

INTERNATIONAL SHIP CREW MANAGEMENT, INC., VICTORIO VELONZA, AND ISHIMA PTE. LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND ERNESTO A. CARDOZA, ...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision[2] dated August 28, 2009 of the National Labor Relations Commission (“public respondent NLRC” or “NLRC” for brevity), which set aside and reversed the Labor Arbiter's Decision[3] dated March 10, 2009 in NLRC NCR Case No. OFW (M) 08-11138-08. The Petition also questions public respondent NLRC's Resolution[4] dated November 5, 2009, which denied petitioners' eventual Motion for Reconsideration.[5]

The antecedent facts are as follows:

Private respondent Ernesto A. Cardoza (“private respondent Cardoza” or “private respondent” for brevity) was hired as Chief Cook of the vessel M/T High Presence by petitioner International Ship Crew Management Phils., Inc. and by petitioner Victorio Velonza, for and in behalf of the foreign principal petitioner Ishima PTE. LTD (“petitioners” for brevity).[6]

The salient facts are continued in public respondent NLRC's Decision[7] of August 28, 2009, as follows:

“A Contract of Employment was executed between the parties on 06 August 2007, patterned in accordance with the P.O.E.A. Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA Contract for brevity) and the same was for a period of nine (9) months and monthly salary of US\$590.00. xxx

Prior to the commencement of his employment on board the vessel, he (private respondent here) was subjected to an extensive Pre-employment Medical Examination (PEME) and after passing the mandatory medi[c]al examinations, the company-designated physicians (Drs. Jennifer P. Santos and Marcel Joseph I. Alcaraz) certified him as 'fit to work' on 19 July 2007. He was given a cardiac clearance even with significant findings of 'Left Atrial Abnormality' based on the ECG Report. Previously (August 25, 2003 and September 22, 2004), he was also given medical clearance as 'fit for sea service'. As noted by the company-designated physician, appellant was a seafarer since 1978 or almost three (3) decades already.

On 05 October 2007, he (private respondent) departed from Manila and commenced his job xxx on 07 October 2007. Being a Chief Cook, his duties and responsibilities involve strenuous physical activities. xxx.

On 05 March 2008, he suffered pain on his 4th toe of right foot which totally swelled on 13 March 2008 that he can no longer walk [thus] hindering his working capacity. The pain persisted even with pain reliever given by the 2nd Mate. In a convenient port at Gleneagles Maritime Medical Center in Singapore, he was seen by a physician on 15 March 2008 and his attending physician issued an initial diagnosis of 'abscess right 4th toe with cellulites right foot; uncontrolled diabetes mellitus; and hypertension'. Thus, he was declared 'unfit to sail'

due to elevated blood pressure of 210/100mmHg xxx.”[8] (Italics was made in the original, emphasis supplied)

Due to his illness, private respondent Cardoza was repatriated to the Philippines on March 16, 2008. Private respondent Cardoza immediately[9] reported to petitioners' office and was referred by petitioners to their company designated physician at the Metropolitan Medical Center in Manila.[10]

The rest of the facts are continued in public respondent NLRC's Decision[11] of August 28, 2009, to wit:

“The company physician confirmed and diagnosed complainant (private respondent) suffering from 'Infected Wound, 4th digit, Right Foot; Hypertension; Diabetes Mellitus, Type II'. Thereafter, he (private respondent) was subjected to an extensive medical treatment to control his Diabetes Mellitus and Hypertension with continuous medical check-up and medication.

Complainant (private respondent) xxx continued medical treatment under the authority of the company designated physician Dr. Lamberto H. Garcia, Sr. wherein he was subjected to several medical check-ups on May 22, 2008, June 16 and July 10, 2008 [and] was advised to continue indefinitely his medication and to avail of maximum rest period under the work contract.

Lastly, on (sic) the medical progress report dated 17 July 2008 of the company-designated physician Dr. Lamberto H. Garcia, Sr. noted the following elevated blood pressure of his patient:

'Date:

Blood pressure

April 26, 2008

150/70

May 3, 2008

160/100

May 17, 2008

150/90

May 24, 2008

210/100

June 7, 2008

180/100

June 14, 2008

170/80

June 28, 2008

170/100

July 5, 2008

190/100

July 12, 2008

170/100

July 17, 2008

220/130

Not satisfied with the findings and assessments of the company-designated physician, complainant (private respondent) sought further consultation, treatment, and second expert medical opinion in the name of Dr. Antonio C. Pascual and after careful evaluation and analysis, the said physician issued a Medical Certificate dated 13 September 2008 stating that his patient is 'medically unfit for work as a seaman' and he advised his patient to have regular check-up and medications in order to avoid further medical complications, which assessment is equivalent to permanent total disability xxx.”[12] (*Italics was made in the original; emphasis supplied*)

As a result of all these, private respondent Cardoza requested from petitioners the payment of his Disability Benefits, which request however, was refused by petitioners. Afterwards, private respondent filed before the Labor Arbiter, a Complaint[13] for “Medical Expenses [and] Other Causes of Action”[14] against petitioners.[15]

On March 10, 2009, the Labor Arbiter rendered a Decision[16] dismissing private respondent Cardoza's Complaint.[17]

However, upon private respondent Cardoza's appeal[18], public respondent NLRC rendered the assailed Decision[19] of August 28, 2009, which set aside and reversed the Labor Arbiter's Decision[20] of March 10, 2009. Public respondent NLRC ordered petitioners to pay, jointly and severally, private respondent Cardoza his Disability Benefits, as well as Attorney's Fees. The dispositive portion of public respondent NLRC's Decision[21] read as follows:

“WHEREFORE, premises considered, the assailed Decision dated 10 March 2009 of the Labor Arbiter Gaudencio P. Demaisip is hereby REVERSED and SET ASIDE and in lieu thereof, a new one is entered ordering respondents-appellees International Ship Crew Management Phils., Inc., Victorio Velonza, and Ishima PTE. Ltd., to pay jointly and severally, complainant-appellant Ernesto A. Cardoza, the sum of SIXTY THOUSAND US DOLLARS (US\$60,000.00) representing the permanent total disability benefits and ten percent (10%) as attorney's fees.

SO ORDERED.”[22]

After petitioners' Motion for Reconsideration[23] was denied by public respondent NLRC in its assailed Resolution[24] dated November 5, 2009, petitioners filed the Petition for Certiorari[25] at bench, praying as follows:

“WHEREFORE, petitioners International Ship Crew Management, Inc., Victorio Velonza, and Ishima Pte. Ltd. respectfully pray as follows:

A. upon the filing of this Petition for Certiorari and conditioned upon the posting of a bond in such amount as the Honorable Court may fix, a temporary restraining order and/or writ of preliminary injunction be issued directing the National Labor Relations Commission, its officers, employees, and/or other persons acting for and on its behalf to desist during the pendency of this instant Petition for Certiorari from enforcing public respondent's Decision in NLRC LAC No. 06-000347-09 (NLRC Case No. OFW[M]-08-11138-08) entitled 'Ernesto A. Cardoza v. International Ship Crew Management, Inc., and/or Victorio Velonza, and Ishima Pte. Ltd.';

B. the instant Petition for Certiorari be given due course; and,

C. after due consideration of all relevant issues, judgment be rendered reversing and setting aside the Decision

promulgated on 28 August 2009 and the Resolution promulgated on 5 November 2009 by public respondent in NLRC LAC No. 06-000347-09 (NLRC Case No. OFW[M]-08-11138-08) entitled 'Ernesto A. Cardoza v. International Ship Crew Management, Inc., and/or Victorio Velonza, and Ishima Pte. Ltd.' for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioners further pray for such other relief as may be deemed just and equitable.”[26] (Emphasis was made in the original)

Petitioners raised the following grounds:

“GROUNDS IN SUPPORT
OF THE PETITION

5.1. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENT IS ENTITLED TO TOTAL PERMANENT DISABILITY COMPENSATION.

5.1.1. PRIVATE RESPONDENT WAS FOUND TO BE FIT TO WORK BY PETITIONER SHIP-OWNER'S ACCREDITED DOCTORS.

5.1.2. PRIVATE RESPONDENT FAILED TO COMPLY WITH THE ARBITRATION MECHANISM PLAINLY SET FORTH IN THE POEA STANDARD CONTRACT.

5.1.3. PRIVATE RESPONDENT'S SUBJECT MEDICAL CONDITION CANNOT BE CONSIDERED AS TOTAL PERMANENT DISABILITY UNDER THE POEA STANDARD CONTRACT.

5.1.4. PRIVATE RESPONDENT'S SUBJECT MEDICAL CONDITION IS NOT COMPENSABLE UNDER THE POEA STANDARD CONTRACT.

5.1.5. PRIVATE RESPONDENT IS DISQUALIFIED FROM CLAIMING PERMANENT DISABILITY COMPENSATION FOR DELIBERATELY CONCEALING HIS PRE-EXISTING MEDICAL CONDITION.

5.2. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENT IS ENTITLED TO THE AWARD OF ATTORNEY'S FEES FOR HAVING BEEN COMPELLED TO LITIGATE.”[27]

Contrary to petitioners' assigned ground 5.1.1., petitioners' company-designated physician improperly found private respondent to have been “fit to work”.

Petitioners had argued as follows:

“6.3. Petitioners maintain that the findings of petitioner ship-owner's accredited doctors that private respondent is fit to work should have even heeded and accorded evidentiary weight.

xxx

6.6. In this case, petitioners provided unstinting support for private respondent's medical treatment from Gleaneagles Medical Centre in Singapore to the OCW Medical Clinic and Metropolitan Medical Center in Manila and until the Chong Hua Hospital in Cebu, where he was declared fit to work by 15 July 2008 by petitioner ship-owner's accredited doctor, Dr. Garcia.

6.7. In this regard, and more importantly, it bears stressing that the conclusion reached by petitioner ship-owner's accredited doctor relative to the exact nature and extent of private respondent's subject medical condition i.e., fit to work, is the result of immediate, thorough, and competent medical management xxx. Since the conclusion of petitioner ship-owner's accredited doctor is well-founded and does not appear to have been

whimsically or haphazardly arrived at, the same should have been accorded due evidentiary weight. And with private respondent having been conclusively declared fit to work, petitioners have no obligation to private respondent for disability benefits.”[28] (Emphasis Supplied)

Frustrating petitioners' arguments however, is that the finding of the company-designated physician, Dr. Lamberto H. Garcia (“Dr. Garcia” for brevity) that private respondent was fit to resume his work could not be given credence. This is because of the contradictory conclusions made by Dr. Garcia about the physical condition of private respondent. Despite Dr. Garcia's finding in his “Medical Certificate”[29] dated June 17, 2008 that private respondent Cardoza “[would] be fit to work on July 15, 2008”[30], his “Medical Report”[31] dated July 17, 2008 indicated that private respondent still suffered from an elevated and uncontrolled blood pressure that required regular check-up and continuous medication.

Consequently, notwithstanding Dr. Garcia's certification that private respondent was “fit to work”, private respondent was still shown to be unfit to resume his work as a seafarer as of July 17, 2008. These matters were as also found by public respondent NLRC in its Decision[32] dated August 28, 2009, to wit:

“On 17 June 2008, Dr. Garcia certified appellant would be 'fit to work on July 15, 2008'; however on 17 July 2008, he summarizes the following elevated blood pressures of his patient:

'Date:

Blood pressure

April 26, 2008

150/70

May 3, 2008

160/100

May 17, 2008

150/90

May 24, 2008

210/100

June 7, 2008

180/100

June 14, 2008

170/80

June 28, 2008

170/100

July 5, 2008

190/100

July 12, 2008

170/100

July 17, 2008

220/130

By simple analogy, appellant's Diabetes Mellitus and Hypertension cannot be treated for a period of 1 or 2 weeks as can be gleaned from his extensive medical treatment at the hands of the company-designated physician. In short, the alleged medication to avoid having medical problems (Diabetes Mellitus and Hypertension) for around 1 or 2 weeks prior to his PEME on 19 July 2007 has no leg to stand on considering that even for an extensive medication of four (4) months or more under the care of Dr. Garcia, appellant's diseases could hardly be controlled, so much so that it cannot be concealed during the PEME on 19 July 2007 by a medication for only 1 or 2 weeks. In the same manner, the fitness to work effective 15 July 2008 was not justified due to continuous uncontrolled or elevated blood pressure even on 17 July 2008 and the recommended regular check up and medication prescribed by Dr. Pascual clearly demonstrates appellant's permanent medical unfitness for sea duties.”[33] (Emphasis Supplied)

Given that private respondent Cardoza was still suffering from an elevated and uncontrolled blood pressure on July 17, 2008[34], then contrary to petitioners' assigned ground 5.1.3., private respondent Cardoza suffered total and permanent disability. This is because as of July 17, 2008, more than 120 days, or exactly 123 days, had elapsed from the time private respondent was repatriated on March 16, 2008, and yet, private respondent Cardoza was still unable to perform his job as Chief Cook.

The true test of whether a worker, such as private respondent Cardoza here, suffered from total and permanent disability is whether or not his inability to perform his job lasted for more than 120 days. This determination is pursuant to the pronouncement of the Supreme Court in *Oriental Shipmanagement Co., Inc. vs. Romy B. Bastol* G.R. No. 186289 , June 29, 2010, as follows:

“It has been held that disability is intimately related to one’s earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity. Total disability does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one’s earning capacity. Thus, 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. xxx

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, we cited the consistent application of the definition of permanent disability under Sec. 2 (b), Rule VII of the Implementing Rules of Book V of the Labor Code as amended by PD 626, which provides:

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

We likewise noted in *Wallem Maritime Services, Inc.* that:

The foregoing concept of permanent disability has been consistently employed by the Court in subsequent cases involving seafarers, such as in *Crystal Shipping, Inc. v. Natividad*, in which it was reiterated that permanent disability means the inability of a worker to perform his job for more than 120 days. Also in *Philimare, Inc. v. Suganob*, notwithstanding the opinion of the company-designated physician that the seafarer therein was fit to work provided he regularly took his medication, the Court held that the latter suffered permanent disability in view of evidence that he had been unable to work as chief cook for more than 7 months. Similarly, in *Micronesia Resources v. Cantomayor and United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*, the Court declared the seafarers therein to have suffered from a permanent disability after taking evidence into account that they had remained under treatment for more than 120 days,

and were unable to work for the same period.

Moreover, we explained in *Wallem Maritime Services, Inc.* that the lapse of the 120-day threshold period is not the benchmark for considering a permanent disability due to injury or illness, 'rather, the true test of whether respondent suffered f[ro]m a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days.' (Italics and underscoring were made in the original, emphasis supplied)

Petitioners could not also properly argue in their assigned ground 5.1.2. that private respondent should have waited for the lapse of "the two hundred forty (240)-day temporary total disability period"[35] before claiming for permanent and total disability benefits. The reason is that the 240-day maximum period applies only in cases where the company-designated physician failed to make a declaration regarding the seafarer's fitness or disability within 120 days. This is as is pursuant to the following declaration of the Supreme Court in *C.F. Sharp Crew Management, Inc., et al. vs. Joel D. Taok*, G.R. No. 193679, July 18, 2012:

"The importance of this 120-day period cannot be overemphasized that the CA's failure to consider and apply it in the disposition of this case strikes this Court as absurd. In *Vergara v. Hammonia Maritime Services, Inc.*, this Court discussed the significance of the 120-day period as one when the seafarer is considered to be totally yet temporarily disabled, thus, entitling him to sickness wages. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability.

It is also in *Vergara* that this Court addressed the apparent conflict between Paragraph 3, Section 20 of the POEA-SEC on the one hand and Article 192(c)(1) of the Labor Code and Section 2, Rule X of the AREC. While it may appear under Paragraph 3, Section 20 of the POEA-SEC and Article 192(c)(1) of the Labor Code that the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with Section 2, Rule X of the AREC indicates otherwise. That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days." (Italics was made in the original, Emphasis and underscoring supplied)

Here, petitioners' company-designated physician, Dr. Garcia, had made a declaration within 102 days, or on June 17, 2008[36], of private respondent's alleged fitness to return to work by July 15, 2008.[37]

Because of all these, then, contrary to petitioners' assigned ground 5.1., private respondent Cardoza was entitled to permanent and total disability benefits.

Moreover, contrary to petitioners' contentions in its assigned ground 5.1.5., private respondent was not disqualified from claiming permanent disability compensation under the "2000 Philippine Overseas Employment Agency Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels"[38], otherwise known as the "POEA Standard Employment Contract" ("POEA Standard Contract" for brevity).

Petitioners had raised the following arguments:

"6.38. Assuming *arguendo* that private respondent is indeed permanently disabled and that his subject medical condition is compensable, he is still not entitled to disability compensation since he knowingly and intentionally gave false information on his medical history.

6.38.1 In private respondent's PEME certificate from OCW Medical Clinic, Inc., there is a section on Past Medical History where private respondent was supposed to have disclosed that he suffered from or has been told he had any of the ailments listed therein. However, the PEME certificate shows that the items 'High Blood

Pressure' and 'Diabetes Mellitus' are marked 'NO' xxx. And yet, private respondent admitted to petitioner ship-owner's accredited doctors at the OCW Medical Clinic and Metropolitan Medical Center that he was previously diagnosed with hypertension in 2001 and diabetes mellitus in 2004 by a private physician and for which he is taking medication xxx. In fact it was even noted by Dr. Alcaraz in his report that private respondent would take his medication one (1) to two (2) weeks prior to a PEME in order to avoid any difficulty with his medical. xxx. Evidently, private respondent maliciously concealed his hypertension and diabetes mellitus.

xxx

6.39. Private respondent's malicious concealment and misrepresentation is not without serious consequence. The provisions of Section 20 [E] of the POEA Standard Contract punishes knowing and intentional misstatements in the PEME with disqualification from disability benefits.

'A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.'

It also bears noting that the above mentioned PEME certificate and private respondent's personal data sheet carry a certification by the private respondent that 'x x x certify that my medical history contained above, is true and any false statement or undisclosed material and/or information in regard to past or present illness and/or medical condition will disqualify me from any employment benefits and claims. x x x.' xxx (Emphasis and underscoring were made in the original)

6.40. Thus, pursuant to the POEA Standard Contract and by his own hand, private respondent disqualified himself from claiming disability benefits by his malicious concealment and misrepresentation of his hypertension and diabetes mellitus.”[39] (Emphasis Supplied)

Prevailing over petitioners' allegations however, is that private respondent could not be considered to have concealed from petitioners that he had been previously diagnosed with any of the illnesses listed in private respondent's Pre-Employment Medical Examination (“PEME” for brevity) record[40], including Diabetes Mellitus and Hypertension, which concealment would have disqualified private respondent from claiming disability benefits under the POEA Standard Contract. This is because during private respondent's PEME, petitioners' company-designated physician had extensively examined private respondent Cardoza, and had made a “significant finding”[41] based on private respondent's ECG that private respondent suffered from a “Left Atrial Abnormality”.[42]

Despite such “significant finding”[43] of an abnormality in private respondent's ECG however, petitioners' company-designated physician still certified private respondent to have been “cleared by cardiologist”[44] and “fit to work”[45]. Such certification of the company-designated physician that private respondent was “fit to work” at the start of his employment with petitioners was as also found by public respondent NLRC in its assailed Decision[46] dated August 28, 2009, to wit:

“xxx Prior to commencement of his employment, he (private respondent) was extensively examined by the company-designated physician and he was even cleared by a cardiologist despite significant findings of 'Left Atrial Abnormality' based on the ECG. xxx”[47] (Italics was made in the original, Emphasis Supplied)

An employee, such as private respondent Cardoza, who failed to declare in his PEME that he had been previously diagnosed with an illness, could not be said to have committed concealment. This is, if such an employee was declared by the physician of his employer, such as petitioners, to have been “fit to work” at the start of the

employee's employment notwithstanding the existence of which the employer's physician was aware, of a finding of significant sickness in his ECG. All of these are in accordance with the similar declaration of the Supreme Court in *Micronesia Resources, et al. vs. Fabiolo Cantomayor*, G.R. No. 156573, June 19, 2007, to wit:

“In the same PEME result, there appears a certification that after physical examination, Cantomayor was found to have a normal heart. However, the result of his ECG is indicated as follows:

A. ECG Report () Within Normal Limits () Significant Findings Poor R-waves progression NSSTTWC.

Yet, the examining physician, designated by petitioner, certified him fit to work.

The foregoing entries in his PEME result confirm that even if Cantomayor had declared himself free of heart ailment, *Micronesia, et al.* had the opportunity to pre-qualify, screen and verify, as it actually did in the case of Cantomayor for it even noted significant findings in his ECG result. This precludes the possibility that Cantomayor concealed his illness. Rather, *Micronesia, et al.* hired him despite the ECG Report and should now accept liability for his ailment in the course of his employment.” (Emphasis Supplied)

Furthermore, contrary to petitioners' arguments in their assigned ground 5.1.4., private respondent's Diabetes Mellitus and Hypertension were compensable under the POEA Standard Contract.

Petitioners had argued as follows:

“6.31. A perusal of the records will show that private respondent has not provided any evidence that will satisfy the requirements set forth in Section 32-A of the POEA Standard Contract. Not only does private respondent's work not particularly involve the risk factors in developing hypertension and diabetes mellitus, but hypertension and diabetes mellitus are lifestyle diseases xxx

xxx

Clearly, in order for hypertension to be compensable the same must be considered essential. Furthermore, the severity of the hypertension must be to an extent that it has already impaired the function of body organs. Moreover, such condition must be substantiated by 1) chest x-ray report, 2) ECG report, 3) blood chemistry report, 4) funduscopy report, and 5) a C-T scan.

6.34. For his part, private respondent has not presented the required documents – not even after petitioners called for the same as far back as their Position Paper dated 16 January 2009, which call was reiterated in each of their subsequent pleadings. xxx In fact, private respondent's hypertension has not been shown or even alleged to have impaired any body organ as required under Section 32-A of the POEA Standard Contract. Clearly then, private respondent's hypertension is not a compensable disease under the POEA Standard Contract.

6.35. With regard to private respondent's diabetes mellitus, it is not even listed as an occupational disease. Section 20 [B] [4] of the POEA Standard Contract does presume that illnesses not listed under Section 32 are disputably work-related, but petitioners have more than overcome this presumption with private respondent's admission that his diabetes was diagnosed by a private physician as far back as 2004 xxx.

6.36. Also, by their very nature, hypertension and diabetes mellitus are more related to a person's lifestyle and personal circumstances than his employment.”[48] (Italics was made in the original, Emphasis Supplied)

Overwhelming petitioners' arguments however, is that private respondent Cardoza's illnesses, even if they were considered as pre-existing to his employment, were aggravated by his working conditions in petitioners' vessel, he having worked there as Chief Cook. As such, the illnesses are considered as work-related. Private respondent's illnesses having been aggravated by his working conditions was as also found by public respondent NLRC in its assailed Decision[49] of August 28, 2009, as follows:

“Working for 16 hours a day without the help of a Messman constitutes strenuous labor and his exposure to extreme humidity weakens his health and these are proof of reasonable working condition that aggravated his diseases.”[50] (Emphasis Supplied)

That a seafarer's diseases or illnesses, such as private respondent Cardoza's Diabetes Mellitus and Hypertension, are compensable despite having been found to be pre-existing if such diseases or illnesses were aggravated by the working conditions of the employee, is in accordance with the following declaration of the Supreme Court in *Magsaysay Maritime Services and Princess Cruise Lines, Ltd. vs. Earlwin Meinrad Antero F. Laurel*, G.R. No. 195518, March 20, 2013:

“Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.” (Emphasis Supplied)

As a result of petitioners' unjustified refusal to give the disability benefits due private respondent, private respondent Cardoza is entitled to the award of ten percent (10%) Attorney's Fees, contrary to petitioners' arguments in their assigned ground 5.2. Private respondent's entitlement to Attorney's Fees was as also properly concluded by public respondent NLRC, to wit:

“Appellant (private respondent) was forced, compelled to litigate, and incurred expenses in order to protect his rights and interest under the POEA Contract, hence, an award of ten percent (10%) of the total award as attorney's fees is proper in this case.”[51]

The award of Attorney's Fees is expressly permitted in an action to claim disability compensation, such as the case here. This is pursuant to Article 2208 (8) of the New Civil Code[52], and is in accordance with the ruling of the Supreme Court in *Ramon G. Nazareno vs. Maersk Filipinas Crewing Inc. and Elite Shipping A/S*, G.R. No. 168703, February 26, 2013, as follows:

“The Court also agrees with the ruling of the labor arbiter that petitioner is entitled to attorney's fees following Article 2208 of the New Civil Code, which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws. Pursuant to prevailing jurisprudence, petitioner is entitled to attorney's fees of ten percent (10%) of the monetary award.” (Emphasis Supplied)

Indeed, the findings of administrative agencies, such as public respondent NLRC, are accorded due respect and even finality, and are binding upon the court,[53] especially when supported by substantial evidence, as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

IN VIEW OF ALL THESE, the Petition for Certiorari is DENIED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-59

[2] Rollo, pp.61-72

- [3] Rollo, pp. 78-86
- [4] Rollo, pp. 74-76
- [5] Rollo, pp. 524-540
- [6] Rollo, p. 62
- [7] Rollo, pp. 61-72
- [8] Rollo, pp. 62-64
- [9] Rollo, pp. 64, 79, 299, 381
- [10] Rollo, p. 64
- [11] Rollo, pp. 61-72
- [12] Rollo, pp. 64-65
- [13] Rollo, pp. 127-128
- [14] Rollo, p. 127
- [15] Rollo, p. 131
- [16] Rollo, pp. 78-86
- [17] Rollo, pp. 127-128
- [18] Rollo, pp. 293-328
- [19] Rollo, pp.61-72
- [20] Rollo, pp. 78-86
- [21] Rollo, pp.61-72
- [22] Rollo, p. 71
- [23] Rollo, pp. 524-540
- [24] Rollo, pp. 74-76
- [25] Rollo, pp. 3-59
- [26] Rollo, pp. 53-54
- [27] Rollo, p. 19
- [28] Rollo, pp. 23-25
- [29] Rollo, p. 125
- [30] Rollo, p. 125
- [[31]] Rollo, p. 169
- [32] Rollo, pp.61-72
- [33] Rollo, pp. 67-68

[34] Rollo, p. 169

[35] Rollo, p. 34

[36] Rollo, p. 125

[37] Rollo, p. 125

[38] pursuant to Department Order No. 4 of the Department of Labor and Employment and POEA Memorandum Circular No. 9, both series of 2000

[39] Rollo, pp. 42-44

[40] Rollo, p. 91

[41] Rollo, p. 91

[42] Rollo, p. 91

[43] Rollo, p. 91

[44] Rollo, p. 91

[45] Rollo, p. 91

[46] Rollo, pp.61-72

[47] Rollo, p. 68

[48] Rollo, pp. 38-40

[49] Rollo, pp.61-72

[50] Rollo, p. 69

[51] Rollo, p. 70

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

xxx

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

[53] Letran Calamba Faculty and Employees Association vs. National Labor Relations Commission and Colegio De San Juan De Letran Calamba, Inc., G.R. No. 156225, January 29, 2008

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