

PHILIPPINE TRANSMARINE CARRIERS, INC., MARINE SHIPMANAGEMENT LTD., AND/OR ANDRE CARLO TORIBIO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND ORLANDO ...

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is a Petition for Certiorari[2] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision[3] dated May 28, 2014 of public respondent National Labor Relations Commission (NLRC) which reversed the Decision[4] dated November 29, 2013 of the Labor Arbiter and, in its stead, ordered petitioners to jointly and severally pay private respondent Orlando S. Tan total permanent disability benefits of US\$60,000.00, sickness allowance of US\$1,044.00, reimbursement of medical expenses in the amount of P66,000.00, moral and exemplary damages in the total amount of P100,000.00 and attorney's fees equivalent to ten percent (10%) of the total award; and the Resolution[5] dated June 25, 2014 denying the motion for reconsideration thereof.

THE FACTS

On February 16, 2012, private respondent Orlando S. Tan was hired as Ordinary Seaman by petitioner Philippine Transmarine Carriers, Inc. to work for its foreign principal petitioner Marine Shipmanagement Limited⁶. The contract of employment[7] stipulated that private respondent was to work for a period of eight (8) months with a basic salary of US\$ 516.00 per month. He joined his vessel of assignment, MV Pago, on March 28, 2012.

During the sixth month of his contract, or sometime in September 2012, private respondent suffered lower abdominal pain while he was moving provisions of the vessel weighing about 40-50 kilograms. The pain became recurrent, hence, he informed the Master of the vessel about it. Since the vessel was then in open seas, he was not able to undergo any medical examination. In the meantime, he took pain reliever for two (2) weeks. On September 24, 2012, he was ordered to assist in cleaning the forward portion of the vessel. The task required him to move heavy equipment from one area to another. Thereafter, he felt severe pain in his scrotum.

When the ship docked at the Port of Charleston, South Carolina, USA on September 25, 2012, he had a check-up at a hospital. The initial diagnosis was that he was suffering from inguinal hernia. He was advised not to lift objects weighing more than twenty (20) pounds.[8] After his check-up, the pain still persisted and became unbearable. Consequently, on October 25, 2012, he was repatriated to the Philippines and arrived in the country on the next day.

On October 31, 2012, private respondent reported to the company-designated clinic, Marine Medical Services, for medical examination. After undergoing physical examination and inguino-scrotal ultrasound, it was confirmed that private respondent was suffering from right inguinal hernia. In the Medical Report[9] of even date, it was suggested that private respondent should undergo the procedure right inguinal herniorrhaphy to address his hernia. This procedure costs P80,000.00. It was also indicated that private respondent was to report back on November 21, 2012 for reevaluation.

On January 10, 2013, private respondent underwent a medical procedure called hernia repair, right, with prolene mesh application at the St. Luke's Medical Center under Dr. Oscar Mercado, Jr. who is not the company-designated physician.[10] During the operation, a lipoma of the spermatic cord was discovered and removed.[11] Private respondent shouldered all the hospital expenses.

On March 6, 2013, private respondent filed with the Arbitration Branch of public respondent NLRC the instant complaint[12] for total and permanent disability benefits and damages against petitioners Philippine Transmarine Carriers, Inc., its crewing manager[13] Andre Carlo Toribio, and Marine Shipmanagement Limited.

During the pendency of the case with the Labor Arbiter but before the parties could submit their position papers, private respondent consulted with Dr. Christopher F. Perez, a urologist. Dr. Perez issued a Medical Certificate[14] dated May 14, 2013 containing the following remarks: "Presently unfit to work" and a notation that private respondent was experiencing scrotal pain. On the next day, or on May 15, 2013, Dr. May S. Donato-Tan, a cardiologist, issued a Medical Certificate[15] of even date to the effect that private respondent was suffering from permanent disability. The medical certificate stated that despite undergoing inguinal hernia repair, private respondent is still very apprehensive because he still experiences pain over his right inguinal area specially while walking and using tight underwear. Also, despite the operation and an explanation to him that the mass removed from his spermatic cord is just a lipoma, he is worried that his condition will develop into cancer. Because of this, he lacks sleep and sometimes refuses to eat. With private respondent's attitude, he will not be able to perform his job effectively, hence he was given permanent disability assessment.

On July 9, 2013, private respondent filed his position paper[16] where he averred that upon his repatriation, he reported to the office of petitioners. The crewing manager of petitioner Transmarine referred him to the company doctors at St. Luke's Medical Center. As proof of the referral, Annex "G"[17] was attached to the position paper. He was under the care of Dr. Oscar Mercado. After undergoing laboratory examinations, Dr. Mercado recommended that he undergo hernia repair, right with prolene mesh application. Private respondent informed petitioners of the need to undergo surgical procedure but he was asked to wait until petitioner Marine Shipmanagement Ltd. approves the cost of the surgery. He followed up several times until he was told to advance the expenses of the operation subject to reimbursement when petitioner Marine Shipmanagement approves the surgery. Hence, he underwent the required surgery on January 10, 2013. After the surgery, he sought reimbursement of his medical expenses from petitioners but the latter ignored his claim.

Private respondent averred that he is entitled to total and permanent disability benefits because from the time he was repatriated on October 26, 2012 up to the filing of the complaint, he failed to recover completely from his ailment and to perform the work which he is accustomed to and trained for. The illness he suffered is hernia, which is one of the occupational diseases listed under the Philippine Overseas Employment Agency Standard Employment Contract (POEA SEC). Private respondent's disability is attested by the medical certificate issued by Dr. Donato-Tan who categorically stated that he may no longer perform his usual duties as a seaman. He is entitled to disability benefits of US\$125,000.00 pursuant to the collective bargaining agreement covering his employment. Private respondent likewise prayed for the reimbursement of his medical expenses as well as sickwages, actual and exemplary damages and attorney's fees.

In their traverse, petitioners averred that upon private respondent's repatriation, petitioners referred him to the company-designated clinic, Marine Medical Services, and was examined by Dr. Kendrick Sia on October 30, 2012[18]. After undergoing medical tests, it was confirmed that he was suffering from right inguinal hernia. On December 31, 2012, the company physician recommended that he should undergo right inguinal herniorrhaphy which is a surgical procedure.[19] However, private respondent abandoned his treatment with the company-designated doctors. Petitioners later learned that private respondent had himself treated by his private

doctor and that he shouldered the cost of the medical procedure performed on him and other medical expenses. Having abandoned his treatment with the company-designated doctors without any justifiable reason, he breached his duty under the POEA SEC to comply with the treatment plan laid out for him by the company-designated physician until he is declared fit to work or the degree of his disability is established. Since he refused to be further examined by the company-designated physician, the latter was prevented from rendering a final assessment of private respondent's state of health. The assessment made by the doctors appointed by private respondent cannot be the basis of an award of disability. Under the POEA SEC, it is the company-designated physician who shall determine the disability grading of the seafarer. Private respondent's medical condition is treatable with surgery. As he already underwent a successful surgery, he should be considered fit to work as seaman. As such, his complaint for disability benefits should be dismissed.

In a Decision[20] dated November 29, 2013, the Labor Arbiter ruled in favor of petitioners and dismissed private respondent's complaint. The Labor Arbiter gave credence to petitioners' version that private respondent abandoned his medical treatment with the company-designated physicians. There is nothing in the records that would support private respondent's claim that petitioners' crewing manager referred him to the physicians at St. Luke's Medical Center. The evidence he presented to support this claim does not pertain to the crewing manager's referral but to private respondent's request for his final settlement/pay. Having abandoned his medical treatment, he has foreclosed his right to the benefits under the POEA SEC including his right to disability benefits and sickness allowance. Also, under Section 20 (B) (3) of the POEA SEC, it is the company-designated physician who is authorized to assess the fitness or extent of disability of seafarers. Here, private respondent sued petitioners for disability benefits without seeking the assessment of company physician of his condition. Perforce, private respondent has no cause of action since there was no assessment to contest. The Labor Arbiter, however, granted private respondent's plea for reimbursement of the cost of his operation and expenses on his medication since he really underwent surgery as suggested by the company-designated physician and the same are supported with official receipts. The pertinent portions of the Labor Arbiter's decision are quoted:

xxx Complainant is not entitled to total and permanent disability benefits.

FIRST. The 2010 POEA-SEC xxx was amended to include among others, the effect of failure of the seafarer to report regularly to the company physician in the course of treatment. The purpose of this amendment is to ensure that the seafarers would report regularly to the company physician to undergo the required treatment. Failure would result in the forfeiture of his rights to claim benefits provided in the POEA-SEC.

Here, the accredited physicians of Marine Medical xxx Services xxx were the company physicians appointed by Respondents to diagnose, treat and manage the illness of Complainant. Immediately after his repatriation xxx Complainant submitted himself to company physician Dr. Kendrick Sia for post employment medical examination. In the course of his treatment, he was diagnosed with "Right Inguinal Hernia". On December 31, 2012, Dr. Sia recommended that Complainant undergo surgery called "Right Inguinal Herniorrhaphy". But it was another physician, Dr. Oscar Mercado of St Lukes Medical Center who operated on Complainant xxx on January 10, 2013. Clearly, Complainant abandoned his medical treatment under the company physician. Complainant alleged that Respondents' crewing manager referred him to the company physicians at Saint Lukes Medical Center xxx. To prove this, he presented Annex "G" to his position paper supposedly the "referral" to the company physicians at St. Luke's Medical Center. But Annex "G" is not the "referral" but his "request for his final settlement/pay". xxx There being nothing on record showing Dr. Mercado is Respondents' company physician, we conclude that Complainant abandoned his medical treatment with the company physician. Being so, he has foreclosed his right to the benefits under the POEA-SEC, including disability benefits.

SECOND. Pursuant to Section 20 [B] [3] of the POEA-SEC, it is the company physician who is authorized to assess the fitness or extent of disability of seafarers. We have declared that Complainant abandoned the

treatment of the company physician and sought the medical treatment of his appointed physician. xxx without seeking the assessment of the company physician on his condition, complainant sued Respondents for disability benefits. Perforce, xxx we conclude that the complaint has no cause of action since there was no assessment to contest.

THIRD. xxx if indeed Complainant is no longer fit to work and is permanently disabled, it is Dr. Mercado, the physician who operated on Complainant rather than Drs. Perez and Tan xxx who is in better position to declare Complainant as such. The failure of Mercado to declare Complainant unfit to work/permanently disabled only bolsters our conclusion that Complainant is not entitled to permanent and total disability benefits.

xxx

xxx considering that we have declared Complainant to have abandoned his medical treatment with the company physician, Complainant is barred from claiming sickness allowance and reimbursement of medical expenses. But being cognizant that Complainant has really undergone surgery as suggested by the company physician and advanced the payment for the expenses thereof, we are disposed to grant Complainant's claim for reimbursement of medical expenses which are supported by official receipts in the sum of P66,000.00 xxx The claim for sickness allowance stands rejected.

Claims for damages and attorney's fees are rejected for being baseless.

WHEREFORE, premises considered, except for the claim for reimbursement of medical expenses, the complaint is hereby DISMISSED for lack of merit. PHILIPPINE TRANSMARINE CARRIERS INC., MARIN SHIPMANAGEMENT LTD. & ANDRE CARLO TORIBIO are jointly and solidarily ordered to pay ORLANDO S. TAN the sum of PESOS : SIXTY SIX THOUSAND ONLY [P66,000.00], Philippine Currency, representing reimbursement of medical expenses.

SO ORDERED.[21]

Private respondent filed an appeal with public respondent NLRC which, in a Decision[22] dated May 28, 2014, reversed the Labor Arbiter's Decision and granted private respondent's plea for total and permanent disability benefits. It was ratiocinated that private respondent's failure to report to the company doctors for treatment and assessment cannot be attributed to his fault. Petitioners did not faithfully comply with their obligation to render timely medical attention to private respondent when they failed to approve the urgent surgery to correct private respondent's inguinal hernia. Private respondent cannot be blamed when he consulted an independent surgeon who performed the surgery in January 2013 and two other experts in urology and internal medicine. On account of petitioner's failure to faithfully provide medical attention to private respondent, there arises a conclusive presumption that private respondent is totally and permanently disabled due to the illness he suffered while in the employ of petitioners. Given the strenuous nature of private respondent's shipboard employment, it is logical to conclude that he could no longer resume his work as a seaman as his illness will recur when he goes back to his usual activities. Private respondent was also awarded 120 days sickness allowance. Petitioners' wanton disregard of their duty to provide medical attention and fraudulent refusal to pay their liability gave rise to an award of moral and exemplary damages. The pertinent portions of the assailed decision are quoted:

Addressing, now, the more crucial issue of medical abandonment, it bears emphasizing that the provisions of the 2010 POEA-SEC created a reciprocal obligation on the part of the seafarer and his employer. Such that while the latter is required to report to the company doctors, specially on the date agreed upon, for treatment and assessment, the former is likewise mandated to provide prompt medical attention until such time that he is declared fit or the degree of his disability has been established. In fact, although the rules sanction the forfeiture of the right to claim disability compensation for failure to comply with the mandatory reporting requirement, it is necessary that the employer should first prove that such breach is directly attributable to the seafarer's fault. xxx

Notably, as early as 31 October 2012 or as soon as the Complainant was referred to the company designated doctors, a surgery to repair inguinal hernia was recommended. Despite the recommendation, the required surgery was never conducted even after the lapse of two (2) months. This lends credence to the Complainant's assertion that he made several requests for the urgent surgery but was told to wait until the approval of the cost of the surgery. Hence, the Complainant cannot be faulted when he consulted independent doctors xxx. Reason dictates that he could not have opted to spend his personal money for his surgery if the needed medical care was extended by the Respondents. Certainly, the inaction or indifference of the Respondents prompted him to seek medical treatment elsewhere. xxx

Evidently, the Complainant's failure to report to the company[-]doctors for treatment and assessment cannot be attributed to his fault. The Respondents were liable when they failed to provide timely medical attention, particularly the urgent surgery to correct his inguinal hernia. Consequently, the Respondents, who did not comply faithfully with their obligations, cannot demand strict compliance of the Complainant's obligation. xxx

Apropos to Our findings that the Respondents failed to faithfully provide medical attention to the Complainant, it was, thus, by operation of law that brought forth the conclusive presumption that the latter is totally and permanently disabled due to his illness. xxx Given the strenuous nature of the Complainant's shipboard employment, it is logical to conclude that he could no longer resume his work as a seaman, as his illness will recur when he goes back to his usual activities. xxx

In fine, the Complainant is entitled to total permanent disability benefit. xxx Equally, he is also entitled to one hundred twenty (120) day sickness allowance. The Respondents' wanton disregard of their duty to provide medical attention and fraudulent refusal to pay their obvious liability give rise to an award of moral and exemplary damages, pursuant to Article 2220 and 2232 of the Civil Code. The award of attorney's fees is also justified. Article 2208 (2) of the Civil Code allows the recovery of attorney's fees in actions for recovery of wages of laborers. Finally, the solidary liability of Andre Carlo Toribio is hereby imposed pursuant to Section 1 (f), Rule II, Book II of the POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers and Section 10 of R.A. 8042, otherwise known as the Migrant Workers and Overseas Filipino Act.

WHEREFORE, the Appeal is GRANTED and the Labor Arbiter's Decision, dated 29 November 2013 is REVERSED and SET ASIDE and in lieu thereof another is hereby issued ordering Philippine Transmarine Carriers, Inc.; Marin Shipmanagement Ltd., and Andre Carlo Toribio to jointly and severally pay the Complainant, the following:

1. Total permanent disability benefits of US\$60,000.00 or its Peso equivalent at the time of payment;
2. Sickness allowance of US\$1,044.00 or its Peso equivalent at the time of payment;
3. Reimbursement of medical expenses of P66,000.00;
4. Moral and exemplary damages of one hundred thousand pesos (P100,000.00); and
5. Attorney's fees of ten percent of the total award.

SO ORDERED.[23]

Petitioners' motion for reconsideration thereon was denied in a Resolution[24] dated June 25, 2014. Hence, the instant petition for certiorari which raised the following grounds for its allowance[25], to wit:

I PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AWARDING FULL DISABILITY BENEFITS TO PRIVATE RESPONDENT DESPITE ABANDONING HIS TREATMENT;

II

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AWARDING SICKNESS ALLOWANCE; AND

III

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AWARDING DAMAGES AND ATTORNEY'S FEES.

THE ISSUE

The all-encompassing issue to be resolved in the instant case is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in awarding in favor of private respondent total and permanent disability benefits, sickness allowance, moral and exemplary damages and attorney's fees and reimbursement of his medical expenses.

THE RULING

The petition is impressed with merit.

Petitioners essentially argue that his claim for disability benefits should have been denied because he has no cause of action against petitioners. He abandoned his treatment with the company-designated physician when he failed to report thereto for surgery and reevaluation. He also opted to undergo surgery with his own private doctor without the knowledge of petitioners and the company-designated physician. Because of his act of abandonment, he should be barred from claiming disability benefits under the POEA SEC.

We agree with petitioners that the claim for disability benefits should be denied, albeit, on a different ground.

A seafarer's right to disability benefits is a matter governed by law, contract and medical findings. The relevant legal provisions are Articles 191[26], 192[27] and 193[28] of the Labor Code and Section 2, Rule X[29] of the Amended Rules on Employee Compensation (AREC). The relevant contracts are the POEA Standard Employment Contract (POEA SEC), the collective bargaining agreement (CBA), if any, and the employment agreement between the seafarer and his employer.[30]

In the case of *Vergara vs. Hammonia Maritime Services*[31], the Supreme Court reconciled the pertinent provisions of the Labor Code, AREC and the POEA-SEC. It was discussed therein the significance of the 120-day period provided under Section 20 (B)(3)[32] of the POEA-SEC and Article 192 of the Labor Code as the period when the seafarer is considered to be totally yet temporarily disabled. 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. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability. While the 120-day period may appear to be nonextendible, and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting the aforesaid provisions in harmony with the applicable provisions of AREC indicates otherwise. That is, if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days. During this period, the employer may declare that a permanent partial or total disability already exists or that the seafarer is already fit to work.

Applying the ruling in *Vergara vs. Hammonia*, the Supreme Court pronounced in *CF Sharp Crew Management, Inc., et al. vs. Taok*[33] that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, the High Court enumerated the instances when a seafarer may be allowed to pursue an action for total and permanent disability benefits, as follows:

- (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

- (b) 240 days had lapsed without any certification issued by the company-designated physician;
- (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
- (d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
- (e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
- (f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
- (g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
- (h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

A scrutiny of the records reveals that none of the foregoing circumstances is extant at the time private respondent filed a complaint for permanent and total disability benefits with the Arbitration Branch of public respondent NLRC.

It is well to note that private respondent filed the instant complaint for total and permanent disability benefits on March 6, 2013. At that time, however, there was yet no declaration either from the company-designated physician or from a privately-designated doctor that he was suffering from total and permanent disability. In fact, there was even no assessment yet as to whether or not he was suffering from any type of disability, be it partial, total, temporary or permanent. The records show that private respondent underwent hernia repair, right, with prolene mesh application on January 10, 2013 to address his inguinal hernia. Almost two (2) months from his operation, he lodged the instant complaint for disability benefits without first consulting a physician for the assessment of his medical condition or degree of his disability, if any. It was only in May 2013, or two (2) months after the institution of the present action, that he consulted with his private doctors, Dr. Christopher Perez, who is a urologist and Dr. May Donato-Tan, who is a cardiologist. Indeed, private respondent's act of filing a complaint for total and permanent disability benefits without the opinion of a medical expert as to his degree of disability is premature. Verily, an action for disability benefits cannot justly hinge on the complainant's own declaration and opinion that he is suffering from total and permanent disability.

That the complaint was prematurely filed is also evident from the fact that it was instituted 131 days from the time private respondent was medically repatriated on October 26, 2012. In other words, private respondent filed the instant complaint even before the lapse of the 240-day maximum treatment period as explained in the Vergara case. As such, the most that can be said about private respondent's disability at the time of the institution of the complaint was that he was suffering from temporary total disability. Being in a state of temporary disability, private respondent cannot claim total and permanent disability benefits and cannot be said to have acquired a cause of action for the same. Neither can private respondent claim for disability benefit less superior than that which corresponds to total and permanent disability in the absence of a competent proof as to his disability grading or the type of disability he was suffering, be it partial permanent or total permanent disability.

The circumstance that private respondent obtained medical certificates from his private physicians to the effect that he is unfit to work as a seaman is of no moment. The assessment made by his doctors-of-choice was made almost two (2) months after he instituted the instant case. As previously pointed out, a medical doctor has yet to declare that private respondent is suffering from total and permanent disability at the time he filed the complaint. Furthermore, the medical certificates issued by Dr. Christopher Perez and Dr. May Donato-Tan hardly deserve credence. A perusal of these certificates indicate that the same were issued after a single consultation only. There is even no indication of the test/s and procedure conducted on private respondent to arrive at the conclusion that he is unfit to perform his duties as a seafarer. More importantly, the Medical Certificate dated May 14, 2013 issued by Dr. Perez states that private respondent was, at the time of issuance, "presently unfit". There was no indication therein whether such disability is temporary or permanent nor a qualification that private respondent was suffering from a total or partial disability.

In the same wise, the Medical Certificate dated May 15, 2013 issued by Dr. May Donato-Tan can hardly be a basis of an award for total and permanent disability benefits. The assessment therein cannot be said to have been based on private respondent's actual medical condition but rather on his attitude towards his post-operative state of health. Specifically, it was stated that private respondent was given permanent disability grading because he will be unable to perform his job effectively as a seafarer on account of his attitude of worrying that his condition will lead to cancer. This has caused him lack of sleep and made him refuse to eat at times. Dr. Donato-Tan also took into consideration private respondent's apprehension about his condition since he still experiences pain in his inguinal area. We quote the pertinent portions of the Medical Certificate dated May 15, 2013, to wit:

MEDICAL CERTIFICATE
ORLANDO S. TAN

xxx

Reason for Permanent Disability:

Despite his undergoing right inguinal repair with mesh herniorrhaphy, patient is very apprehensive because even if it was already repaired he still experience pain over his right inguinal area especially while walking or using tight underwear. Aside from the pain that he experience, and despite explaining to him that the mass that was removed from his spermatic cord is just a lipoma, he is worried that it will end up as cancer, he therefore lack sleep[s] and sometime refused to eat. With his attitude of him, Seaman Tan will not be able to perform his job effectively, efficiently and productively. He is therefore given a permanent disability as a seaman.

[Sgd] MAY S. DONATO-TAN, MD[34]

As can be gleaned from the foregoing medical certificate issued by Dr. Donato-Tan, the same does not provide a clear picture of private respondent's medical condition that would justify an award of disability benefits. Rather than providing a correlation between private respondent's ailment and his degree of disability, it focused on private respondent's attitude after his surgery. Indubitably, this piece of evidence cannot be relied upon. It is well to emphasize that an award of disability benefits should be anchored on concrete and reliable evidentiary support. Settled is the rule that the burden of proof rests upon the party who asserts the affirmative of an issue. In labor cases, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In disability claims, as in the case at bar, the employee bears the onus to prove by substantial evidence his own positive assertions.[35] Here, private respondents failed to adduce substantial evidence to support his claim for total and permanent disability benefits.

This Court commiserates with private respondent, but absent substantial evidence from which reasonable basis for the grant of disability benefits prayed for can be drawn, We are left with no choice but to deny his prayer, lest an injustice be caused to his employers.[36] While it is true that labor contracts are impressed with public interest

and the provisions of the POEA SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[37]

Be that as it may, public respondent NLRC correctly ordered petitioners to pay private respondent his sickness allowance and to reimburse him his medical and hospitalization expenses. Section 20 (A) (3)[38] of the POEA SEC explicitly provides that in cases where a seafarer suffers work-related injury or illness during the term of his contract, the seafarer shall receive sickness allowance for a maximum period of 120 days. Also, Section 20 (A) (2)[39] states that if after repatriation, the seafarer still requires medical attention arising from the work-related injury or illness, he shall be so provided at cost to the employer. In the case at bench, there is no dispute that private respondent's inguinal hernia is a work-related illness which he acquired during the term of his contract with petitioners. Thus, there should be no question as to his entitlement to sickness allowance. He should likewise be reimbursed with the expenses he incurred in relation to the surgical operation he underwent to address his inguinal hernia and which are sufficiently supported by receipts.

Private respondent's entitlement to sickness allowance and reimbursement of his medical and hospitalization expenses should not be put to naught by petitioners' allegation that private respondent abandoned his treatment with the company-designated physicians. A close perusal of the records would reveal that there is no substantial evidence to support petitioner's assertion of abandonment on the part of private respondent. Also, public respondent NLRC correctly pointed out that it is contrary to human experience that private respondent would spend for his own hospitalization and surgery if petitioners were truly prompt in providing the necessary medical attention that private respondent needed.

Public respondent NLRC was likewise correct in awarding moral and exemplary damages and attorney's fees in favor of private respondent. Pursuant to Article 2217[40] of the New Civil Code, an award of moral damages is justified on account of the physical suffering and mental anguish caused to private respondent by petitioner's failure to accord him with prompt and adequate medical treatment. The award of exemplary damages is also warranted pursuant to Article 2232[41] of the New Civil Code. Here, petitioners wantonly failed to comply with their obligation under the POEA SEC to provide private respondent with adequate medical care after repatriation as well as to pay him his sickness allowance during the period allowed under the said contract. In like manner, the award of attorney's fees is proper in light of Article 2208 (8)[42] of the New Civil Code which states that the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability laws.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The Decision dated May 28, 2014 and Resolution dated June 25, 2014 of public respondent National Labor Relations Commission are ANNULLED and SET ASIDE. Accordingly, the Decision dated November 29, 2013 of the Labor Arbiter denying private respondent Orlando S. Tan's entitlement to total and permanent disability benefits is REINSTATED with MODIFICATION in that petitioners Philippine Transmarine Carriers, Inc., Marine Shipmanagement Ltd. and Andre Carlo Toribio are ORDERED to jointly and severally pay private respondent Orlando S. Tan sickness allowance of US\$1,044.00 or its peso equivalent at the time of payment; reimbursement of medical expenses in the amount of P66,000.00; moral and exemplary damages in the total amount of P100,000.00; and attorney's fees of ten percent (10%) of the total award.

SO ORDERED.

Dimagiba, L. R., and [*]Sempio Diy, M. E., JJ., concur.

[1] Mistakenly spelled as Andrew Carlo Torribio, Rollo, p. 179.

[*] Acting Junior member per Office Order No. 15-15-ABR dated January 20, 2015.

[2] Rollo, pp. 3-35.

[3] Rollo, pp. 37-46.

[4] Rollo, pp. 48-54.

[5] Rollo, pp. 56-58.

[6] Referred in the records also as Marin Shipmanagement Ltd.

[7] Rollo, p. 205.

[8] Doctor's Report dated September 25, 2012, Rollo, p. 230.

[9] Rollo, pp. 161-162.

[10] Record of Operation, Rollo, p. 163.

[11] Record of Operation, Rollo, p. 163; and Rollo, p. 164.

[12] Rollo, p. 248.

[13] Rollo, p. 179.

[14] Rollo, p. 244.

[15] Rollo, pp. 245-246.

[16] Rollo, pp. 186-204.

[17] Annex "G" pertains to a document denominated as "Seaman's Request for Final Settlement", Rollo, p. 231.

[18] Affidavit of Dr. Kendrick Sia, Rollo, pp. 159-160.

[19] Petitioners' Reply dated August 13, 2013, Rollo, pp. 153-158.

[20] Supra, at Note 4.

[21] Rollo, pp. 51-54.

[22] Supra, at Note 3.

[23] Rollo, pp. 40-45.

[24] Supra, at Note 5.

[25] Rollo, pp. 10, 18 and 19.

[26] Article 191 of the Labor Code reads:

ARTICLE. 191. Temporary total disability. – (a) Under such regulations as the Commission may approve, any

employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: xxx 27 Article 192 of the Labor Code reads:

ARTICLE. 192. Permanent total disability. – xxx

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

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

[28] Article 193 of the Labor Code reads:

ARTICLE. 193. Permanent partial disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability. xxx

[29] Section 2, Rule X of the Amended Rules on Employee Compensation (AREC) reads:

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 days except when 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.

[30] C.F. Sharpe Crew Management, Inc., et. al. vs. Taok, G.R. No. 193679, July 18, 2012.

[31] G.R. No. 172933, October 6, 2008.

[32] Section 20 (B) (3) of the POEA-SEC reads:

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

[33] G.R. No. 193679, July 18, 2012.

[34] Rollo, p. 246.

[35] Esguerra vs. United Philippines Lines, Inc., et al., G.R. No. 199932, July 3, 2013.

[36] Vide: Panganiban vs. Tara Trading Shipmanagement Inc., et al., G.R. No. 187032, October 18, 2010.

[37] Ibid.

[38] Section 20 (A) (3) of the POEA SEC reads:

SECTION 20. COMPENSATION BENEFITS

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

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. xxx

[39] Section 20 (A) (2) of the POEA SEC reads:

SECTION 20. COMPENSATION BENEFITS

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.

[40] Article 2217 of the New Civil Code reads:

Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[41] Article 2232 of the New Civil Code reads:

Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

[42] Article 2208 of the New Civil Code reads:

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

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

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