Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOLLY D. TEODORO, Petitioner, - versus - **TEEKAY SHIPPING PHILIPPINES, INC.,** Respondent.	**G.R. No. 244721** Present: PERLAS-BERNABE, *S.A.J.*, Chairperson, REYES, A., JR., CARANDANG,* INTING, and DELOS SANTOS, *JJ.* Promulgated: 05 FEB 2020

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 24, 2018 and the Resolution[3] dated February 8, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153637 which affirmed with modifications the Decision[4] dated August 16, 2017 of the Panel of Voluntary Arbitrators (PVA), National Conciliation and Mediation Board (NCMB), Department of Labor and Employment (DOLE), granting petitioner Jolly D. Teodoro (petitioner) partial and permanent disability benefits only and deleted the award of attorney's fees.

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* Designated Additional Member per Raffle dated February 3, 2020.

1 *Rollo*, pp. 14-27.

2 Id. at 29-41. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando (now a member of this Court), concurring.

3 Id. at 44-45. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Ricardo R. Rosario and Carmelita Salandanan Manahan, concurring.

4 Id. at 195-205. Signed by Chairperson MVA Jesus S. Silo and Panel Member MVA Gregorio C. Biares, Jr., with Panel Member MVA Gregorio B. Sialsa dissenting.

The Facts

On February 17, 2015, petitioner was hired as Chief Cook by respondent Teekay Shipping Philippines, Inc. (TSPI), for its principal, Teekay Shipping Limited (TSL), on board the vessel M.T. Al Marrouna for a period of eight (8) months, with such being covered by a Contract of Employment[5] and a Collective Bargaining Agreement[6] (CBA) between TSPI, on behalf of TSL, and the Philippine Seafarers' Union (PSU) - ALU TUCP.[7] After undergoing the required pre-employment medical examination, petitioner was declared fit for duty[8] by the company-designated physician notwithstanding the former's declaration of Dyslipidemia and diabetes mellitus. For this reason, petitioner was made to sign an Affidavit of Undertaking[9] relative to his health condition before boarding the vessel on March 14, 2015.[10]

On June 30, 2015, the ship arrived at the port of Fujairah, United Arab Emirates, to get its food supplies. Petitioner claimed that aside from preparing meals for the officers and crew, he also assisted in hauling the food provisions from the upper deck of the ship to its reefer where the food items were frozen and stored at the meat and fish rooms, respectively. Because of the sudden extreme changes in temperature from the upper deck to the freezer during the hauling and storage process, petitioner experienced a fever-like symptom with body pain and blindness in his left eye the following day.[11] He was brought to a hospital in India where he was diagnosed with "Left Eye Endophthalmitis with Orbital Cellulitis;" subsequently, he was repatriated on July 10, 2015 for further medical treatment.[12]

Upon arrival in Manila, petitioner was referred to a company-designated physician at the Ship to Shore Medical Assist and his condition was confirmed.[13] He was admitted at Medical City where he was given intravenous antibiotics and subjected to visual acuity testing, orbital CT scan and B scan ultrasound, and other laboratory examinations to monitor his eye ailment.[14] He was found to have "Idiopathic Orbital Inflammatory Disease, Left Eye; Retinal Detachment, Left Eye; Panuveitis, Left Eye; Dacryoadenitis, Left Eye," and thereafter, referred to the Marine Medical Services for further evaluation and treatment.[15]

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5 CA *rollo*, p. 96.
6 See id. at 136-141.
7 See *rollo*, p. 63.
8 See Medical Examination Report dated January 6, 2015; CA *rollo*, pp. 97-98.
9 See *rollo*, pp. 127-129.
10 See id. at 70.
11 See id. at 71-72.
12 See CA *rollo*, p. 92.
13 See letter dated July 14, 2015; id. at 99-100.
14 See Discharge Summary/Clinical Abstract; id. at 102.
15 See id. at 92.

In a Medical Report[16] dated November 3, 2015, the company-designated physician explicated that petitioner's eye condition may have been triggered by his diabetes mellitus which, in addition to lack of sleep or inadequate rest, impaired his immune system, thus, making his body susceptible to infections. Hence, it was not work-related. Moreover, petitioner's visual prognosis and recovery were found to be poor due to the permanent loss of vision in one eye despite medications, and as such, he was declared to be unfit for further sea duties.[17] He was also advised to wear polycarbonate glasses to avoid further infection and was recommended to be fitted with scleral shell prosthesis to support his left eye, which, however was temporarily deferred. For this reason, the company-designated physician declared petitioner to have already reached his maximum medical improvement and suggested a disability rating of Grade 7 or total loss of vision in one eye.[18] Notwithstanding, petitioner returned for re-evaluation on November 24 and 25, 2015, wherein no noticeable changes in his condition have been observed.[19]

Considering that there was permanent loss of vision in his left eye resulting in his unfitness to work as declared by his attending specialist,[20] and since he was no longer advised by TSPI to return for further consultations in view of the company's alleged policy on a 130-day limit liability only,[21] petitioner demanded[22] from TSPI the payment of disability benefits pursuant to the CBA, which the latter refused. This prompted petitioner to raise his grievance before the Philippine Seafarers' Union, which likewise resulted in a deadlock.[23] Consequently, petitioner filed a complaint for disability benefits against TSPI, its President Alex N. Verchez (Verchez), and its foreign principal, TSL, with the NCMB, DOLE, docketed as MVA-028-RCMB-NCR-160-12-08-2016.[24]

In its defense, TSPI asserted that petitioner did not suffer from a work-related illness, claiming that his eye condition was highly attributed to his pre-existing diabetes mellitus and that it was also aggravated by his own failure to take his prescribed medications.[25] It denied that petitioner's illness was brought about by the working conditions on board the vessel, contending that the ship was seaworthy at all times and conducive to work, and that petitioner was well aware of the safety items installed in his work area.[26] It also argued that petitioner breached his duties under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) when he abandoned his treatment by not showing up for his

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16 Id. at 94-95.
17 See id. at 94.
18 See id. at 95.
19 See id. at 115-116.
20 See Medical Certificate dated November 23, 2015; id. at 142-143.
21 See *rollo*, p. 118.
22 See letter dated December 16, 2015; CA *rollo*, pp. 369-370.
23 See id. at 144.
24 See Submission Agreement dated August 10, 2016; *rollo*, p. 194.
25 See id. at 98-101.
26 See id. at 138.

scheduled re-evaluation on December 15, 2015 and effectively preventing the company-designated physician from arriving at a proper disability grading as required by law. Lastly, it denied the other monetary claims for lack of factual and legal bases.[27]

The PVA Ruling

In a Decision[28] dated August 16, 2017, the PVA ruled in favor of petitioner, ordering TSPI, Verchez, and TSL to jointly and severally pay him US$89,100.00 representing total and permanent disability benefits, as well as ten percent (10%) attorney's fees.[29]

In so ruling, the PVA held that petitioner's eye condition was not caused by or associated with his diabetes mellitus, and that he did not abandon his treatment. On the contrary, the PVA held that TSPI was negligent in failing to provide a safe place to work and appropriate equipment to their workers to avoid all kinds of dangers and illnesses. On this score, it was pointed out that TSPI's personnel were exposed to extreme temperatures without the proper protective clothing, thus, creating a more dangerous work environment that resulted to petitioner's permanent blindness in the left eye and his incapacity to resume the same line of work. Consequently, even if petitioner suffered blindness in only one eye, the CBA deems his disability as total and permanent, entitling him to US$89,100.00. The PVA also awarded ten percent (10%) attorney's fees since petitioner was compelled to litigate to protect his rights and interest. All other claims were dismissed for lack of merit.[30]

Aggrieved, TSPI moved for reconsideration,[31] which the PVA denied in a Resolution[32] dated October 25, 2017. Hence, the matter was elevated to the CA *via* a petition for review[33] pursuant to Rule 43 of the Rules of Court.

The CA Ruling

In the assailed Decision[34] dated August 24, 2018, the CA partly granted TSPI's petition declaring petitioner entitled to partial and permanent disability benefits only, or Grade 7 disability as assessed by the company-designated physician, and deleted the award of attorney's fees.[35] While the CA sustained the finding that there was no medical abandonment given that

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27 Id. at 144-152.
28 Id. at 195-205.
29 Id. at 204.
30 See id. at 196-204.
31 See motion for reconsideration dated October 6, 2017; id. at 228-250.
32 Id. at 251-252.
33 Dated November 27, 2017. Id. at 253-281.
34 Id. at 29-41.
35 See id. at 40.

no further medical treatment can be done to save petitioner's left eye except the improvement of his physical appearance, and that TSPI failed to disprove the presumption of work-relatedness of petitioner's illness, it nonetheless held that the loss of vision in one eye is equivalent to Grade 7 disability only under the POEA-SEC. The CA also found no basis in awarding petitioner attorney's fees, holding that there was no bad faith or malice on the part of TSPI.[36]

Petitioner's motion for reconsideration[37] was denied in a Resolution[38] dated February 8, 2019; hence, the present petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in awarding petitioner partial and permanent disability benefits only and in deleting the award of attorney's fees.

The Court's Ruling

The petition is granted.

Preliminarily, petitioner argues that the CA should not have entertained TSPI's appeal before it since: (1) the PVA decision had already become final and executory considering the lapse of the ten (10)-day period from receipt of the copy of the award or decision by the parties; and (2) in any event, the petition was not timely filed because it was not sent to his counsel of record. However, records show that petitioner never advanced these issues before the CA despite receipt of TSPI's Manifestation[39] explicating that the petition was inadvertently served to a different counsel and that the same was immediately rectified by sending a copy of the same to petitioner's counsel of record by personal service. In fact, petitioner did not submit[40] any comment to the petition notwithstanding receipt[41] of the CA's directive to do so, nor raised the issues in his motion for reconsideration.[42] Having failed to bring up the matter before the CA, the latter cannot be faulted in giving due course to the petition.

This notwithstanding, the Court nonetheless finds that the CA erred in modifying the PVA Decision when it held that petitioner is entitled only to partial and permanent disability benefits and in deleting the award of

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36 See id. at 33-40.
37 Dated September 20, 2018. Id. at 282-287.
38 Id. at 44-45.
39 Dated December 8, 2017; CA *rollo*, pp. 828-829.
40 See Notice of Resolution in CA-G.R. SP No. 153637 dated July 20, 2018; id. at 512.
41 See Notice of Resolution in CA-G.R. SP No. 153637 dated January 11, 2018; id. at 510.
42 Dated September 20, 2018. Id. at 822-827.

attorney's fees.

It is doctrinal that the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings but by law and contract. The pertinent statutory provisions are Articles 197 to 199[43] of the Labor Code in relation to Section 2 (a), Rule X of the Rules implementing Title II, Book IV of the said Code, while the relevant contracts are the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; the parties' CBA, if any; and the employment agreement between the seafarer and his employer.

In this case, petitioner entered into a contract of employment with TSPI in accordance with the 2010 POEA-SEC which, as borne from the records, was covered by an overriding IBF-PSU TCC Agreement[44] (CBA) that was effective from February 20, 2014 to February 19, 2016. During the course of his employment and while in the performance of his duties on board the vessel M.T. Al Marrouna, petitioner complained of sudden blindness in his left eye, among others. He was later diagnosed to have Left Eye Endophthalmitis with Orbital Cellulitis that caused his repatriation on July 10, 2015, or during the effectivity of the CBA, and resulted to permanent loss of vision in one eye which rendered him unfit for further sea duties.

Under Section 20 (A) of the 2010 POEA-SEC, the employer shall be liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." Here, while petitioner's diagnosed condition is not among the listed occupational diseases under Section 32-A of the 2010 POEA-SEC, Section 20 (A) (4) nonetheless states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Thus, the burden is on the employer to disprove the work-relatedness, failing which, the disputable presumption that a particular injury or illness that results in disability is work-related stands. Unfortunately, the said presumption was not overturned by TSPI. Moreover, the Grade 7 disability rating assessment by the company-designated physician negates any claim that the non-listed illness is not work-related.[45]

Accordingly, having suffered a work-related illness in the course of his last employment contract, the 2010 POEA-SEC imposes upon the company-designated physician the responsibility to arrive at a **definite assessment** of the seafarer's fitness to work or degree of disability within a

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43 Formerly Articles 191 to 193 of the Labor Code.

44 CA *rollo*, pp. 136-141.

45 See *Heirs of Licuanan v. Singa Ship Management, Inc.*, G.R. Nos. 238261 & 238567, June 26, 2019.

period of 120 days from repatriation.[46] During the said period, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage 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-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, 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.[47] Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods, and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.[48]

In the case at bar, TSPI contended that petitioner abandoned his medical treatment when he failed to return for his scheduled follow-up check-up on December 15, 2015 that effectively prevented the company-designated physician from arriving at a definite assessment, which is in breach of his obligation under the POEA-SEC. However, as correctly pointed out by the CA, there was no medical abandonment on the part of petitioner given that the company-designated physician, in the confidential medical report dated November 3, 2015, had already declared the former to have "*already reached his maximum medical improvement*[,]"[49] thus, indicating his treatment through curative means to have already ended and that the subsequent check-ups were for the improvement of his physical appearance by means of fitting a scleral shell prosthesis. The said medical report also recommended a Grade 7 disability rating based on the specialist's finding that petitioner's visual prognosis and recovery were poor due to "*permanent loss of vision in one eye despite intravenous antibiotic and steroids as well as oral medications given*[,]" thus rendering him "*unfit for further sea duties*."[50]

Considering that: (1) in the November 3, 2015 medical report, which was issued within the 120-day treatment period, the company-designated physician already gave petitioner a partial and permanent disability rating of Grade 7, *i.e.*, loss of vision or total blindness in one eye, and declared him to have already reached his maximum medical improvement, rendering him unfit for further sea duties; and (2) during petitioner's subsequent check-ups on November 24 and 25, 2015, respectively, the company-designated physician did not find any significant improvement in his condition, it is evident that there was no need for further medical treatment and he cannot be faulted for his failure to appear on his scheduled check-up session on

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46 See Section 20 (A) (3) of the 2010 POEA-SEC.

47 See *Deocariza v. Fleet Management Services, Philippines, Inc.*, G.R. No. 229955, July 23, 2018.

48 *Ampo-on v. Reiner Pacific International Shipping, Inc.*, G.R. No. 240614, June 10, 2019.

49 CA *rollo*, p. 95.

50 See id. at 94.

December 15, 2015 nor can such be construed as abandonment. Besides, his attending specialist at Medical City likewise confirmed the permanent loss of vision in petitioner's left eye.[51]

Notably, while the company-designated physician assessed petitioner only a partial and permanent disability rating of Grade 7 in accordance with the POEA-SEC, the latter was nonetheless also found to be unfit for further sea duties. In *Kestrel Shipping Co., Inc. v. Munar*,[52] the Court held that the POEA-SEC merely provides the minimum acceptable terms in a seafarer's employment contract, and that in the assessment of whether a seafarer's injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC, but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation, to wit:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would **incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days**, depending on the need for further medical treatment, then he is, **under legal contemplation, totally and permanently disabled**. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. **That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.**[53] (Emphases and underscoring supplied)

From the foregoing, since petitioner was declared by no less than his attending specialist to be unfit for further sea service due to permanent loss of vision in his left eye, the Court finds his resulting disability to be not only partial and permanent as ruled by the CA, but rather total and permanent as correctly found by the PVA. It is well to point out that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. **Total disability** refers to an employee's **inability to perform his or her usual work**. It does not require total paralysis or complete helplessness. **Permanent disability**, on the other hand, is a worker's **inability to perform his job for more than 120 days or 240 days**, if the seafarer required further medical attention justifying the extension of the temporary total disability

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51 See Medical Certificate dated November 23, 2015; id. at 142-143.
52 702 Phil. 717 (2013).
53 Id. at 730-731.

period, regardless of whether or not he loses the use of any part of his body.[54]

Moreover, considering that petitioner's employment contract is covered by a CBA which provides for better benefits, these terms will override the 2010 POEA-SEC provisions on disability compensation in favor of petitioner. This is so because a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer.[55]

Article 31 of the CBA on Compensation for Disability provides:

> Section 1. A seafarer who suffers **permanent disability as a result of work[-]related illness** or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's [willful] act, whilst serving on board, including accidents and work[-]related illness occurring while travelling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, **be entitled to compensation according to the provisions of this Agreement.** In determining work[-]related illness, reference shall be made to the Philippine Overseas Employment Administration (POEA) Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels.
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> Section 2. The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Company and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties.
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> x x x x
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> Section 4. A seafarer whose disability, in accordance with 25.2 above is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation. Furthermore, **any seafarer assessed at less than 50% disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to 100% compensation**. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 25.2 above.[56] (Emphases supplied)

Based on the above-quoted provisions of the CBA, there are three (3) instances when a seafarer may be entitled to 100% disability compensation, namely: (1) when the seafarer is declared to have suffered 100% disability, (2) when the seafarer is assessed with disability of at least 50%; and (3) **when the seafarer is assessed at below 50% disability, but he or she is certified as permanently unfit for sea service.**

Here, since petitioner was assessed a Grade 7 disability rating by the company-designated physician, which under the CBA Degree of Disability

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54 See *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.
55 See *Centennial Transmarine, Inc. v. Sales*, G.R. No. 196455, July 8, 2019.
56 CA *rollo*, pp. 140-141.

Rate for Ratings[57] to which he belongs is equivalent to 37.244[58] or below the 50% disability, and further declared to be unfit for further sea duties as found by the PVA and reflected in the confidential medical report dated November 3, 2015, the CA erred in awarding partial and permanent disability only. Accordingly, petitioner is entitled to 100% disability compensation or in the total amount of US$89,100.00 as provided under the CBA.

With respect to the issue of attorney's fees, Article 2208[59] of the New Civil Code provides that the same is granted in actions for indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the employer's act or omission has compelled the employee to incur expenses to protect his or her interest, as in this case. Case law further states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."[60] Considering that petitioner was clearly compelled to litigate to enforce what was rightfully due him under the CBA, the award of ten percent (10%) attorney's fees by the PVA was proper, and as such, must be reinstated.[61] Finally, in line with prevailing jurisprudence, all monetary awards due petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.[62]

WHEREFORE, the petition is **GRANTED**. The Decision dated August 24, 2018 and the Resolution dated February 8, 2019 of the Court of Appeals in CA-G.R. SP No. 153637 are hereby **AFFIRMED** with **MODIFICATION**, entitling petitioner Jolly D. Teodoro to full disability benefits in the amount of US$89,100.00 at the prevailing rate of exchange at the time of payment, as well as attorney's fees equivalent to ten percent (10%) of the total monetary award. Finally, all monetary awards shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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57 See Section 3 of Article 31 of the IBF-PSU-Teekay Fleet Agreement.

58 See *rollo*, p. 64.

59 Pertinent portions of Article 2208 of the CIVIL CODE provides:

> Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
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> x x x x
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> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
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> x x x x
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> (8) In actions for indemnity under workmen's compensation and employer's liability laws[.]

60 *Deocariza v. Fleet Management Services Philippines, Inc.*, supra note 47; citing *Atienza v. Orophil Shipping International Co., Inc.*, 815 Phil. 480, 508 (2017).

61 *Horlardor v. Philippine Transmarine Carriers, Inc.*, G.R. No. 236576, September 5, 2018.

62 See *Pelagio v. Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

WE CONCUR:

ANDRES B. REYES, JR.
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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.

DIOSDADO M. PERALTA
Chief Justice