Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ABNER P. SALONGA, *Petitioner,*	**G.R. NO. 229451**
	Present:
- *versus* -	LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, J., *JJ.*
SOLVANG PHILIPPINES, INC. and/or SOLVANG MARITIME AS and VIRGILIO A. LOPEZ, JR., *Respondents.*	Promulgated: February 10, 2021 MisDCBatt

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DECISION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Abner P. Salonga (petitioner) seeking to set aside the Decision[2] dated September 15, 2015 and the Resolution[3] dated January 17, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 139319. The CA Decision partially granted the Petition for *Certiorari* (with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)[4] filed by Solvang Philippines, Inc. and/or Solvang Maritime As and Virgilio A. Lopez, Jr. (collectively, respondents), reducing the total and permanent disability benefits of US$60,000.00 awarded to petitioner by the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 04-000322-

[1] *Rollo*, pp. 3-24.

[2] *Id.* at 30-48; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles, concurring.

[3] *Id.* at 49-53.

[4] CA *rollo*, pp. 3-27.

14/NLRC NCR Case No. OFW (M) 07-10798-13 to only a partial permanent disability compensation of US$22,020.00. The CA Resolution, on the other hand, denied petitioner's Motion for Reconsideration (Of the Decision dated September 15, 2015).[5]

The Antecedents

Respondents hired petitioner as Chief Steward under a nine-month Philippine Overseas Employment Administration (POEA) Contract of Employment[6] dated April 3, 2012. After undergoing a pre-employment medical examination, he was declared fit to work. He then joined the vessel M/V Clipper Hebe on May 15, 2012.[7]

In his Position Paper (For the Complainant),[8] petitioner alleged that sometime in July 2012, while carrying the newly issued provisions on board, he suddenly felt pain on his neck and back. He ignored the pain and continued to work. However, he suffered severe back and neck pains every night, coupled with high fever and numbness of both arms and legs.[9]

In October 2012, when petitioner could no longer stand the pain, he approached the Master of the vessel for help. He was then brought to a nearby hospital in the port of Indonesia, but no doctor was available to examine him and the vessel was about to leave. As such, petitioner was not given any medical attention.[10]

On November 11, 2012, petitioner was brought to a local hospital in Bangkok, Thailand where he underwent x-ray and medical examination. He was diagnosed to have C-spondylosis, myofarcial pain, and L-spondylosis; he was given the remark "*not unfit.*"[11] He was advised to consult a rehabilitation doctor after the initial medication for physical therapy.[12]

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5 *Rollo*, pp. 54-59.
6 CA *rollo*, p. 103.
7 *Rollo*, p. 31.
8 CA *rollo*, pp. 111-128.
9 *Id.* at 113.
10 *Id.*
11 See Doctor's and Dentist's Report and Account issued by Dr. Sorapong Sripongprapai, M.D., *id.* at 131.
12 *Id.*

Petitioner returned to the vessel and resumed his duties as Chief Steward. However, due to the unbearable pain and the Master's refusal to send him back to the Philippines for examination, petitioner requested to be medically repatriated. Consequently, he was required to execute a letter requesting for the early termination of his contract.[13]

On January 12, 2013, petitioner arrived in the Philippines and immediately reported to respondents' office the next day. He was referred to the Metropolitan Medical Center where he underwent a series of medical examinations, such as x-ray and magnetic resonance imaging of the cervical spine and the lumbosacral spine. The examination showed that petitioner was suffering from: (1) cervical spondylosis; (2) broad-based disc-osteophyte complexes and facet/ligamentous Hypertrophy at L4-5 and L5-S1, with moderate bilateral foraminal narrowing; and (3) mild L2-3 and L3-4 disc bulges and mild ligamentum flavum and facet hypertrophy.[14]

The company-designated physician refused to issue him a disability assessment and no declaration was ever issued as to his fitness to work. Due to the gravity of petitioner's injury and the refusal of the company-designated physician to issue an assessment, petitioner consulted Dr. Allan Leonardo R. Raymundo, M.D. (Dr. Raymundo), an independent Orthopedist, for a second opinion on June 25, 2013. He was diagnosed by Dr. Raymundo to be suffering from carpal tunnel syndrome and nerve root impingement of the lumbar spine and was given the following remark: "[*t*]*he patient's present condition will no longer make him fit to return to work.*"[15]

In July 2013, despite the fact that he was still suffering from a lumbar and spine injury, petitioner was told by the company-designated physician that his medical assistance was discontinued by respondents.

In denying petitioner's claim for permanent disability benefits, respondents in their Position Paper[16] claimed that upon repatriation, petitioner was referred to the company-designated physician, Dr. Robert Lim (Dr. Lim), who referred him to Dr. William Chuasuan (Dr. Chuasuan), an Orthopedic Surgeon. During his treatment, petitioner was

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[13] *Rollo*, 31-32.
[14] *Id.* at 32.
[15] See Medical Report dated June 25, 2013, CA *rollo*, p. 136.
[16] *Id.* 83-100.

noted to improve with the therapy. There was "*decreased pain on paracervical and paralumbar areas from pain scale of 7/10 to 5/10; there was note of resolution of neck spasm; there was improved range of motion of the cervical area.*" Allegedly, Dr. Lim issued the following interim assessments: Grade 12 (neck) – flight stiffness of neck; and Grade 8 (back) – 2/3 loss of lifting power.[17]

On May 23, 2013, Dr. Chuasuan, in turn, allegedly issued final disability ratings, *viz.*: Grade 12 (cervical) – 1/3 loss of motion; and Grade 8 (trunk) – 2/3 loss of lifting power.[18]

Decision of the Labor Arbiter (LA)

In a Decision[19] dated March 7, 2014 in NLRC NCR Case No. OFW (M) 07-10798-13, the LA ruled in favor of petitioner and ordered respondents to jointly and solidarily pay petitioner the amount of US$110,000.00 representing the disability compensation under the Collective Bargaining Agreement (CBA), plus 10% attorney's fees.[20]

The LA held that the assessment given by the company-designated physician that petitioner suffered only Grades 8 and 12 disability was not precise. The LA gave more weight to the evaluation given by petitioner's doctor of choice that petitioner was no longer fit to resume sea duties since he was still undergoing treatment. Given his medical condition, the LA held that petitioner was no longer capable of performing his job as a Chief Steward which required strenuous physical activities.[21]

The LA likewise found that petitioner sustained his injury while on board respondents' vessel as a result of a marine peril and held that he should be awarded a disability compensation for officers of the ship in the amount of US$110,000.00 in accordance with the CBA. The LA also awarded medical and transportation reimbursement to him in the amount of ₱25,000.00 for having consulted another physician as a result of respondents' discontinuance of his medical support.[22]

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17 *Id.* at 85.
18 *Id.*
19 *Id.* at 167-176; penned by Labor Arbiter Quintin B. Cueto III.
20 *Id.* at 176.
21 *Id.* at 173.
22 *Id.* at 175-176.

Aggrieved, respondents appealed to the NLRC.

Decision of the NLRC

In the Decision[23] dated September 25, 2014, the NLRC partially granted the appeal of respondents by reducing the disability benefits of US$110,000.00 awarded to petitioner by the LA to only US$60,000.00 and deleting the ₱25,000.00 award of medical and transportation reimbursements.

The NLRC ruled that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or disability within the period of 120 or 240 days; otherwise, the seafarer shall be deemed totally and permanently disabled. It held that since the company-designated physician failed to issue a definite assessment of petitioner's disability within 120 days, his illness should be considered as total and permanent.[24]

As to the amount of compensation, the NLRC reduced petitioner's disability compensation award to US$60,000.00, holding that the validity of the CBA was outside his employment period; thus, inapplicable to him.[25]

Ruling of the CA

In the assailed Decision[26] dated September 15, 2015, the CA found grave abuse of discretion on the part of the NLRC in awarding petitioner total and permanent disability benefits in the amount of US$60,000.00. It set aside the ruling of the NLRC and held that petitioner's condition falls under the disability ratings of Grade 8 (trunk) and Grade 12 (cervical) for the total amount of US$22,020.00, plus 10% attorney's fees.[27]

The CA disagreed with both the LA and the NLRC when they held that petitioner is entitled to total and permanent disability benefits on account of the failure of the company-designated physician to issue an

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[23] *Id.* at 40-54; penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring.
[24] *Id.* at 51-52.
[25] *Id.* at 54.
[26] *Rollo*, pp. 30-48.
[27] *Id.* at 47.

assessment of petitioner's disability within 120 days from the time petitioner reported to respondents. The CA explained that "[*a*] *seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.*"[28] The CA pointed out that there was no basis for the NLRC to determine that petitioner's injury merited a Grade 1 rating based merely on the fact that it lasted for more than 120 days.

The CA held that since the parties did not jointly seek the opinion of a third-party doctor who was supposed to make the final determination of petitioner's disability, the gradings given by the company-designated physicians prevail over the assessment made by the seafarer's doctor of choice. The CA pointed out that it was the company-designated physicians who personally attended to petitioner shortly after his repatriation; and they were likewise the ones who examined, treated, and closely monitored petitioner's condition and provided him extensive medical care for several months. As such, the CA found the company-designated physicians to be in the best position to assess the degree of petitioner's disability.

Petitioner filed his Motion for Reconsideration (of the Decision dated September 15, 2015),[29] but the CA denied it in the Resolution dated January 17, 2017.

Hence, the petition.

The Issue

The core issue at hand is whether petitioner is entitled to total and permanent disability compensation due to the failure of Dr. Chuasuan, the Orthopedic company-designated physician, to issue a definite medical assessment on petitioner's disability or fitness to work within the required 120 or 240-day period.

The Court's Ruling

The Court finds merit in the petition.

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[28] *Id.* at 39.

[29] CA *Rollo*, pp. 54-59.

Respondents claim that Dr. Chuasuan issued final medical assessments on petitioner's disability on May 23, 2013; that even before said date, Dr. Lim already issued interim assessments on petitioner's disability, *viz.*: Grade 12 (neck) – flight stiffness of neck; and Grade 8 (back) – 2/3 loss of lifting power.

Dr. Chuasuan's failure to issue a final disability assessment on petitioner within the time frame required by law rendered petitioner's disability permanent and total by operation of law.

Respondents rely on the CA's ruling that "*a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.*"

The Court in *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue*[30] explained the rules governing a claim for total and permanent disability benefits, *viz.*:

> In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (*rules*) shall govern:
>
> 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

[30] 765 Phil. 341 (2015).

> days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
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> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[31]

As pronounced above, the following requisites must be met in determining the seafarer's condition: (1) the assessment must be issued within the period of 120 or 240 days, as the case may be, from the time the seafarer reported to the employer upon repatriation; and (2) the assessment must be final and definitive.

The primordial consideration is whether the medical assessment or report of the company-designated physician *was complete and appropriately issued within the 120 or 240-day period*, as the case may be; otherwise, the medical report must be set aside.[32] A final and definitive disability assessment is important in order to truly reflect the extent of the illness of the seafarer and his or her capacity to resume work as such. To be conclusive, the medical assessments or reports should be complete and definite to afford the appropriate disability benefits to seafarers. There must also be sufficient bases to support the assessment.[33]

In *Kestrel Shipping Co., Inc., et al. v. Munar*,[34] the Court elucidated that the *company-designated doctor is required to arrive at a definite assessment of the seafarer's fitness to work or permanent disability* within the period of 120 or 240 days. Should the company doctor fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.

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[31] *Id.* at 362-363.

[32] See *Paleracio v. Sealanes Marine Services, Inc.*, G.R. No. 229153, July 9, 2018, 871 SCRA 316, 331-332.

[33] *Wilhelmsen-Smithbell Manning, Inc. v. Aleman*, G.R. No. 239740 (Notice), January 8, 2020, citing *Orient Hope Agencies, Inc. et al. v. Jara*, 832 Phil. 380, 400.

[34] 702 Phil. 717 (2013).

In this case, petitioner immediately reported to respondents' office on January 13, 2013 after disembarking from the vessel on January 12, 2013. The 120th day from January 13, 2013 being May 13, 2013, Dr. Chuasuan was required to arrive at a definite assessment of petitioner's fitness to work or disability on or before May 13, 2013. However, Dr. Chuasuan issued his alleged final assessment only on May 23, 2013 without giving any justification why petitioner's diagnosis and treatment extended beyond the 120-day period. Having established that Dr. Chuasuan failed to issue a final disability assessment of petitioner within the time frame required by law, his disability was indeed rendered permanent and total by operation of law.

There is no evidence that a final medical assessment was issued on petitioner's disability within the 120-day period.

Even assuming that petitioner's continued medical treatment justified the extension of his diagnosis beyond the 120-day period or until May 23, 2013, there is no evidence that a final medical assessment was actually issued by Dr. Chuasuan on petitioner's fitness to work or disability. As aptly observed by the NLRC, respondents failed to substantiate their claim that Dr. Chuasuan issued final disability ratings of Grades 8 and 12 on May 23, 2013. The non-presentation of the medical report dated May 23, 2013 is fatal to respondents' cause since there is no proof to validate their claim that petitioner was given a definite medical assessment of his fitness or disability. This lends truth to petitioner's contention that the company-designated physician refused to issue him any disability assessment and no declaration was ever issued as to his fitness or disability to work.

The third-doctor-referral provision does not find application at bar.

Respondents now bank on the CA's conclusion that since the parties did not jointly seek the opinion of a third-party doctor who was supposed to make the final determination of petitioner's disability, the gradings given by the company-designated physicians prevail over the assessment made by the seafarer's doctor of choice

In *Carcedo v. Maine Marine Philippines, Inc., et al.*,[35] the Court made it clear that if there is no final disability assessment made by the company-designated physician within the 120 or 240-day period, as the case may be, the third-doctor-referral provision finds no application in the case.

Viewed in this light, the CA erred in upholding the purported assessment of Dr. Chuasuan, the company-designated Orthopedist, over that of Dr. Raymundo, petitioner's doctor of choice, on the basis of petitioner's failure to seek medical opinion from a third doctor as provided under the POEA Standard Employment Contract (POEA-SEC).

To reiterate, Dr. Chuasuan, having failed to issue a final disability assessment of petitioner within the time frame required by law, petitioner's disability was indeed rendered permanent and total by operation of law.

Petitioner is entitled to the compensation benefits provided under the POEA-SEC, not under the CBA.

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2(a), Rule X of the Amended Rules on Employee Compensation.[36] By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' CBA, if any, and the employment agreement between the seafarer and the employer.[37]

In this case, the subject CBA[38] between respondents and its employees was valid from January 1, 2011 to December 2011. It provides that an officer of the vessel, such as petitioner as Chief Steward, shall be paid disability compensation in the maximum amount

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[35] 758 Phil. 166 (2015).
[36] *Falcon Maritime and Allied Services, Inc. v. Pangasian*, G.R. No. 223295, March 13, 2019.
[37] *Id.*
[38] CA *Rollo*, pp. 137-151.

of US$110,000.00 if he suffers an occupational injury. Inasmuch as the CBA's validity was outside of petitioner's nine-month employment contract which only commenced on April 3, 2012, the NLRC aptly held that the disability award due to petitioner is US$60,000.00, pursuant to the POEA-SEC, not the CBA.

Petitioner is entitled to attorney's fees, but not to the reimbursement of his alleged medical and transportation expenses.

The Court likewise holds that petitioner is not entitled to the ₱25,000.00 medical and transportation reimbursement as the record does not support his claim that he actually incurred such expenses.

However, the Court finds no cogent reason to deviate from the CA's award of attorney's fees to petitioner. Considering that he was forced to litigate and incur expenses to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8)[39] of the Civil Code of the Philippines. Also, in accordance with prevailing jurisprudence,[40] the Court hereby imposes legal interest on the monetary awards at the rate of 6% *per annum*, reckoned from the finality of this Decision until its full payment.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 15, 2015 and the Resolution dated January 17, 2017 of the Court of Appeals in CA-G.R. SP No. 139319 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 25, 2014 and the Resolution dated December 15, 2014 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 04-000322-14/NLRC NCR Case No. OFW (M) 07-10798-13, are hereby **REINSTATED** with **MODIFICATION** in that the monetary award of US$60,000.00 plus attorney's fee shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until full satisfaction.

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[39] Article 2208(8) of the Civil Code of the Philippines provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws.

[40] See *Wilhelmsen Smith Bell Manning, Inc. v. Villaflor*, G.R. No. 225425, January 29, 2020.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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