] *(Crystal Shipping)* the Court ruled that "[permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."[21] Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The *Court in Vergara v. Hammonia Maritime Services, Inc.*[22] *(Vergara)*, however, noted that the doctrine expressed in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made <u>because the seafarer requires further medical attention</u>, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. [Emphasis and Underscoring Supplied]

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

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20 510 Phil. 332 (2005).

21 *Id.* at 340. The respondent therein was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment.

22 *Supra* note 11, at 912.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar (Kestrel).*[23] In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a maximum of 240 days. In *Kestrel,* however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara,* the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.*[24] stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

Then came *Carcedo v. Maine Marine Phils., Inc. (Carcedo).*[25] Although the said case recognized the 240-day rule in Vergara, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law.**" Carcedo further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."[26]

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr,*[27] *(Elburg)*, it was affirmed that the Crystal Shipping doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated — that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

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;

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23 702 Phil. 717 (2013).
24 G.R. No. 210634, January 14, 2015, 746 SCRA 287.
25 G.R. No. 203804, April 15, 2015, 755 SCRA 543.
26 *Id.*, citing *Kestrel Shipping Co., Inc. v. Munar*, *supra* note 23, at 810.
27 G.R. No. 211882, July 29, 2015, 764 SCRA 430.

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.

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.

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Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: **(1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient**

justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[28] this Court set forth the following guidelines, to wit:

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.

In the present case, the company-designated physician was only able to issue a certification declaring respondent to be entitled to a disability rating of Grade 8 on the 163rd day that petitioner was undergoing continuous medical treatment, which is beyond the period of 120 days, without justifiable reason. It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period. In this case, the respondents failed to do so. Therefore, the company-designated physician, failing to give his assessment within the period of 120 days, without justifiable reason, makes the disability of petitioner permanent and total.

As such, the issue as to whether or not the company-designated physician be the sole authority to assess and certify the extent of the

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[28] *Supra* note 27, at 453-454. (Emphasis ours)

injury/sickness for purposes of payment of compensation and disability benefits is now rendered moot.

This Court, however, does not see the need to award petitioner damages and attorney's fees because petitioner has not given us any proof or valid reason upon which to grant such award.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated June 4, 2015 of petitioner Paulino M. Aldaba is **GRANTED** and the Decision dated November 19, 2014 of the Court of Appeals in CA-G.R. SP No. 127057 is **REVERSED** and **SET ASIDE**. Consequently, the Decision dated July 16, 2012 and Resolution dated August 31, 2012 of the National Labor Relations Commission, 2nd Division, granting petitioner total and permanent disability benefits in the amount of US$60,000.00 is **AFFIRMED** and **REINSTATED,** with the **MODIFICATION** that the award of attorney's fees be omitted.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On wellness leave
ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice