

**MAERSK-FILIPINAS CREWING, INC., A.P. MOLLER A/S, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION)
AND EDGAR S. ALFEROS, RESPONDENTS.**

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court is a Petition for Certiorari[1] dated 10 July 2014, with prayer for injunctive relief, assailing the Decision[2] dated 30 April 2014 and Resolution[3] dated 05 June 2014 of the National Labor Relations Commission (Fourth Division) in the case entitled "Edgardo S. Alferos v. Maersk-Filipinas Crewing, Inc./AP Moller Maersk A/S/ Ms. Rosalia Caballero (President)," docketed as NLRC LAC No. OFW (M) 11-001107-13, NLRC NCR OFW Case No. (M)-04-06399-13, which affirmed the Decision[4] dated 16 September 2013 of Labor Arbiter Enrique L. Flores, Jr., and denied the Motion for Reconsideration for lack of merit, respectively.

Private respondent filed his Comment[5] dated 16 September 2014, to which petitioners filed their Reply[6] dated 24 September 2014. Thus, the third paragraph of the Resolution[7] dated 25 July 2014 is reiterated, and the Petition is submitted for Decision.

FACTUAL ANTECEDENTS

On 29 April 2013, complainant Edgar S. Alferos filed a Complaint[8] for disability benefits, sick wages, damages and attorney's fees against respondents Maersk-Filipinas Crewing, Inc., ("Maersk," for brevity), AP Moller Maersk A/S, and Ms. Rosalia Caballero.

In his Position Paper[9] dated 05 July 2013, complainant alleged, inter alia, that: he had been employed with respondent Maersk, as Able Seaman without interruption since 1995; every time he would be redeployed for his new contract, he was subjected to a Pre-Employment Medical Examination ("PEME," for brevity) where he was always found to be fit for work; in his last employment contract, he was again hired as an Able Seaman with a basic monthly salary of US\$585.00 per month, for a period of six (6) months; his contract commenced on 10 May 2012 on board the vessel M/S Laura Maersk; while he has completed his contract with respondents, the same was mutually extended since there was no available person to take over his position on board the vessel; on 20 December 2012, while in the performance of his duty, he suddenly felt pain on his lower back and abdomen; he also experienced difficulty and pain when urinating; he reported his condition to his superior officer which later brought him to a hospital in Dubai at Dulsco Medical Clinic; he was medically examined, treated thereat, afterwards discharged and was allowed to return to the vessel; despite the treatment in Dubai, his condition did not improve and even worsened; he was medically repatriated on 14 January 2013; upon arrival in Manila, he immediately reported to his local manning agency and the latter referred him to Metropolitan Medical Center ("MeMC," for brevity) and was treated as an out-patient; respondent presumed him to be fit to work even though he was not and assured him that he would be reemployed; to his dismay, respondent refused to reemploy him, for in truth, he was not fit to work; respondents literally abandoned him and stopped giving him his medical assistance; respondents themselves have diagnosed complainant to be unfit for work; in a Medical Evaluation of Super Care Medical Services ("Supercare," for brevity), respondents' company medical institution, he was found

to be suffering from kidney stones; in the Assessment Notes as well as Medical Report of Supercare, it was stated that he is suffering from Benign Positional Vertigo and unfit for work as per Department of Health Standard; due to the stoppage of respondents' medical assistance to him, the latter sought the services of Dr. Jaime C. Balingit ("Dr. Balingit," for brevity), a urologist in St. Luke's Medical Center, and he was found to be suffering from nephrolithiasis as stated in his Examination Result dated 29 April 2013; Dr. Balingit referred him to Dr. Manuel C. Jacinto, Jr. ("Dr. Jacinto," for brevity) for further examination and treatment; complainant was found afflicted with several illnesses consisting of nephrolithiasis, diabetic nephropathy, osteoarthritis, lumbosacral spine radiculopathy, and Benign Positional Vertigo, contracted by him on board the vessel; he filed the instant case to recover his permanent disability compensation in accordance with his CBA, payment of sick wages for 120 days, moral and exemplary damages, attorney's fees and other benefits provided by law; under Section 32-A, par. 21 of the POEA-SEC, osteoarthritis is considered as an occupational disease; after he contracted the said disease, he became unfit as seafarer which entitled him to total permanent disability compensation in the sum of US\$60,000.00; there is a disputable presumption that his illness is work-related which respondents must overcome; the duties of seafarers on board the vessel are strenuous, stressful and extremely physical; seafarers like him are usually deprived of sleep as they spent sleepless nights in order to comply with their duties; they are likewise exposed to hazardous fumes, chemicals and substances that are stored on board the vessel and are likewise exposed to extreme hot or cold weather; his illnesses are compensable being work-related or work-aggravated; he has been unfit for work from the time that he was medically repatriated on 14 January 2013 up to this time; more than 120 days had elapsed since his repatriation, and as such he can be legally considered to have suffered from permanent total disability; the fact that he was not reemployed by respondents clearly shows that complainant is not fit for further seafaring services; and the act of respondents in unjustifiably withholding the payment of his permanent disability benefits as well as his sickness allowance is a clear indication that respondents acted in bad faith. Complainant prayed that respondents be jointly and severally held liable to pay him permanent disability compensation of US\$60,000.00; sick wages for 120 days in the sum of US\$2,340.00; Php300,000.00 as moral damages; Php300,000.00 as exemplary damages; and attorney's fees equivalent to 10% of the judgment award.

In their Position Paper[10] dated 24 June 2013, respondents alleged, inter alia, that: the company-designated urologist Dr. Darwin Lim after continuous medication, extensive evaluation and monitoring found the complainant to be fit to work; the company-designated physician subjected him to several confirmatory and laboratory tests until the condition of prostatitis has been resolved; he was repatriated due to alleged dysuria with loin pain and back pain or difficulty in urinating; a urologist would be the best person to diagnose and treat his condition; he has been under the care and supervision of urologist Dr. Darwin Lim since his repatriation in January 2013; for a period of roughly two (2) months, complainant has been under the care, close observation, monitoring and treatment of the company-designated physician until his fitness status was achieved on 05 March 2013; he was prescribed with appropriate medication, underwent CT Stonogram which showed normal kidney size with no evidence of radiopaque calculi or hydronephrosis, non-dilated ureters, unremarkable urinary bladder; when he has no more subjective complaints and repeat urinalysis showed normal results, it was only then that the specialist opined that he is already fit to work; the fact that he freely executed a Certificate of Fitness without coercion is but an indication of his unqualified declaration that he is already in good health; the company-designated physician issued a fitness declaration on 05 March 2013 or within 120 days from his initial consultation and treatment by the company-designated physician on 17 January 2013; there is no established link concerning his resolved prostatitis and his work on board the vessel; he did not perform tasks which would entail exposure to bacteria that could eventually get into the prostate from the urethra by backward flow of infected urine into the prostate ducts; the alleged condition of complainant is not listed as an occupational disease; the burden of proof to show work-relation is therefore placed upon the seafarer; with regard to his claim for sick

wages, there is neither factual nor legal basis to grant this; Annex '11' with submarkings are pertinent vouchers evidencing payment of sick wages until 05 March 2013; he is not entitled to the payment of moral, exemplary damages and attorney's fees; and the Complaint should be dismissed for lack of merit.

Respondents filed a Reply[11] dated 18 July 2013. Complainant also filed a Reply[12] dated 12 August 2013. Respondents then filed a Rejoinder[13] on 05 September 2013, while complainant filed his Rejoinder[14] dated 04 September 2013.

Labor Arbiter Enrique L. Flores, Jr., rendered a Decision[15] dated 16 September 2013, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents jointly and severally liable to pay: (1) the amount of US\$ 60,000.00 at its peso equivalent at the time of; (sic); (b) an (sic) ten percent (10%) of the total award as attorney's fees at its peso equivalent at the time of payment. Other claims are Dismissed.

SO ORDERED."[16]

Respondents filed a Notice of Appeal with Memorandum of Appeal[17] dated 08 November 2013, to which complainant filed his Comment/Opposition[18] dated 21 November 2013.

On 30 April 2014, the NLRC (Fourth Division) promulgated the assailed Decision,[19] the fallo of which reads:

"WHEREFORE, respondents' appeal is DISMISSED. Accordingly, the assailed DECISION is hereby AFFIRMED.

SO ORDERED."[20]

Respondents filed a Motion for Reconsideration[21] dated 13 May 201(4), which was denied for lack of merit by the NLRC (Fourth Division) in the assailed Resolution[22] dated 05 June 2014.

Hence, this Petition.

RULING

Petitioners raise the following grounds for allowance of their Petition, viz:

" The Honorable Public Respondent NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction due to the following:

1. In affirming the Labor Arbiter's judgment and awarding permanent total disability compensation to Private Respondent notwithstanding the categorical and well supported findings of the company-designated physician that Private Respondent is already fit to resume seafaring duties.
2. In adjudging the Petitioners liable for payment of disability benefits for alleged ailments, which are neither work-related nor acquired during the term of the Private Respondent's employment with Petitioners.
3. In affording more weight and consideration to the incredible, unfounded and untrustworthy medical certification of Private Respondent's doctor of choice, contrary to the express mandate of the 2010 POEA Contract that divergence of opinion between the company-designated physician and the seafarer's doctor must be resolved in accordance with a prescribed conflict-resolution procedure.
4. In making tenuous and unreasonable inferences out of Private Respondent's act of voluntarily executing a Certificate of Fitness for Work.
5. In holding the petitioners liable for payment of attorney's fees despite want of factual and legal justification."[23]

Petitioners contend, inter alia, that: there is no disability to speak of; after more than two (2) months of close and continuous monitoring, the company-designated physician issued a final medical certification declaring prostatitis as the final diagnosis and that private respondent is fit to work; at the time private respondent was declared fit, the company-designated physician noted that he no longer experienced symptoms such as dysuria, loin pain or back pain and the result of the repeat urinalysis conducted already yielded normal results; the company-designated physician initially examined him on 16 January 2013 and the final medical assessment was issued on 05 March 2013; counting from 16 January 2013 up to 05 March 2013, only forty eight (48) days have elapsed, and the timely medical assessment has prevented his state of temporary disability from ripening into a permanent and total one; the conditions for which he claims disability compensation are neither work-related nor suffered during the term of the seafarer's employment; the symptoms that precipitated his repatriation were dysuria, loin pain and back pain, all of which were later on diagnosed as manifestations of prostatitis; the said condition was treated until he was declared fit to resume sea duties; the claim for compensation was on account of the alleged conditions of kidney stones/nephrolithiasis, vertigo, diabetic nephropathy, osteoarthritis, and lumbosacral spine radiculopathy; prostatitis is the swelling and inflammation of the prostate gland, while urolithiasis is the condition where urinary stones are formed anywhere in the urinary system; based on the 04 February 2013 progress report, the CT Stonogram showed normal size kidneys with no evidence of radiopaque calculi or hydronephrosis, non-dilated ureters and unremarkable urinary bladder; private respondent could not claim entitlement to permanent total disability benefits since the existence of kidney stones was ruled out in the course of his treatment; the company-designated physician confirmed that he is not suffering from urolithiasis or nephrolithiasis; what appears in private respondent's Agreement to Proceed with Further Evaluation and Management dated 19 March 2013 is "Kidney Stones S/P medical treatment 2013" which means that he has already undergone treatment for kidney stones; this is impossible because he has just undergone CT stonogram on 04 February 2013 and based on the results thereof, his kidneys were normal; as to the alleged Assessment Notes, where the finding of "kidney stones s/p medication 2013" appears, it states there that "ff-up KUB" which means that the KUB x-ray has not been performed and there is no basis yet for a final diagnosis of kidney stones; in the request for x-ray of lumbosacral spine, while it mentions nephrolithiasis, it is clearly stated that such was merely a provisional diagnosis; Dr. Jacinto has seen private respondent once and he could not have arrived at the various diagnoses on a single day without conducting a single diagnostic test; no disability benefits can arise from benign positional vertigo because it bears no work causation; his own evidence shows that he no longer experiences dizziness, nausea and vomiting, blurring of vision and headache which are symptoms of vertigo; Annex C of private respondent's Position Paper as to the 2[nd] opinion of otorhinolaryngology states that benign positional vertigo is not in acute attack and no further treatment is necessary; diabetes and its complication and nephropathy are not work-related; based on the nature of osteoarthritis, it is not work-related; osteoarthritis is a disease of the joint and he never complained of joint pains, as in fact he was referred to Dr. Jacinto due to muscle pain and not joint pain; as to how Dr. Jacinto arrived at the diagnosis of osteoarthritis remains a mystery; lumbosacral spine radiculopathy refers to nerve irritation caused by damage to the discs between the vertebrae and is not work-related; public respondent expressed doubts on the findings of the company-designated physician allegedly because there is no record that the underlying diseases that caused dysuria was ever looked into and medically addressed; public respondent laments that while the company-designated physician notes the appearance of blood in urine and the existence of right kidney calcification, the doctor immediately ruled out urolithiasis and confined his findings to prostatitis; public respondent's findings are untrue as the company-designated physician ordered the conduct of CT Stonogram which showed that private respondent's kidney has no stones and his urinary bladder unremarkable, thus the doctor properly eliminated urolithiasis from the prospective condition of private respondent; with his failure to appoint a third doctor jointly with petitioners, he is deemed to have no right to claim benefits for absence of evidentiary basis; Dr. Jacinto issued the Medical Certificate on 29 April 2013, after a

single consultation by the private respondent; nephrolithiasis can only be confirmed through a CT scan or a KUB and there is no showing that these tests were performed; the same is true with diabetic nephropathy, osteoarthritis and radiculopathy which are not the kind of illnesses that can be detected through mere physical examination; Dr. Jacinto likewise declares private respondent unfit for alleged right flank pain and progressive low back pain and weakness of both lower extremities; none of which has any established relation to his employment; he executed the Certificate of Fitness for Work voluntarily and in full acknowledgment of the company-designated physician's assessment; the element of bad faith is wanting and it is grave abuse of discretion for public respondent to award attorney's fees.

Private respondent ripostes, inter alia, that: during the term of his employment contract, he had acquired several illnesses consisting of nephrolithiasis, diabetic nephropathy, osteoarthritis, degenerative changes of lumbar spine with minimal L3-L4 caudal to L5-S1 Disc protrusions and benign positional vertigo; he was medically repatriated on 14 January 2013; he was provided medical attention by the company-designated physician at MeMC; however, his various illnesses, including his spinal injuries, remain unresolved and severely deteriorated; the Petition is pro forma, being a rehash of the issues and arguments already resolved by the Labor Arbiter and public respondent; he was medically repatriated and rendered totally unfit as seafarer in any capacity, in view of his said deteriorated various illnesses; he was cleared by the company-designated physicians with respect to his prostatitis, however his other illnesses were not resolved and even deteriorated; he is no longer capable of performing the usual physical and stressful activities of a seafarer on board the vessel; he has difficulty in standing, walking and could not twist his trunk and body, and could not carry even a moderate load; he is not fit for work anymore despite the period of 120 days, as what was only resolved by the company-designated physicians is his prostatitis; what is being compensated under the law is not the absolute helplessness of the seafarer or the gravity of the illness or injury for what is being compensated is the loss of the seafarer's capacity to obtain further sea employment and loss of opportunity to earn an income; the medical assessment made by Dr. Jacinto is credible as it is reflective of his actual physical and medical condition; and petitioner's prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order is without factual and legal bases.

The Petition is bereft of merit. Thus, the application for injunctive relief must perforce fail.

(A) special civil action for certiorari under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[24] To justify the grant of the extraordinary remedy of certiorari, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," the discretionary authority must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[25] In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, inter alia, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement is clearly expressed in Section 5, Rule 113 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." [26]

(C)ourts generally accord great respect and finality to factual findings of administrative agencies, i.e., labor tribunals in the exercise of their quasi-judicial function.[27] (F)indings of fact made by the Labor Arbiter and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered binding if the

same are supported by substantial evidence.[28]

Stripped of verbiage, the threshold issue in this special civil action for certiorari, is whether or not public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the Decision of the Labor Arbiter, awarding permanent total disability benefits and attorney's fees in private respondent's favor.

We find in the negative.

The entitlement of a seafarer on overseas employment benefits is governed by the medical findings, by law and by the parties' contract.[29] Under the Contract of Employment[30] dated 02 May 2012, which was approved by the POEA on 17 May 2012, between petitioners and private respondent, the latter was employed as Able Seaman by the former, for a period of six (6) months on board the vessel M.S. Laura Maersk. He embarked the vessel on 12 June 2012 at Rio de Janeiro,[31] and assumed his duties and responsibilities as Able Seaman.[32] He has been employed by petitioners as Able Seaman continuously without interruption since 1995 and each time he was redeployed under a new contract, he underwent rigorous PEME where he was always found to be fit to work.[33] While private respondent completed his contract with petitioners, the same was extended as there was no available person to take over his position.[34]

Section 20 (A) of the 2010 POEA Standard Employment Contract ("2010 POEA-SEC", for brevity) provides:

"SECTION 20. COMPENSATION AND BENEFITS

- 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

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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 illnesses 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 by either injury or illness the seafarer

shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his 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 diseases was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

x x x x"

It is well-settled that for a disability to be compensable, the seafarer must establish that there exists "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." In other words, not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent that he shows a causal connection between such injury or illness and the work for which he had been contracted.[35]

On or about 28 December 2012 while on board the vessel, private respondent was: brought to a hospital in Dubai; seen by a medical specialist abroad; diagnosed with "dysuria with loin pain and back pain,"[36] as evinced by a Medical Report[37] dated 28 December 2012 of the Danish Maritime Authority; medically repatriated;[38] and disembarked on 12 January 2013 at the Suez Canal.[39] He was initially evaluated at the MeMC on 16 January 2013 and per medical report[40] dated 17 January 2013 of the Marine Medical Services ("MMC," for brevity), through the company-designated physicians Dr. Karen Frances Hao-Quan ("Dr. Quan," for brevity) and Dr. Robert D. Lim ("Dr. Lim," for brevity), private respondent was referred to a urologist.[41] As stated in the said medical report, private respondent complained of pain in urination accompanied with urinary frequency and back discomfort since December 2012 on board the sea vessel and was diagnosed to have dysurea with loin pain and back pain;[42] urinalysis showed red blood cells; kidney, urinary bladder and prostate gland ultrasound showed focal cortical calcification, right kidney and Grade 1 prostate hypertrophy; he was recommended to undergo CT Stonogram and was given medications; he was to come back on 31 January 2013 for reevaluation; and the impression was prostatitis rule out urolithiasis.[43] In the medical report[44] dated 31 January 2013 of Drs. Quan and Lim, the earlier impression was restated and private respondent was asked to come back on 04 February 2013 for reevaluation. In the follow-up medical reports[45] dated 04 and 18 February 2013, he was advised to continue his medications. In the medical report[46] dated 05 March 2013, the company-designated physicians pronounced that private respondent was fit to resume sea duties as of said date, as his prostatitis was resolved.

As stated in the printed form "Agreement to Proceed with Further Evaluation and Management"[47] dated 19 March 2013 of Supercare, private respondent was "seeking employment with petitioner Maersk Filipinas Crewing, Inc. and undergoing PEME at Supercare xxx", and the medical findings/diagnosis showed kidney stones. Further, based on Supercare's Assessment Notes[48] dated 18 March 2013 in connection with private respondent's PEME, he was also found to be suffering from benign positional vertigo, and unfit for work, per DOH standards. He was refused reemployment by petitioners for being unfit for work.[49] Due to the stoppage of petitioners' medical assistance to him, private respondent sought the services of Dr. Balingit, a urologist at the St. Lukes Medical Center.[50] As stated in the Request dated 29 April 2013 of the Institute of Radiology of the said hospital, which was signed by Dr. Balingit, the provisional diagnosis was nephrolithiasis; "stat" x-ray of lumbosacral spines was an examination desired; and the film was for release to Dr. Jacinto. Per the Medical Certificate[51] dated 29 April 2013 issued by Dr. Jacinto, a specialist in orthopedic surgery and traumatology, private respondent was diagnosed with "Nephrolithiasis, Diabetic Nephropathy, Osteoarthritis lumbosacral spine radiculopathy, and Benign Positional Vertigo," and was "physically unfit to go back to work as a seafarer due to

persistence of symptoms of vertigo, ® flank pain, progressive low back pain and weakness of both lower extremities." [52]

Here, the findings of both the Labor Arbiter and public respondent that private respondent is entitled to his claim for permanent total disability benefits are anchored on substantial evidence.

(T)he company physician's assessment does not evince irrefutable and conclusive weight in assessing the compensability of an illness as the seafarer has the right to seek a second opinion from his preferred physician. [53] While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion. [54] The High Court has reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration. [55]

In the present case, after the company-designated physicians declared private respondent as fit to work, the latter underwent his PEME with Supercare which provides medical services to seafarers seeking employment with petitioner Maersk Filipinas Crewing, Inc. No less than Supercare found him with kidney stones, and benign positional vertigo that makes him unfit for work as a seafarer. After he sought the medical services of specialists Drs. Balingit and Jacinto, the findings of both physicians, as earlier discussed, showed contrary diagnosis, to the fit-to-work declaration of the company-designated physicians. Thus, as aptly found by public respondent, "(a) closer look at the medical assessment of the company designated physician reveals that the said physician confined his treatment solely to the diagnosis of PROSTATITIS and simultaneously RULE OUT UROLITHIASIS. There was no further mention at all about the cause of Dysurea with Loin Pain and Back pain being suffered by complainant as earlier diagnosed by the physician who initially examined him in Dubai and for which complainant was medically repatriated. Neither was their (sic) any pronouncement at all whether other ailments such as Dysurea was completely resolved as well xxx" [56] It was also pointed out by public respondent that "(o)bviously not feeling fit to resume sea duties despite such final diagnosis issued by the company-designated physician, and after being made to sign a Certificate of Fitness For Work, complainant had himself examined by another physicians (sic)." [57]

The fit-to-work declaration of the company-designated physicians is not reflective of the true state of health of private respondent. Petitioners even made the unsuspecting private respondent sign a printed document entitled "Certificate of Fitness to Work" [58] dated 05 March 2013, with the company-designated physician Dr. Quan as a witness. Petitioners utterly failed to appreciate the fact that private respondent is not a medical practitioner, but a seafarer who has no competence to determine whether he is medically fit to work or not. Thus, the said printed Certification which even stated that private respondent would defend the right of petitioner Maersk to use the Certification as a bar to any proceedings is devoid of probative value.

Thus, We find no compelling reason to disturb the findings of both the Labor Arbiter and public respondent that private respondent is entitled to the permanent and total disability benefit of US\$60,000.00 under Section 32 of the 2010 POEA-SEC. As keenly found by public respondent, "xxx indeed there is serious doubt as to the medical assessment of the respondents-appellants' designated physician. Complainant's contention that his other ailments such as Nephrolithiasis as diagnosed by complainant's physician was indeed not resolved" [59] and that "there is no showing that respondents' designated physician had addressed this symptom, but instead he immediately ruled out Urolithiasis (Nephrolithiasis) and confined themselves solely to their diagnosis of PROSTATITIS." [60]

(I)t has been the Court's consistent ruling 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." [61]

In a catena of case, the Court has consistently ruled that disability should not be understood more on its medical

significance but on the loss of earning capacity. 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 kind of work which a person of his mentality and attainment could do. Disability therefore, is not synonymous with "sickness" or "illness." What is compensated is one's incapacity to work resulting in the impairment of his earning capacity.[62] (Further) (a) total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it.[63] Here, petitioner, who is a seafarer, cannot pursue his usual work, resulting in the impairment of his earning capacity.

Verily, the courts should be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.[64] In any case, the bottomline is this: the certification of the company-designated physician would defeat petitioner's claim while the opinion of the independent physicians would uphold such claim. In such a situation, the Court adopts the findings favorable to (private respondent). The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.[65]

Finally, there was no grave abuse of discretion on the part of public respondent in awarding attorney's fees of 10% of the total award in favor of private respondent as the latter was compelled to litigate to protect his interest. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to 10% of the total award at the time of actual payment.[66]

WHEREFORE, premises considered, the Petition is DENIED. Costs against petitioners.

SO ORDERED.

Diamante, and Sadang, JJ., concur.

[1] Rollo, pp. 3-54

[2] Id. at 56-74

[3] Id. at 89-91

[4] Id. at 76-87

[5] Id. at 365-388

[6] Id. at 389-414

[7] Id. at 346

[8] Id. at 143-144

[9] Id. at 155-172

[10] Id. at 119-142

[11] Id. at 179-197

[12] Id. at 198-217

[13] Id. at 218-230

[14] Id. at 235-245

[15] Id. at 76-87

[16] Id. at 87

[17] Id. at 246-275

[18] Id. at 296-315

[19] Id. at 56-74

[20] Id. at 73

[21] Id. at 93-118

[22] Id. at 89-91

[23] Id. at 10-11

[24] Cf. *The City of Manila, etc., et al. v. Hon. Caridad H. Grecia-Cuerdo, etc., et al.*, G.R. No. 175723, 04 February 2014

[25] Cf. *Martin K. Ayungo v. Beamko Shipmanagement Corporation, et al.*, G.R. No. 203161, 26 February 2014

[26] Id.

[27] *Diamond Taxi, et al. v. Felipe Llamas, Jr.*, G.R. No. 190724, 12 March 2014

[28] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission, et al.*, G.R. No. 155306, 28 August 2013

[29] *Philman Marine Agency, Inc. (now Dohle-Philman Manning Agency Inc.), et al. v. Armando S. Cabanban*, G.R. No. 186509, 29 July 2013

[30] Rollo, p. 145

[31] Id. at 146

[32] Id. at 120

[33] Id. at 156

[34] Id. at 157

[35] *Martin K. Ayungo v. Beamko Shipmanagement Corporation, et al.*, *supra*

[36] Rollo, p. 120

[37] Id. at 147

[38] Id. at 120-121

[39] Id. at 146

[40] Id. at 148-149

[41] Id. at 149

- [42] Id. at 148
- [43] Id. at 149
- [44] Id. at 150
- [45] Id. at 151-152
- [46] Id. at 153
- [47] Id. at 173
- [48] Id. at 174
- [49] Id. at 157
- [50] Id. at 158, 176
- [51] Id. at 178
- [52] Id.
- [53] Maersk Filipinas Crewing, Inc., et al. v. Nelson E. Mesina, G.R. No. 200837, 05 June 2013
- [54] Ramon G. Nazareno v. Maersk Filipinas Crewing, Inc., et al., G.R. No. 168703, 26 February 2013
- [55] Id.
- [56] Rollo, p. 67
- [57] Id. at 66
- [58] Id. at 154
- [59] Id. at 70
- [60] Id.
- [61] Filpride Shipping Company, Inc. v. Edgar A. Balasta, G.R. No. 193047, 03 March 2014
- [62] Magsaysay Maritime Corporation v. Oscar D. Chin, Jr., G.R. No. 199022, 07 April 2014
- [63] Maersk Filipinas Crewing, Inc., et al. v. Nelson E. Mesina, *supra*
- [64] Ramon G. Nazareno v. Maersk Filipinas Crewing, Inc., et al., *supra*
- [65] Id.
- [66] Alpha Ship Management Corporation, et al. v. Eleosis V. Calo, G.R. No. 192034, 13 January 2014

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