

**DIAMOND-H MARINE SERVICES & SHIPPING AGENCY, INC.
AND/OR DIAMOND-H SHIPPING CO., LTD./HONGKONG AND MR.
RUBEN TURINGAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION (FIFT...**

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

Assailed in this Petition for Certiorari filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure are the Decision and Resolution issued by the Fifth Division of public respondent National Labor Relations Commission ("NLRC") in NLRC LAC No. 03-000334-13, viz: (a) the Decision[1] dated October 30, 2013, which affirmed with modification the Decision[2] dated January 31, 2013 rendered by Labor Arbiter Elias H. Salinas in NLRC NCR Case No. (M) NCR 07-11440-12,[3] and (b) the Resolution[4] dated December 27, 2013 which denied petitioners' motion for reconsideration of the October 30, 2013 NLRC Decision.

The Facts

Petitioner Diamond-H Marine Services & Shipping Agency, Inc., through its local manning agent, Diamond-H Shipping Company Ltd./Hong Kong ("Diamond-H"), is engaged in the shipping business. On July 8, 2011, Diamond-H hired private respondent Arnel C. Caputan ("Caputan") as an Able Bodied (A/B) Seaman aboard its vessel HC Mellina for nine (9) months.[5] Aside from being covered by the Total Crew Cost Collective Bargaining Agreement No. F2350 ("CBA"),[6] Caputan's Contract of Employment is also covered by the 2010 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels [2010 Philippine Overseas Employment Administration Standard Employment Contract] ("2010 POEA-SEC").

On March 4, 2012, Caputan figured in an accident when his right forearm got caught between the stationary crane and the moving gantry crane that he rode on while the cargo haul hatch cover was being opened.[7] He was brought to the Ben Taub General Hospital for treatment where he was diagnosed with "Right Radial and Ulnar Fractures with Compartment Syndrome." [8] On March 5, 2012, he underwent a surgical procedure called "Open Reduction and Internal Fixation with Plate and Screws, Right Radius and Ulna Fasciotomy, Right Forearm." [9] On March 7, 2012, he underwent another procedure called "Wound Irrigation, Debridement of Right Forearm Fasciotomy wound application of negative pressure wound vacuum assisted closure dressing", as well as "Closure of the Right Forearm Wound." He was given medication afterward.[10]

On March 16, 2012, Caputan was deemed fit to travel so he was repatriated to the Philippines on March 19, 2012. Upon arrival, he was referred to the company-designated clinic, the Marine Medical Services at Metropolitan Medical Center for further medical attention.[11] After check-up by the attending specialist, he was diagnosed with "S/P Open Reduction and Internal Fixation with Plates and Screws, Right Radio-Ulnar Fracture." [12] He was then advised to undergo physical therapy.

On June 13, 2012, Caputan's injury was subjected to a repeat x-ray[13] and he continued his rehabilitation in

Butuan City. On July 23, 2012, the attending psychiatrist issued a Psychiatric Report[14] and the Assistant Medical Coordinator of the Marine Medical Services of the clinic released documents (Brief Clinical History, Medical Certificate and SSS medical claims) as regards Caputan's condition.[15]

On July 30, 2012, Caputan filed a complaint[16] for payment of disability benefits, damages and attorney's fees.[17] The next day, or on July 31, 2012, Caputan consulted Dr. Cesar H. Garcia ("Dr. Garcia") who issued a handwritten Orthopedic Surgeon's Report[18] which summed up the accident and the state of Caputan's injury. Dr. Garcia noted that "[P]atient is ambulatory. The post operative wounds are dry with no signs and symptoms of infection." [19] Dr. Garcia concluded that Caputan is "still unfit to work as a seaman in an ocean going vessel." [20]

On August 3, 2012, considering that Caputan already undertook several physical therapy sessions, the company-designated physician, Dr. William Chuasuan, Jr. ("Dr. Chuasuan"), assessed that Caputan had a Disability Grade 11 (inability to turn forearm in normal position) based on the 2010 POEA-SEC.[21] However, during the mediation conference, Caputan manifested that he was claiming maximum disability compensation based on the CBA. Diamond-H then asked Dr. Chuasuan to assess Caputan's disability based on the said CBA. On September 27, 2012, Dr. Chuasuan declared that Caputan had a Disability Grade 10 (stiffness in good working position).[22] Diamond-H offered to grant Caputan disability benefits based on Disability Grade 10 of the CBA, but he refused and insisted on the maximum disability compensation. Since both parties could not agree on an amicable settlement, they were directed to file their respective pleadings for the Labor Arbiter's consideration.[23]

Caputan asserted that Dr. Chuasuan fraudulently assessed him with a Grade 10 Disability Rating despite his permanent incapacity to perform his duties as an A/B Seafarer. He added that to dispute the assessment, he sought the medical opinion of Dr. Garcia who in turn estimated that Caputan's healing could take around 120 days and declared that Caputan is "still unfit to work as a seaman in an ocean going vessel." [24] Furthermore, he stressed that he could no longer use his right arm especially in strenuous activities and in effect could not work properly to earn a living since March 2012. Caputan claimed permanent total disability benefits in the amount of US\$125,000 under the CBA as well as damages and attorney's fees.[25]

Conversely, Diamond-H argued that Caputan could not claim permanent total disability benefits, damages and attorney's fees because he received the medical attention he needed which was paid for by Diamond-H. It noted that before Caputan was diagnosed with Grade 11 Disability based on the 2010 POEA-SEC after several physical therapy sessions, he already filed a complaint on July 30, 2012. Since Caputan manifested that he was claiming maximum disability benefits based on the CBA, Diamond-H asked the company-designated physician to assess him again. The same physician issued a Disability Grading of Grade 10, so Diamond-H offered to pay Caputan benefits based on such disability rating but he refused. It insisted that the assessment of the company-designated physician should be controlling based on the 2010 POEA-SEC as opposed to the assessment of Caputan's doctor of choice.[26]

The Decision of the Labor Arbiter

Labor Arbiter Salinas granted disability benefits to Caputan, ruling that it is the company-designated physician who should declare if the seafarer suffered a permanent disability, whether partial or total. He also held that the assessment of the company-designated physician was based on Section 32 of the 2010 POEA-SEC. He noted that Diamond-H complied with its contractual obligation because it gave full medical attention to Caputan after his accident.[27] Hence, he awarded Caputan partial permanent disability benefits, but not damages and attorney's fees, to wit:

"WHEREFORE, premises considered, premises considered (sic), judgment is hereby rendered ordering

respondents Diamond-H Marine Services & Shipping Agency Inc., and/or Diamond-H Shipping Co., Ltd. To pay, jointly and severally, complainant Arniel C. Caputan the amount of Twelve Thousand Five Hundred US dollars (US\$ 12,500.00) or its Philippine peso equivalent at the time of actual payment, representing partial permanent disability benefits under the CBA.

All other claims are dismissed for lack of merit.

SO ORDERED."[28]

Aggrieved, Caputan then filed an appeal with the NLRC, disputing the allegedly self-serving declaration of the company-designated physician and seeking the declaration of total permanent disability.[29]

The Decision of the NLRC

The NLRC granted the appeal of Caputan and awarded him total permanent disability benefits and attorney's fees. The NLRC held that although it is the company-designated physician who is tasked to determine the seafarer's disability, it is not final and binding on the seafarer and the courts because the assessment should still be weighed on the merits. The NLRC added that the seafarer can dispute the assessment and consult a doctor of his choice for a second opinion. Furthermore, it noted that even if Caputan's arm had been medically attended to, his performance as an able-bodied seaman has already been affected due to the injury. The NLRC added that the 2010 POEA-SEC is not the only basis in determining the rights of the seafarers, as the Labor Code should also apply and the loss of earning capacity should be taken into account.[30] The dispositive portion of the NLRC decision declared:

"WHEREFORE, premises considered, the assailed decision of Labor Arbiter Elias H. Salinas is hereby AFFIRMED with MODIFICATION in that complainant-appellant is declared to have suffered a permanent total disability. Accordingly, respondent-appellees are hereby ordered to jointly and severally pay appellant the amount of One Hundred Twenty Five Thousand US Dollars (US\$125,000) in accordance with the parties['] CBA.

SO ORDERED."[31]

Diamond-H filed its motion for reconsideration which the NLRC denied. Hence, Diamond-H filed this petition.[32]

On April 29, 2014, both parties agreed on a Conditional Satisfaction of Judgment[33] which provided that since Caputan had received conditional payment from Diamond-H, he would no longer pursue the execution proceedings he initiated to carry out the decision in his favor. Additionally, it ensured Diamond-H that the execution of the document would not prejudice its petition for certiorari with the Court of Appeals and that in the event that its petition is granted, Caputan would return the amount which is not due him.[34]

The Issues

In seeking the reversal of the assailed Decision, petitioner Diamond-H raises the following issues:

"1. THE HONORABLE COMMISSION COMMITTED A SERIOUS REVERSIBLE ERROR AND A GRAVE ABUSE OF DISCRETION IN AWARDING FULL DISABILITY BENEFITS UNDER THE CBA. PRIVATE RESPONDENT IS NOT ENTITLED TO MAXIMUM DISABILITY BENEFITS AS HE IS MERELY SUFFERING FROM DISABILITY GRADE 10 AS ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN.

2. THE MEDICAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS PREVAIL OVER THAT OF THE PRIVATE RESPONDENT'S PERSONAL DOCTOR.

3. BY PRIVATE RESPONDENT'S OWN ADMISSION HE DID NOT WEAR PROTECTIVE EQUIPMENT WHEN HE FIGURED IN THE ACCIDENT. SUCH WILLFUL FAILURE ON HIS PART IS CONSIDERED A GROUND FOR THE FORFEITURE OF HIS RIGHT TO CLAIM DISABILITY COMPENSATION FROM RESPONDENTS."[35]

The Court's Ruling

We find the petition impressed with merit.

In accordance with the avowed policy of the State to give maximum aid and full protection to labor, the Labor Code concept of permanent total disability has been applied to Filipino seafarers, on the notion that disability is intimately related to the worker's capacity to earn, and what is compensated is not his injury or illness but his inability to work resulting in the impairment of his earning capacity. In other words, disability should be understood less on its medical significance but more on the loss of earning capacity.[36]

Well-established under jurisprudence is the principle that entitlement of seafarers to disability benefits does not entirely depend on medical diagnosis but also on (1) the Labor Code and (2) its Implementing Rules and Regulations ("IRR"), (3) the 2010 POEA-SEC and (4) the CBA.

Permanent total disability is defined by Article 192(c)(1) of the Labor Code, thus:

"Art. 192. Permanent total disability. – x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days [120], except as otherwise provided for in the Rules."[37]

"The 120-day period may be extended up to 240 days, under Rule X, Section 2 of the Amended Rules on Employees Compensation[38] and pursuant to the pronouncement in Vergara v. Hammonia Maritime Services, Inc.[39] to the effect that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability."[40]

It is undisputed that Caputan was involved in an accident on March 4, 2012; that he underwent surgery and was repatriated back to the Philippines on March 19, 2012; and that he underwent therapy sessions as advised by the company-designated physician. However, without waiting for the assessment of the company-designated physician regarding his fitness to work, Caputan filed a complaint for disability benefits on July 30, 2012. The next day, or on July 31, 2012, he consulted a doctor of his choice, Dr. Garcia, who declared that he was still unfit to work as a seafarer. It was only on August 3, 2012, after Caputan underwent several physical therapy sessions, that Dr. Chuasuan finally issued him a Grade 11 disability rating based on the 2010 POEA-SEC. Clearly, Caputan preempted the assessment of the company-designated physician when he filed a complaint and consulted a different doctor even before Dr. Chuasuan could assess the degree of his disability. Doing so should have been considered as premature by the labor tribunals.[41] Meanwhile, due to Caputan's manifestation that he is claiming benefits under the CBA, Dr. Chuasuan further examined and gave him a Grade 10 disability rating based on the CBA on September 27, 2012.

It is important to note that while both of the disability gradings were issued by the company-designated physician beyond 120 days in accordance with the Labor Code, they were still well within the extended 240-day treatment period specified by the IRR of the Labor Code. In particular, the disability grading under the 2010 POEA-SEC was given 137 days after Caputan's repatriation, while that under the CBA was given 192 days after his repatriation.

It should be noted also that Diamond-H does not deny liability for Caputan's disability compensation; it is only the disability grading which it seeks to contest. Deemed incorporated in Caputan's employment contract[42] when he was hired on July 8, 2011 is a set of standard provisions established and implemented by the POEA. Also known as the 2010 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (2010 POEA-SEC), it contains the minimum requirements prescribed by the government for employment of seafarers, such as Section 20(A)(3) which provides:

"A. 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:

xxx

2. xxx However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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 this sickness allowance shall be made on a regular basis, but not less than once a month.

xxx

If a doctor appointed by the seafarer disagrees with the assessment [of the company-designated physician], 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."[43]

At the same time, Caputan's employment contract is also covered by the Total Crew Cost Collective Bargaining Agreement No. F2350. Section 19 (51) thereof states:

"The disability suffered by the Seafarer shall be determined by a doctor appointed mutually by the Company and the ITF [International Transport Workers' Federation], and the Company shall provide disability compensation to the Seafarer in accordance with the percentage specified in the table below which is appropriate to this ability. With any differences, including less than 10% disability, to be pro-rata."[44]

Section 19 (53) of the CBA, under which Caputan seeks to recover permanent total disability[45], reads:

"53. Permanent Medical Unfitness – A Seafarer whose disability, in accordance with Section 19 (1) is assessed at 50% or more under the attached Annex 3 shall, for purposes of this paragraph be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation, i.e. US\$ 250,000 for Officers and Ratings above AB and US\$125,000 for Ratings and below. Furthermore, any Seafarer assessed at less than 50% disability under the Attached Annex 3 but certified unfit for further sea service in any capacity by a doctor mutually appointed by the Company and the ITF, shall also be entitled to 100% compensation."[46]

Construing the foregoing provisions together, it is clear that for purposes of determining the seafarer's degree of disability, it is the company-designated physician who must proclaim that he sustained a permanent disability. However, in the event of conflict in the medical assessment of the company-designated physician and that of the seafarer's self-appointed physician, the parties are given the option to jointly appoint a third physician whose

decision shall be final and binding upon them.

The problem in this case arose when Caputan pursued his claim and later consulted a doctor of his own choice without waiting for the assessment by the company-designated physician. Essentially, there was still no assessment to dispute when he filed his complaint and consulted another doctor. Further, even when Dr. Chuasuan issued the disability gradings based on the POEA-SEC and then the CBA which Caputan could dispute using his personal doctor's assessment, there was no referral to a third doctor mutually agreed upon by the parties for final determination—a remedy provided by both the POEA-SEC and the CBA. If only both parties had followed the procedure laid down for disability assessment provided by the POEA-SEC and the CBA, the issue could have been already resolved.[47] But since they did not avail of this remedy, We are constrained to evaluate the conflicting medical assessments of both physicians to determine which of the two is more reliable and supported by substantial evidence.

Granted that Caputan's injury is work-related, the remaining question is the degree of disability and the basis for the amount that should be awarded to him. In disability claims, however, it is the seafarer's duty to prove by substantial evidence his eligibility for such claims.[48] We note that Caputan submitted a medical certificate,[49] SSS medical certificate[50] and handwritten Orthopedic Surgeon's Report[51] signed by Dr. Garcia which certified him to be still unfit to work. However, We find these documentary evidence insufficient because it was not Dr. Garcia who closely monitored the treatment progress of Caputan's injury. Notably, the medical certificates issued by Dr. Garcia reveal that they were issued on July 31, 2012, which is the very same day that Caputan first consulted him about the injury. No medical documents were presented to certify that separate and independent tests were administered on Caputan by Dr. Garcia to support his diagnosis. It can only be surmised that Dr. Garcia's findings were based on the medical tests that have been done on Caputan which were provided by the company-designated physician, and not based on his own tests.[52]

In contrast, Diamond-H was able to establish that its company-designated physician, Dr. Chuasuan, has been monitoring Caputan's health and progress for five (5) months since he was repatriated. There were several documents attached to Diamond-H's pleadings which would support its claim that it had actually been aiding Caputan since his accident. Dr. Chuasuan's notarized affidavit[53] bolsters its argument that based on his evaluation, Caputan only had a partial disability which would not prevent him from engaging in gainful employment. The company-designated physician's finding is entitled to greater weight and respect as it was arrived at after Caputan was regularly examined in coordination with an orthopedic surgeon, prescribed with medications, and given physical therapy sessions for about 5 months. We therefore hold that Diamond-H was able to prove its defense by substantial evidence.

Because Caputan's complaint was premature and he was not able to substantiate his claim for permanent total disability benefits, his partial permanent disability benefits should be based on the POEA-SEC and the CBA, taking into account the disability ratings issued by the company-designated physician.[54]

Under Section 32 of the 2010 POEA-SEC on the Schedule of Disability Allowances, the impediment grade of 11 has a corresponding benefit of US\$7,465 only[55]. Thus, when he manifested that he wanted to claim higher benefits under CBA, Diamond-H agreed to re-assess Caputan's disability based thereon, despite its earlier assessment based on the 2010 POEA-SEC. Diamond-H then offered to pay the amount based on the CBA but only that equivalent to Disability Grade 10. It should therefore pay US\$12,500.00, the amount corresponding to Disability Grade 10 for seafarers AB and Below based on Section 19 (50) of the CBA, which states:

"A Seafarer who suffers an injury as a result of an accident from any cause whatsoever whilst in the employment of the Company, including accidents occurring whilst travelling to or from the ship or as a result of marine or other similar peril, and whose ability to work is reduced as a result thereof, shall receive from the

Company in addition to their sick pay (\$15 above), a compensation as stated below:

Compensation

a) Masters and Officers and ratings above AB – US\$250,000

b)

All Ratings, AB and below – US\$125,000."⁵⁶

Degree of Disability Rate of Compensation

%

Ratings AB and Below

Officers & Ratings above SB

US\$

US\$

50-100

125000

250000

49

62500

125000

40

50000

100000

30

37500

75000

20

25000

50000

10

12500

25000

Loss of profession caused by disability (accident) shall be secured by 100% of the compensation.^[57]

With regard to the issue of not wearing protective gear, We agree with petitioner Diamond-H that Caputan did not

follow protocol when he failed to wear protective equipment before his accident. This is based on the ED Provider Notes signed by Dr. Jessica L. Nelson[58] that Caputan himself attached to his pleading, to wit:

"xxx

Arm Injury

The incident occurred just prior to arrival. The incident occurred at work. The injury mechanism was a crush injury. The injury was related to work. The wounds were not self-inflicted. No protective equipment was used. xxx (Emphasis Ours)."[59]

Corollarily, Section 20(D) of the POEA-SEC provides:

"No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer."

It is clear from the above-mentioned provision that Caputan could not automatically claim benefits because it was his decision not to wear protective gear which added danger to himself. He knew that his job entailed risks which he should always be prepared for. Nonetheless, there is still a probability of getting injured despite the use of protective gear due to the gravity and serious nature of the accident, i.e., his right forearm got crushed between the stationary crane and the moving gantry crane while the cargo haul hatch cover was being opened. There is also no proof that Caputan was guilty of willful or criminal act or intentional breach of his duties when he did not wear protective equipment which, at most, may be considered as negligent act. Neither can it be said that Caputan's disability is directly attributable to him as it was caused by the said crushing accident. Besides, Diamond-H already admitted that Caputan is entitled to disability benefits under the CBA. Hence, Diamond-H is still liable for partial total disability benefits.

Be that as it may, there is no basis to uphold the award for damages because there is no showing that Diamond-H acted in bad faith or was negligent in providing Caputan medical treatment and therapy after his accident and even during his period of disability.[60] The claim for attorney's fees is likewise denied since Caputan preempted the assessment of disability rating by the company-designated physician and consulted a different doctor without having any such assessment to dispute yet. Caputan was in fact not constrained to engage the services of counsel to protect his rights since his complaint was premature.

Finally, in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court, as a general rule, does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC to determine if the same are supported by substantial evidence,[61] or if the NLRC arbitrarily disregarded the evidence before it or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[62] In the case at bar, the NLRC gravely abused its discretion when it ignored the substantiated medical findings of the company-designated physician, and relied on the uncorroborated medical findings of Caputan's chosen physician to reverse and vacate the Labor Arbiter's grant of his partial permanent total disability benefits. In rendering a factual finding of permanent total disability which is not supported by substantial evidence, the NLRC committed in the process grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision of the NLRC dated October 30, 2013 and Resolution dated December 27, 2013 are hereby SET ASIDE. The Decision dated January 31, 2013 of the Labor Arbiter is REINSTATED. Private respondent Arnel C. Caputan is further ordered to return any excess of the amount previously paid to him by petitioner Diamond-H based on the Conditional Satisfaction

of Judgment signed by both parties.

SO ORDERED.

Rosario, and Dimagiba, JJ., concur.

[1] Rollo, pp. 36-46.

[2] Id., pp. 176-185.

[3] Id., pp. 55-56.

[4] Id., pp. 49-53.

[5] Id., pp. 57, 238, 306.

[6] Id., pp. 60-77, 103-120, 146-150, 239-256, 309-326.

[7] Id., pp. 37, 81, 121-122, 125.

[8] Id., pp. 81, 121-122.

[9] Id.

[10] Id., p. 81.

[11] Id., pp. 37, 81-82.

[12] Id., pp. 37-38, 82.

[13] Id., p. 273

[14] Id., p. 274

[15] Id., pp. 177-178, 275-277.

[16] Id., pp. 208-210.

[17] Id., p. 82.

[18] Id., pp. 280-283.

[19] Id., pp. 281-282.

[20] Id., pp. 282-283.

[21] Id., pp. 38, 82, 307.

[22] Id., pp. 38, 82, 308.

[23] *Id.*, pp. 38, 82.

[24] *Id.*, pp. 178, 282-283.

[25] *Id.*, p. 179.

[26] *Id.*, p. 180.

[27] *Id.*, pp. 181-184.

[28] *Id.*, p. 185.

[29] *Id.*, p. 198.

[30] *Id.*, pp. 40-43.

[31] *Id.*, p. 45.

[32] *Id.*, pp. 4-26.

[33] *Id.*, pp. 467-470.

[34] *Id.*

[35] *Id.*, pp. 9-10.

[36] *Quitoriano vs. Jebsens Maritime, Inc.*, G.R. No. 179868, January 21, 2010.

[37] *Alpha Ship Management Corporation vs. Calo*, G.R. No. 192034, January 13, 2014, quoting P.D. 442, As Amended or the Labor Code of the Philippines. Emphasis added.

[38] Rule X, Section 2 (Book IV) of the IRR of the Labor Code states:

"SEC. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System."

[39] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 628

[40] *Alpha Ship Management Corporation vs. Calo*, *supra*

[41] *Magsaysay Maritime Corporation and/or Westfal-Larsen and Co., A/S vs. NLRC and Capoy*, G.R. No. 191903, June 19, 2013.

[42] Rollo, p. 57

[43] Emphasis added.

[44] Rollo, pp. 65, 108, 244, 314.

[45] Id., pp. 457-458

[46] Emphasis added.

[47] Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.) and Dorchester Marine Ltd. vs. Dumadag, G.R. No. 194362, June 26, 2013.

[48] Esguerra vs. United Philippines Lines, Inc., Belships Management (Singapore) Pte Ltd., and/or Lising, G.R. No. 199932, July 3, 2013, citing Antiquina vs. Magsaysay Maritime Corporation, G.R. No. 168922 April 13, 2011.

[49] Rollo, p. 278.

[50] Id., p. 279.

[51] Id., pp. 280-283.

[52] Id., p. 183.

[53] Id., p. 160.

[54] Esguerra vs. United Philippines Lines, Inc., supra.

[55] $\text{US\$50,000} \times 14.93\% = \$7,465$

[56] Rollo, pp. 64-65, 107-108, 243-244, 313-314.

[57] Id., pp. 65, 108, 244, 314. Underscoring supplied.

[58] Id., p. 264.

[59] Id., underscoring supplied

[60] Esguerra vs. United Philippine Lines, Inc., supra

[61] Yolanda M. Mercado, et al. vs. AMA Computer College-Parañaque City, Inc., G.R. No. 183572, April 13, 2010.

[62] Mac Adams Metal Engineering Workers Union-Independent, et al. vs. Mac Adams Metal Engineering and/or

Lydia Sison, et al., G.R. No. 141615, October 24, 2003.

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