

MARLOW NAVIGATION PHILIPPINES, INC./MARLOW NAVIGATION CO. LTD./ AND ANTONIO GALVEZ[,]JR., PETITIONERS, VS. DESIDERIO CLAMUCHA CUTANDA AND NATIONAL LABOR RELATIONS COMMISSION, (F...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision[2] dated April 16, 2014 and the Resolution[3] dated May 23, 2014 of the National Labor Relations Commission (NLRC), Fourth Division, in NLRC LAC OFW Case No. (M) 03-000230-14, NLRC NCR OFW Case No. (M) 02-02505-13 entitled “DESIDERIO CLAMUCHA CUTANDA, Complainant-Appellee, versus MARLOW NAVIGATION PHILS., INC./MARLOW NAVIGATION CO. LTD. and ANTONIO GALVEZ(,) JR. (President), Respondents-Appellants.”, the dispositive portions of which read:

Decision dated April 16, 2014

“WHEREFORE, the appeal filed by respondents is DISMISSED for lack of merit. The Decision of Labor Arbiter Cheryl M. Ampil dated January 14, 2014 is AFFIRMED.

SO ORDERED.”[4]

Resolution dated May 23, 2014

“WHEREFORE, respondents-appellants' Motion for Reconsideration is DENIED for lack of merit.

No motion of similar nature shall hereafter be entertained.

SO ORDERED.”[5]

The facts are:

On February 14, 2013, private respondent Cutanda (Cutanda for brevity) filed a Complaint for recovery of permanent total disability benefits, damages, attorney's fees, reimbursement of medical expenses and sickness allowance against petitioners Marlow Navigation Phils. Inc. (MNPI for brevity), Marlow Navigation Co. Ltd. (MNCL for brevity), and Antonio Galvez, Jr. (Galvez for brevity).[6]

In his Position Paper[7], private respondent Cutanda averred that: on March 14, 2012, he was hired by petitioner MNPI for and in behalf of petitioner MNCL to work as a Key Able Seaman on board the vessel MV “Malte Rambow” (vessel for brevity) for a period of ten (10) months with a basic monthly salary of US\$680.00; he was subjected to pre-employment medical examination and was declared “fit to work” by the company- designated physicians; he was previously employed by petitioners using different employment contracts for a period spanning fifteen (15) years; on April 3, 2012, he departed from the Philippines to join the vessel pursuant to his contract with petitioners; his duties included planning, controlling, executing, and reporting all maintenance and repair works on deck in close coordination and under the supervision of the Chief Officer of the vessel,

supervising the safety of the crew during working hours, taking charge of the tugboat line during mooring and unmooring operation, watching the bow of the vessel or wing of the bridge to look for obstructions along the path of the vessel to avoid accidents and collisions, supervising the junior ratings, steering the ship manually or automatically or with the use of emergency steering apparatus as directed by the navigating officer, Chief Mate, or the Ship Captain, breaking out rigs, overhauling and stowing of cargo-handling gears, stationary riggings and running gears, overhauling lifeboats, winches and falls, manually greasing the wire of the crane, chipping off rust and painting the deck and superstructure of the ship, as well as other duties as may be assigned by his superiors; on October 8, 2012, he had an accident aboard the vessel while performing his duties at the Port of Tanjung, Pelepas, Malaysia; his left index and middle fingers were severely injured and suffered laceration wounds when his left hand was caught and crushed by the tug's line (rope) when the tugboat started pulling the line while the tug's line was not yet free from the ship; immediately after the accident, he was brought to Puteri Specialist Hospital (Johor) SDN BHD in Malaysia for emergency medical treatment; a day after on October 9, 2012, he was medically repatriated and arrived in the Philippines the same day; he immediately reported to petitioner MNPI's office and was referred to Notre Dame Medical Clinic where he was diagnosed with "Lacerated Wounds 2[nd] & 3[rd] digits, Left Hand", after which he was treated and later referred for rehabilitation/physical therapy; the accident was supported by official records of the Social Security System (SSS); he underwent continuous physical therapy until April 3, 2013 or for a period of more than six (6) months from the time of the occurrence of the accident on October 8, 2012 and was still found to be unfit to work, as shown by medical certificates dated January 4, 2013, April 2, 2013, and April 3, 2013, all issued by the Panay Orthopedic and Rehabilitation Institute (PORI); despite medical intervention and months of therapy, his condition did not improve and he could not return to his work as Key Able Salesman because of his injuries; when he demanded from petitioners that he be paid his disability benefits, the latter refused to pay the same; and, to make matters worse, despite the recommendation of PORI that he undergo physical therapy, petitioners stopped providing medical attention to him after the lapse of 120 days, and refused to shoulder expenses incurred for the medicines by private respondent Cutanda.

Private respondent Cutanda further alleged[8] that: his injuries are work-related, resulted to a loss of his earning capacity, and rendered him unfit to return to work for more than 240 days; his continuing inability to pursue his usual work and earn therefrom constitutes permanent and total disability; since Dr. Gicos of PIRO certified on April 2, 2013 that he needed at least three (3) to six (6) months before the latter can improve his condition, and since he was repatriated back in the Philippines on October 9, 2012, the disability is already 174 days plus another minimum period of three (3) months for therapy, the period of inability would already be 264 days; inevitably, the disability would be more than 240 days, making it permanent and total; he is entitled to the maximum or "grade 1" disability compensation under the POEA Standard Employment Contract (POEA-SEC for brevity) corresponding to US\$60,000.00 under Sec. 20(B)(6) thereof; he is also entitled to payment of his medical expenses and sickness allowance; petitioners' actions in denying to pay private respondent Cutanda's disability benefits is a gross violation of the POEA SEC; and, petitioners acted in bad faith and in an oppressive manner for which private respondent Cutanda should be awarded moral damages and attorney's fees.

For their part, petitioners filed their Position Paper[9] asserting that: they hired private respondent Cutanda under a standard POEA approved contract of employment; on October 8, 2012, private respondent Cutanda's left hand was injured by a tug boat rope; debridgment and suturing were done by an orthopedic surgeon at the Puteri Specialist Hospital in Malaysia; eventually, private respondent Cutanda was repatriated to the Philippines; he was referred to Dr. Orlino Hosaka, Jr. (Hosaka for brevity) for medical care and treatment on October 10, 2012; Dr. Hosaka referred to him an orthopedic surgeon and rehabilitation specialist; the treatment under the company-designated physician and the specialist lasted for months; private respondent Cutanda was regularly

examined to check his recovery; Dr. Hosaka's February 11, 2013 medical report concluded that private respondent Cutanda is suffering from a disability "grade 10"; the disability grading of 10 is based on the POEA SEC Schedule of Disability Gradings where it is specified that the loss of grasping power for small objects between the fold of the finger of one hand corresponds to a grade 10 disability grading; since Dr. Hosaka is the company-designated physician, his finding of grade 10 disability should prevail; based on the POEA SEC, private respondent Cutanda's condition clearly does not fall under the category of grade 1 disability; petitioners are not guilty of bad faith since private respondent Cutanda was immediately given medical attention and care, and never faltered in fulfilling their responsibilities; private respondent Cutanda was even sent to reputable doctors for his treatment; petitioners cannot therefore be made liable for moral damages and exemplary damages; and, they also cannot be made liable for an amount contrary to that specified in the POEA SEC.

Thereafter, both parties filed their respective Replies.[10]

On January 14, 2014, Labor Arbiter Cheryl M. Ampil rendered a Decision[11] awarding US\$60,000.00 to private respondent Cutanda as permanent and total disability benefit, US\$6,000.00 in attorney's fees, and P50,000.00 in moral damages. According to the Labor Arbiter, contrary to the position of petitioners, the application of the provisions of the Labor Code to the contracts of seafarers has been passed upon and rejected by the Supreme Court. It also held that the wording and structure of the POEA SEC compel the company physician to match his diagnosis of the seafarer's condition with any of the grades provided therein and, in the process, downplay the latter's condition. Since the company physician declared private respondent Cutanda suffered a grade 10 disability 126 days after he signed-off from the vessel, while the Iloilo coordinating physician declared him to be unfit for work exactly 240 days after sign-off, then private respondent Cutanda is entitled to permanent and total disability. In addition, petitioners' refusal to pay private respondent Cutanda's just claim smacks of bad faith and calls for the award of moral damages. Finally, since private respondent Cutanda was compelled to litigate and incur expenses to protect his interest due to petitioners' refusal to pay his disability benefits, he is also entitled to attorney's fees.

Aggrieved, petitioners filed a Notice of Appeal with Memorandum of Appeal.[12]

On April 16, 2014, public respondent NLRC rendered the assailed Decision[13] dismissing petitioners' appeal for lack of merit. Public respondent NLRC found untenable petitioners' contention that a seafarer's condition can be assessed only by the company-designated physician, especially since Section 20 (B), paragraph 3 of the POEA SEC is clear in that the determination of the company-designated physician pertains only to the entitlement of the seafarer to sickness allowance. The same provision also recognizes the right of the seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice, and even allows a third opinion in case his own physician's findings conflict with that of the company-designated physician. Public respondent NLRC stressed that under Section 32 of the POEA SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. Based on the foregoing, public respondent NLRC considered private respondent Cutanda permanently and totally disabled from performing his duties.

Unsatisfied, petitioners filed their Motion for Reconsideration[14] which was denied in the assailed Resolution dated May 23, 2014.[15]

Hence, this Petition for Certiorari based the following grounds:[16]

With All Due Respect, The Public Respondent NLRC Committed Grave Abuse of Discretion Amounting To Lack Or Excess Of Jurisdiction When It Upheld The Labor Arbiter's Award of Total and Permanent Disability

Benefits In Favor Of Private Respondent, Considering That:

I.

THE LOWER LABOR TRIBUNALS GRAVELY ERRED IN DISREGARDING THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS FINDING THAT PRIVATE RESPONDENT SUFFERED DISABILITY WITH A DISABILITY GRADING OF GRADE 10 ONLY.

II.

THE PREVAILING RULINGS OF THE SUPREME COURT EXPRESSLY DECLARE THAT THE COMPANY-DESIGNATED PHYSICIAN'S DISABILITY GRADING SHOULD PREVAIL.

III.

THE POEA-SEC SPECIFICALLY PROVIDES THAT PRIVATE RESPONDENT'S INJURY ON HIS LEFT INDEX AND MIDDLE FINGERS IS EQUIVALENT ONLY TO DISABILITY GRADING OF GRADE 10 ONLY.

IV.

PRIVATE RESPONDENT IS OBVIOUSLY NOT SUFFERING ANY TOTAL PERMANENT DISABILITY, ESPECIALLY TAKING INTO CONSIDERATION HIS PRESENT CONDITION COMPARED TO OTHER SEAFARERS WHO SUFFERED MORE SEVERE DISABILITY BUT REMAINED WORKING AS SEAFARERS.

V.

PRIVATE RESPONDENT IS NOT ENTITLED TO MORAL DAMAGES CONSIDERING THE ABSENCE OF BAD FAITH ON THE PART OF PETITIONERS. MOREOVER, PRIVATE RESPONDENT SHOULD NOT HAVE BEEN AWARDED ATTORNEY'S FEES AS THE RECORDS SHOW THAT PETITIONERS ARE READY AND WILLING TO PAY HIM HIS DISABILITY BENEFITS EQUIVALENT TO THE DISABILITY GRADING OF GRADE 10 AS CORRECTLY ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN.

The petition is meritorious.

At the outset, it should be stressed that certiorari is a remedy narrow in its scope and inflexible in character. The Court does not assess and weigh the sufficiency of evidence upon which public respondent NLRC based their decisions, but rather limits its query to the determination of whether or not public respondent NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering the same.[17] Thus, while administrative findings of fact are accorded great respect, even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, the courts may reverse their findings.[18]

Verily, grave abuse of discretion exists when a court or tribunal exercises its power in an arbitrary or despotic manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[19] It also exists when an act is done contrary to the Constitution, law, or jurisprudence,[20] or when it is executed whimsically, capriciously, or arbitrarily out of malice, ill will, or personal bias.[21]

Under these parameters, this Court finds that the public respondent NLRC committed grave abuse of discretion in issuing the assailed Decision and Resolution. In considering private respondent Cutanda permanently and totally disabled, public respondent NLRC disregarded and ruled contrary to the law and jurisprudence pertaining to the

determination of a seafarer's disability.

Preliminarily, this Court points out that it is the avowed policy of the State to give maximum aid and full protection to labor. To this end, the Court has applied the Labor Code concept of permanent total disability to Filipino seafarers.[22] This policy becomes even more apparent in the standard employment contract for seafarers which was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." [23] Clearly, a contract of labor is so impressed with public interest that the New Civil Code even expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects." [24]

Iloreta v. Phil. Transmarine Carriers, Inc., et al., [25] briefly enumerates the three (3) kinds of disability benefits under the Labor Code, as amended by P.D. 626 and differentiated in Section 2 of Rule VII of the Implementing Rules of Book V of the Labor Code, as follows:

Sec. 2. Disability. — (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules. (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. (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

Corollarily, when a seafarer is injured or contracts an illness, certain mechanisms found in the POEA SEC help determine whether his disability is one that is total and permanent. *Vergara v. Hammonia Maritime Services, Inc.*, [26] is illuminating in this respect. In *Vergara*, the Supreme Court explained:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment.[27] For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work.[28] He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws.[29] If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[30] (Emphasis supplied.)

In this case, it is admitted that on October 8, 2012, private respondent Cutanda was involved in an accident while performing his duties as Key Able Seaman for herein petitioners. It is likewise admitted that as a result of the injuries he sustained, private respondent Cutanda was medically repatriated back to the Philippines on October 9, 2012, and the day after, on October 10, 2012, he reported to the company-designated physician, Dr. Hosaka. Private respondent Cutanda then underwent physical therapy for numerous sessions. In the course of his treatment, the following medical reports were issued by Dr. Hosaka of Notre Dame Medico Dental Clinic, Inc.:

- Medical Report dated October 10, 2012[31] stated that private respondent Cutanda was seen by their orthopedic surgeon, x-ray was done which showed no fractures, lacerated wounds on the 2nd and 3rd digits of the left hand were dry and showed no signs of infection, private respondent Cutanda can actively flex/extend digits, and there were no sensory deficits. Dr. Hosaka recommended that sutures be removed on October 18, 2012 with a follow-up on October 31, 2012.

- Medical Report dated October 25, 2012[32] stated that private respondent Cutanda was seen again by their

orthopedic surgeon on October 24, 2012, lacerated wounds were completely healed, there is limited range of motion of the metacarpophalangeal and proximal interpharyngeal joints of the 2nd and 3rd digits, and recommended that private respondent Cutanda undergo physical therapy for one (1) month.

- Medical Report dated November 26, 2012[33] stated that private respondent Cutanda was examined by their orthopedic surgeon that day, after a month of physical therapy. It was found that private respondent Cutanda lacks 10 degrees of extension and can flex his 2nd digit at 90 degrees, and his 3rd digit at 100 degrees. It was recommended that physical therapy be continued for another month.

- Medical Report dated January 9, 2013[34] stated that private respondent Cutanda was seen and examined on January 4, 7, and 9, 2013 by their Iloilo Coordinating Physician, Rehab Medicine Specialist, and Orthopedic Surgeon, respectively, and that he has completed 24 sessions of physical therapy. It was found that he has limited flexion/extension of the 2nd and 3rd digits but can oppose left fingers, and that his left hand has a fair power grip. It was recommended that he continue physical therapy for one (1) month, have EMG-NCV of upper extremities on January 15, 2013 and a follow-up on February 12, 2013.

- Medical Report dated February 11, 2013[35] stated that private respondent Cutanda was seen and examined on February 11, 2013 by the Iloilo Coordinating Physician and Orthopedic Surgeon, and that he finished 4 out of the 12 sessions of physical therapy prescribed by their Rehab Medicine Specialist. It was found that private respondent Cutanda lacks full flexion of the index finger but has good grip strength. He was then referred back to the Rehab Specialist on February 14, 2013.

- Second Medical Report dated February 11, 2013[36] stated that private respondent Cutanda needs another month of physical therapy to fully recover, and that he has a good chance of returning to work. Dr. Hosaka then recommended a disability grading of 10 under Hands: Loss of grasping power for small object between the fold of the finger of one (1) hand.

On the other hand, the company-designated physicians' Iloilo coordinating counterpart, Panay Orthopedic & Rehabilitation Institute, issued the following medical certificates which yielded the following findings and recommendations:

- Medical Certificate dated January 4, 2013[37] stated that private respondent Cutanda had limited flexion of 2[nd]-3[rd] digits and slight weakness of grip. It was recommended that rehabilitation continue for another 2-3 months.

- Medical Certificate dated April 2, 2013[38] stated that on that date, private respondent Cutanda was not fit to work. He still had limitation in motion of digits 2-3, left hand, with poor grip. It was recommended that private respondent Cutanda continue treatment for another 3-6 months.

- Medical Certificate dated April 3, 2013[39] stated that private respondent Cutanda underwent 25 treatment sessions of physical therapy on various dates in the months of November, December, January, February, and March.

What remains clear from the above-cited medical reports and certificates is that the determination of disability was made on February 11, 2013, as shown in the second medical report issued on such date by Dr. Hosaka. From October 10, 2012 when private respondent Cutanda was first seen by Dr. Hosaka, up to the point when a medical assessment of a grade 10 disability was made on February 11, 2013, a total of 124 days had lapsed. As a rule, the company-designated physician should make the declaration or determination as to the seafarer's fitness to work or disability within 120 days, otherwise, the law considers the seafarer's disability as total and permanent and the latter shall be entitled to disability benefits.[40] However, should the seafarer still require medical treatment for

more than 120 days, the period granted to the company-designated physician to make the declaration of the fitness to work or determination of the permanent disability may be extended, but not to exceed 240 days.[41]

In this case, private respondent Cutanda seems to capitalize on the fact that the April 2, 2013 medical certificate which categorically stated that he “is not fit to work as of now” was issued way past the 120 day period, or 174 days to be exact.[42] He argues, that even assuming he follows the recommendation contained in such medical certificate that he undergo another 3-6 months of therapy, then at the very minimum,[43] 264 days would have already lapsed.[44] Prescinding from the lapse of such period, he argues that he should already be considered totally and permanently disabled. By so arguing, private respondent Cutanda seems to take advantage of the conclusive presumption of total and permanent disability.

Private respondent Cutanda's position cannot be sustained for he loses sight of the fact that for the conclusive presumption that the seafarer is totally and permanently disabled to set in, two requisites must concur: (1) the period of 120 or 240 days, depending on the need for further medical treatment, should have lapsed; and (2) upon the lapse of such period, no assessment or determination was made as to the seafarer's fitness to resume work or as to his disability, if he is afflicted with one. In *Alpha Ship Management Corporation et al. v. Calo*,[45] the Supreme Court explained the application of the conclusive presumption in the wise:

Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally or permanently disabled.

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Consequently, if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises.[46] (Emphasis supplied.)

Thus, while the determination or assessment of Dr. Hosaka that private respondent Cutanda was afflicted with a Grade 10 disability was made beyond the 120-day period, or 124 days to be exact, it is noticeable that the same medical report recommended another month of physical therapy. In fact, based on the October 25, 2012 medical report, it appears that as early as October 24, 2012, or some 16 days after private respondent Cutanda's accident, Dr. Hosaka already started recommending therapy to him. This need for further medical treatment effectively extended the 120-day period to 240 days,[47] making Dr. Hosaka's assessment or determination of private respondent Cutanda's Grade 10 disability validly made within the 240 day statutory period, and precluding the conclusive presumption of total and permanent disability from setting in.

Millan v. Wallem Maritime Services, Inc.[48] has the same factual milieu as this case and the Supreme Court held that:

Records show that from the time petitioner was repatriated on February 26, 2003, 129 days had lapsed when he last consulted with the company-designated physician on July 5, 2003 and 181 days had passed on the day he last visited his physiatrist on August 26, 2003. Concededly, said periods have already exceeded the 120-day period under Section 20 (B) of the POEA-SEC and Article 192 of the Labor Code. However, it cannot be denied that the company-designated physician had determined as early as March 5, 2003 or even before his discharge from the hospital that petitioner's condition required further medical treatment in the form of physical therapy sessions, which he had subsequently completed per Dr. Estrada's Memo dated July 5, 2003, thus, justifying the extension of the 120-day period. The company-designated physician therefore had a period of 240 days from the time that petitioner suffered his injury or until October 24, 2003 within which to make a

finding on his fitness for further sea duties or degree of disability.

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To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.[49] (Emphasis supplied.)

As in Millan, Dr. Hosaka was able to make a determination that private respondent Cutanda has a Grade 10 disability on February 11, 2013, well within the 240-day period from the time he suffered his injury on October 8, 2012. Clearly therefore, such declaration effectively prevented private respondent Cutanda's temporary disability from becoming permanent.

What weakens private respondent Cutanda's claim for benefits pertaining to a Grade 1 disability is that aside from a sweeping statement that his injuries make him entitled thereto, he cannot make any reference to the schedule found on Section 32 of the POEA SEC to which he can anchor his claim. In fact, if public respondent NLRC had only taken note of the 2010 POEA-SEC, it would have readily observed that disability payments are compensated in accordance with the schedule of benefits enumerated under Section 32 thereof.[50]

The arbitrariness and whimsicality by which total and permanent disability benefits were awarded by public respondent NLRC to private respondent Cutanda becomes even more apparent when it sustained the latter's claim when he never even made use of the option provided for in Section 20 (A)(3) of the POEA-SEC giving the seafarer the chance to refute the medical findings of the company-designated physician by hiring his own doctor, and hence, never presented independent medical finding that he is in fact afflicted with a Grade 1 disability. What escapes this Court is why private respondent Cutanda did not engage the services of an independent doctor who can examine him and issue a medical finding in support of his claim. Without successfully refuting the medical assessment of Dr. Hosaka by making use of the option provided for under Section 20 (A)(3) of the POEA-SEC, private respondent Cutanda's claim that he is entitled to Grade 1 disability classification must necessarily fail. Furthermore, since the POEA-SEC expressly states that any item in the schedule of disabilities under Section 32 with a classification grade 1 shall be considered or shall constitute total and permanent disability,[51] then all other grades, including the diagnosis of Dr. Hosaka that private respondent Cutanda is suffering from Grade 10 disability cannot be considered total and permanent by this Court. It is the oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[52] Private respondent Cutanda failed to discharge that burden.

More importantly, to lend this Court's imprimatur to private respondent Cutanda's stance would be to effectively diminish the classification of disabilities based on severity and would place laborers who suffered much worse infirmities than private respondent Cutanda in an unjust, unfair, and inequitable situation. If only to put things in perspective, the following injuries, diseases and illnesses are considered "grade 1" or total and permanent disabilities pursuant to Section 32 of the POEA-SEC:

- Traumatic head injuries that result to:

- (a) severe paralysis of both upper or lower extremities or one upper and one lower extremity;
 - (b) severe mental disorder or severe complex cerebral function disturbance or post-traumatic psychoneurosis which requires regular aid and attendance as to render worker permanently unable to perform any work;
 - (c) incurable imbecility
- Complete loss of the power of mastication and speech function;

- Blindness or total and permanent loss of vision of both eyes;
- Injury to spinal cord as to make walking impossible even with the aid of a pair of crutches;
- Injury to the spinal cord resulting to incontinence of urine and feces;
- Severe residuals or impairment of intra-abdominal organs which require regular aid and attendance that will enable worker to seek any gainful employment;
- Fracture of the pelvic rings as to totally incapacitate the worker to work;
- Total loss of use of both hands or amputation of both hands at wrist joints or above;
- Total paralysis of both upper extremities;
- Loss of both feet at ankle joint or above;
- Failure of fracture of both hips to unite; and
- Paralysis of both lower extremities.

While this Court commiserates with private respondent Cutanda for the suffering he endured as a result of his injuries, as illustrated above, injuries classified under Grade 1 disabilities are more severe and traumatic, and more pervasive in its effects. Needless to state, the severity of the injuries classified under Grade 1 will indubitably and completely render the worker incapable of earning livelihood from a job he is accustomed to or is trained to perform. This Court is not prepared to put in equal footing private respondent Cutanda with those who suffered far worse, and to award him the same amount of benefits intended to those who are clearly and irrefutably, totally and permanently disabled. To the mind of this Court, benefits equivalent to a Grade 10 disability suffices and is more than commensurate given the extent of private respondent Cutanda's injuries. A contrary position not only offends the very basis of the disability classification and the premise for which it was established, but also, and more importantly, insults those whose sufferings embody the very essence of what it is to be totally and permanently disabled.

Anent public respondent NLRC's award of moral damages and attorney's fees, this Court deletes the same for lack of factual and legal bases. Moral and exemplary damages cannot be awarded especially when petitioners were not remiss of their duty to provide the medical attention private respondent Cutanda needed, and to pay his sickness allowance from October 2012 to February 2013 in the amount of US\$2,720.00.[53] The good faith of petitioners becomes even more evident in the fact that ever since the inception of the case, they readily acknowledged their obligation to pay private respondent Cutanda his disability benefits, albeit equivalent to Grade 10 disability classification.[54] The party claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith.[55] This Court therefore finds that public respondent NLRC gravely abused its discretion in awarding moral damages to private respondent Cutanda when petitioners' acts were not at all tainted with bad faith, ill-motive or fraud, nor can they be characterized as oppressive to labor or done in a manner contrary to morals, good customs or public policy. Verily, without the award of moral damages, there can be no award of attorney's fees.[56]

Lastly, private respondent Cutanda is reminded 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.[57] It should be borne in mind that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. Social justice does not mandate that every dispute should be automatically decided in favor of labor. Justice should be dispensed in light of established facts, the applicable law, and existing jurisprudence.[58]

In this case, applying the disability Grade 10 pertaining to the “loss of grasping power of small objects between the fold of the finger of one hand”[59] to the Schedule of Disability Allowances,[60] private respondent Cutanda is entitled to the monetary benefit of 20.15%[61] of US\$50,000.00[62] or a total amount of US\$10,075.00.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The assailed Decision[63] dated April 16, 2014 and the Resolution[64] dated May 23, 2014 of the NLRC, Fourth Division in NLRC LAC OFW Case No. (M) 03-000230-14, NLRC NCR OFW Case No. (M) 02-02505-13 are hereby SET ASIDE.

Petitioners are hereby ORDERED to pay private respondent Cutanda the amount of USD10,075.00 in disability benefits, to be paid in Philippine currency equivalent at the exchange rate during the time of payment.[65] The award of moral damages and attorney's fees are ordered DELETED.

SO ORDERED.

Gonzales-Sison,M., and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 3-47.

[2] Rollo, pp. 49-59.

[3] Rollo, pp. 61-62.

[4] Rollo, p. 59.

[5] Rollo, p. 61.

[6] Culled from the Decision of the Labor Arbiter dated January 14, 2014. See Rollo, p. 246.

[7] Rollo, pp. 139-154.

[8] Id.

[9] Rollo, pp. 97-131.

[10] Rollo, pp. 179-203; 228-244.

[11] Rollo, pp. 246-253.

[12] Rollo, pp. 254-301.

[13] Rollo, pp. 49-59.

[14] pp. 63-89.

[15] Rollo, pp. 61-62.

[16] Rollo, pp. 12-13.

[17] Aklan Electric Cooperative Incorporated v. NLRC, et al., G.R. No. 121439, January 25, 2000, citing Building Care Corporation v. NLRC, et al., February 26, 1997; Flores v. NLRC, 253 SCRA 494; Ilocos Sur Electric Cooperative Inc. v. NLRC, 241 SCRA 36. See also AGG Trucking v. Melanio Yuag, G.R. No. 195033, October 12, 2011.

[18] Id. citing Philippine Airlines Inc. v. NLRC, 279 SCRA 445.

- [19] Solvic Industrial Corp. v. NLRC, G.R. No. 125548, September 25, 1998.
- [20] Republic of the Philippines v. Garcia et al., G.R. No. 167741, July 12, 2007 citing Information Technology Foundation of the Philippines v. Commission on Elections, G.R. No. 159139, January 13, 2004.
- [21] Tan Jr. v. Matsura et al., G.R. No. 179003, January 9, 2013.
- [22] Rizaldy M. Quitoriano vs. Jebsens Maritime, Inc., et al., G.R. No. 179868, December 23, 2009.
- [23] Joelson O. Iloreta vs. Phil. Transmarine Carriers, Inc., et al., G.R. No. 183908, December 4, 2009.
- [24] Id.
- [25] Iloreta v. Phil. Transmarine Carriers, Inc., et al., G.R. No. 183908, December 4, 2009
- [26] Vergara v. Hammonia Maritime Services, Inc., G.R. No. 172933, October 6, 2008.
- [27] Id. citing Section 20 [B] (3) of then Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract). Nota Bene: The same provision is currently found in the latest POEA-SEC, Memorandum Circular No. 10 (Series of 2010) “Amended Standard Terms and Conditions Governing The Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships”, Section 20 [A](3), paragraph 3.
- [28] Id. citing Article 192 (c) (1), Labor Code.
- [29] Id. citing Rule X, Section 2, Rules and Regulations Implementing Book IV of the Labor Code.
- [30] Id.
- [31] Rollo, p. 133.
- [32] Rollo, p. 134.
- [33] Rollo, p. 135.
- [34] Rollo, p. 136.
- [35] Rollo, p. 137.
- [36] Rollo, p. 138.
- [37] Rollo, p. 170.
- [38] Rollo, p. 171.
- [39] Rollo, p. 172.
- [40] Philman Marine Agency Inc. et al. v. Cabanban, G.R. No. 186509, July 29, 2013.
- [41] Id.
- [42] Reckoned from October 10, 2012. Rollo, pp. 146-147.
- [43] 3 months of additional therapy would constitute an estimated additional 90 days.
- [44] Rollo, p. 147.
- [45] Alpha Ship Management Corporation et al. v. Calo, G.R. No. 192034, January 13, 2014.

[46] Id. citing Kestrel Shipping Co., Inc. v. Munar, G.R. No. 198501, January 30, 2013.

[47] Supra note 40.

[48] Millan v. Wallem Maritime Services, Inc., G.R. No. 195168, November 12, 2012.

[49] Id. citing Santiago v. Pacbasin Shipmanagement, Inc., G.R. No. 194677, April 18, 2012.

[50] Memorandum Circular No. 10 (Series of 2010) “Amended Standard Terms and Conditions Governing The Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships”, Section 20(A)(6), p.12.

[51] Id. at p.21.

[52] Magsaysay Maritime Corporation v. NLRC, G.R. No. 186180, March 22, 2010.

[53] Rollo, pp. 217-220.

[54] Rollo, p. 100.

[55] Audion Electric Co. Inc. v. NLRC, G.R. No. 106648, June 17, 1999 citing Equitable Banking Corporation vs. NLRC, 273 SCRA 352.

[56] Acuna et al. v. Court of Appeals, et al., G.R. No. 159832, May 5, 2006; Pacquing et al. v. Coca-Cola Phil., Inc., G.R. No. 157966, January 31, 2008; Supra note 55.

[57] Supra note 48.

[58] Supra note 52.

[59] Memorandum Circular No. 10 (Series of 2010) “Amended Standard Terms and Conditions Governing The Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships”, Section 32, under “Hands,” p. 20.

[60] Id. at p.21.

[61] Id.

[62] Id.

[63] Rollo, pp. 49-59.

[64] Rollo, pp. 61-62.

[65] Supra note 59 at 21.

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