

TOMAS P. ATIENZA, PETITIONER, V. OROPHIL SHIPPING INTERNATIONAL CO., INC., ENGINEER TOMAS N. OROLA AND/OR HAKUHO KISEN CO., LTD., RESPONDENTS.

G.R. No. 191049. August 07, 2017

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for review on certiorari[1] are the Decision[2] dated September 30, 2009 and the Resolution[3] dated January 22, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106186, which affirmed the Decision[4] dated April 22, 2008 and the Resolution[5] dated August 26, 2008 of the National Labor Relations Commission in NLRC NCR OFW M-06-03-01004-00 / NLRC NCR CA No. 052872-07, dismissing petitioner Tomas P. Atienza's (petitioner) complaint for disability benefits.

The Facts

Petitioner was employed as an Able Seaman by respondent Orophil Shipping International Co., Inc. (Orophil) on behalf of its principal, respondent Hakuho Kisen Co., Ltd. (Hakuho), and was assigned at the M/V Cape Apricot.[6] In the course of his employment contract, petitioner complained of severe headaches, nausea, and double vision which the foreign port doctors diagnosed to be right cavernous sinus inflammation or Tolosa Hunt Syndrome (THS).[7] As a result, petitioner was repatriated on February 4, 2005 and referred to a company-designated physician, Doctor Nicomedes G. Cruz (Dr. Cruz), who confirmed the findings and advised him to continue the medication prescribed by the foreign doctors.[8] On June 28, 2005, Dr. Cruz issued a certification[9] declaring petitioner fit to resume work.[10] Dissatisfied, petitioner consulted an independent physician, Dr. Paul Matthew D. Pasco (Dr. Pasco), who, on the other hand, assessed his illness as a Grade IV disability and declared him unfit for sea duty.[11] Consequently, petitioner filed a complaint[12] against Orophil, Engineer Tomas N. Orola, and Hakuho (respondents) before the NLRC for payment of disability benefits, reimbursement of medical expenses, damages, and attorney's fees, docketed as NLRC NCR OFW M-06-03-01004-00.

For their part, respondents opposed the claim for disability benefits, asserting that petitioner was declared fit to work by the company-designated physician and that his illness is not work-related, adding too that he maliciously concealed the fact that he had previously suffered from THS that effectively barred him from claiming disability benefits under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).[13] They likewise contended that petitioner had been paid his sickness allowance, while the claims for damages and benefits are without basis.[14]

The Labor Arbiter's Ruling

In a Decision[15] dated April 30, 2007, the Labor Arbiter (LA) ordered respondents to pay petitioner the amount equivalent to US\$34,330.00 for his Grade IV disability and ten percent (10%) attorney's fees, while the rest of the claims were denied for lack of basis.[16] The LA found petitioner's illness to be work-related and that he cannot

be faulted for not declaring his previous treatment for the same illness given that it had occurred way back in 1996 and has not recurred despite several contracts.[17] The LA did not give merit to the company-designated physician's finding of fitness to work, noting that petitioner was subsequently declared unfit for sea duty in a medical certificate dated March 14, 2006.[18] Dissatisfied, both parties appealed the case to the NLRC.[19]

The NLRC Ruling

In a Decision[20] dated April 22, 2008, the NLRC set aside the LA's Decision and dismissed the complaint for petitioner's failure to establish that his illness is work-related.[21] In so ruling, it did not give credence to the certificate issued by Dr. Pasco as the finding of petitioner's unfitness to resume work was not supported by any explanation.[22]

His motion for reconsideration[23] having been denied by the NLRC in a Resolution[24] dated August 26, 2008, petitioner elevated his case to the CA via a petition for certiorari, docketed as CA-G.R. SP No. 106186.[25]

The CA Ruling

In a Decision[26] dated September 30, 2009, the CA affirmed the NLRC, finding no grave abuse of discretion on the latter's part in dismissing petitioner's complaint for disability benefits, allowances, and damages. It held that petitioner failed to prove that his illness was caused or aggravated by his employment conditions.[27] Further, the CA pointed out that petitioner was also declared fit to work by the company-designated physician and that while his independent physician found otherwise, the said assessment was made after the lapse of a considerable period of time.[28]

Aggrieved, petitioner filed a motion for reconsideration, which was, however, denied in a Resolution[29] dated January 22, 2010; hence, this petition.

The Issue Before the Court

The main issue in this case is whether or not petitioner is entitled to total and permanent disability benefits pursuant to the 2000 POEA-SEC.

The Court's Ruling

The petition has merit.

To justify the grant of the extraordinary remedy of certiorari, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it.

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, inter alia, its findings and conclusions are not supported by substantial evidence, or that amount of relevance evidence which a reasonable mind might accept as adequate to justify a conclusion.[30] Likewise, grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[31]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in dismissing petitioner's certiorari petition since the NLRC gravely abused its discretion in holding that petitioner is not entitled to total and permanent disability benefits.

Under the 2000 POEA-SEC, "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness." [32] On the other hand, Section 20 (B) (4) of the 2000 POEA-SEC declares that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown

illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits.[33] Given the legal presumption in favor of the seafarer, he may rely on and invoke such legal presumption to establish a fact in issue. "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the prima facie case created, thereby which, if no contrary proof is offered, will prevail." [34]

Thus, in *Racelis v. United Philippine Lines, Inc.*[35] and *David v. OSG Shipmanagement Manila, Inc.*, [36] the Court held that the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence, which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion." [37]

Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. It does not cover and extend to compensability. In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:

SECTION 32-A OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- The seafarer's work must involve the risks described herein;
- The disease was contracted as a result of the seafarer's exposure to the described risks;
- The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- There was no notorious negligence on the part of the seafarer. (Emphasis and underscoring supplied)

As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer. As such, he bears the burden of proving that these conditions are met.

Thus, in *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, [38] the Court ruled that while work-relatedness is indeed presumed, "the legal presumption in Section 20 (B) (4) of the [2000] POEA-SEC should be read together with the requirements specified by Section 32-A of the same contract." [39]

Similarly, in *Licayan v. Seacrest Maritime Management, Inc.*, [40] it was explicated that the disputable presumption does not signify an automatic grant of compensation and/or benefits claim, and that while the law disputably presumes an illness not found in Section 32-A to be also work-related, the seafarer/claimant nonetheless is burdened to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish its compensability. The proof of work conditions referred thereto effectively equates with the conditions for compensability imposed under Section 32-A of the 2000 POEA-SEC.

In *Jebsen Maritime, Inc. v. Ravena* [42] it was likewise elucidated that there is a need to satisfactorily show the four (4) conditions under Section 32-A of the 2000 POEA-SEC in order for the disputably presumed disease

resulting in disability to be compensable.[43]

To note, while Section 32-A of the 2000 POEA-SEC refers to conditions for compensability of an occupational disease and the resulting disability or death, it should be pointed out that the conditions stated therein should also apply to non-listed illnesses given that: (a) the legal presumption under Section 20 (B) (4) accorded to the latter is limited only to "work-relatedness"; and (b) for its compensability, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must be shown.[44]

The absurdity of not requiring the seafarer to prove compliance with compensability for non-listed illnesses, when proof of compliance is required for listed illnesses, was pointed out by the Court in *Casomo v. Career Philippines Shipmanagement, Inc.*,[45] to wit:

A quick perusal of Section 32 of the [2000 POEA-SEC], in particular the Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted, and the List of Occupational Diseases, easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified.

We are hard pressed to adhere to *Casomo's* position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the [2000 POEA-SEC] which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the conditions mentioned in Section 32-A of the [2000 POEA-SEC]. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

x x x x

Government Service Insurance System (GSIS) v. Cuntapay [576 Phil. 482, 492 (2008)] iterates that the burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder:

The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.[46] (Emphasis supplied)

Therefore, it is apparent that for both listed occupational disease and a non-listed illness and their resulting injury to be compensable, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.

At this juncture, it is significant to point out that the delineation between work-relatedness and compensability in relation to the legal presumption under Section 20 (B) (4) has been often overlooked in our jurisprudence. This gave rise to the confusion that despite the presumption of work-relatedness already accorded by law, certain cases confound that the seafarer still has the burden of proof to show that his illness, as well as the resulting disability is work-related.

Among these cases is *Quizora v. Denholm Crew Management (Phils.), Inc.*,[47] wherein this Court failed to discern that the presumption of work-relatedness did not extend or equate to presumption of compensability, and concomitantly, that the burden of proof required from the seafarer was to establish its compensability not the work-relatedness of the illness:

At any rate, granting that the provision of the 2000 POEA-SEC apply, the disputable presumption provision in

Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his contract. He cannot simply argue that the burden of proof belongs to the respondent company.[48] (Emphasis and underscoring supplied)

Later, in *Magsaysay Maritime Services v. Laurel*,[49] Section 20 (B) (4) (which pertains to a presumption of work-relatedness) was mischaracterized as a presumption of compensability which stands absent contrary proof:

Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work-related and compensable. Their posture does not persuade the Court.

True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20(B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this contract are disputably presumed work-related." The said provision explicitly establishes a presumption of compensability although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[50] (Emphasis and underscoring supplied)

Similarly, in *DOHLE-Philman Manning Agency, Inc. v. Gazzingan*,[51] a "presumption of compensability" was declared for illnesses not listed as an occupational disease:

More importantly, the 2000 POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.[52] (Emphasis supplied)

To address this apparent confusion, the Court thus clarifies that there lies a technical demarcation between work-relatedness and compensability relative to how these concepts operate in the realm of disability compensation. As discussed, work-relatedness of an illness is presumed; hence, the seafarer does not bear the initial burden of proving the same. Rather, it is the employer who bears the burden of disputing this presumption. If the employer successfully proves that the illness suffered by the seafarer was contracted outside of his work (meaning, the illness is pre-existing), or that although the illness is pre-existing, none of the conditions of his work affected the risk of contracting or aggravating such illness, then there is no need to go into the matter of whether or not said illness is compensable. As the name itself implies, work-relatedness means that the seafarer's illness has a possible connection to one's work, and thus, allows the seafarer to claim disability benefits therefor, albeit the same is not listed as an occupational disease.

The established work-relatedness of an illness does not, however, mean that the resulting disability is automatically compensable. As also discussed, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under Section 32-A of the 2000 POEA-SEC. Failure to do so will result in the dismissal of his claim.

Notably, it must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer:

On the one hand, when an employer attempts to discharge the burden of disputing the presumption of

work-relatedness (i.e., by either claiming that the illness is pre-existing or, even if pre-existing, that the risk of contracting or aggravating the same has nothing to do with his work), the burden of evidence now shifts to the seafarer to prove otherwise (i.e., that the illness was not pre-existing, or even if pre-existing, that his work affected the risk of contracting or aggravating the illness.) In so doing, the seafarer effectively discharges his own burden of proving compliance with the first three conditions of compensability under Section 32-A of the 2000 POEA-SEC, i.e., that (1) the seafarer's work must involve the risks described herein; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it. Thus, when the presumption of work-relatedness is contested by the employer, the factors which the seafarer needs to prove to rebut the employer's contestation would necessarily overlap with some of the conditions which the seafarer needs to prove to establish the compensability of his illness and the resulting disability. In this regard, the seafarer, therefore, addresses the refutation of the employer against the work-relatedness of his illness and, at the same time, discharges his burden of proving compliance with certain conditions of compensability.

On the other hand, when an employer does not attempt to discharge the burden of disputing the presumption of work-relatedness, the seafarer must still discharge his own burden of proving compliance with the conditions of compensability, which does not only include the three (3) conditions above-mentioned, but also, the distinct fourth condition, i.e., that there was no notorious negligence on the part of the seafarer. Thereafter, the burden of evidence shifts to the employer to now disprove the veracity of the information presented by the seafarer. The employer may also raise any other affirmative defense which may preclude compensation, such as concealment under Section 20 (E)[53] of the 2000 POEA-SEC or failure to comply with the third-doctor referral provision under Section 20 (B) (3)[54] of the same Contract.

Subsequently, if the work-relatedness of the seafarer's illness is not successfully disputed by the employer, and the seafarer is then able to establish compliance with the conditions of compensability, the matter now shifts to a determination of the nature (i.e., permanent and total or temporary and total) and in turn, the amount of disability benefits to be paid to the seafarer.

In this case, petitioner claims entitlement to total and permanent disability benefits. Under Article 198 (c) (1)[55] of the Labor Code, as amended, in relation to Rule VII, Section 2 (b) and Rule X, Section 2 (a) of the Amended Rules on Employees' Compensation[56] (AREC), the following disabilities shall be deemed as total and permanent:

Art. 198. Permanent Total Disability. - x x x.

x 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, except as otherwise provided for in the Rules[.]

Rule VII

Benefits

Sec. 2. Disability - x x x.

x x x x

(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.

Rule X

Temporary Total Disability

x x x x

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. (Emphases supplied)

Based on the foregoing provisions, the seafarer is declared to be on temporary total disability during the 120-day period within which he is unable to work. However, a temporary total disability lasting continuously for more than 120 days, except as otherwise provided in the Rules, is considered as a total and permanent disability.[57] This exception pertains to a situation when the sickness "still requires medical attendance beyond the 120 days but not to exceed 240 days" in which case, the temporary total disability period is extended up to a maximum of 240 days.[58]

It should be pointed out that these provisions are to be read hand in hand with the 2000 POEA-SEC, whose Section 20 (3) 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.[59]

In *Vergara v. Hammonia Maritime Services, Inc.* (Vergara).[60] the Court explained how the provisions of the Labor Code/AREC and the 2000 POEA-SEC harmoniously operate:

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. 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. 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. 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. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[61]

Note, however, that prior to the promulgation of Vergara on October 6, 2008, the rule which was followed was the doctrine laid down in *Crystal Shipping, Inc. v. Natividad* (Crystal Shipping).[62] Essentially, Crystal Shipping holds that "[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body,"[63] and "[w]hat is important is that [the seafarer] was unable to perform his customary work for more than 120 days which constitutes permanent total disability." [64]

The apparent conflict between Crystal Shipping (120-day rule) and Vergara (120/240-day rule) was later clarified in the case of *Kestrel Shipping Co., Inc. v. Munar* (Kestrel),[65] wherein the Court held that if the seafarer's

complaint was filed prior to the promulgation of Vergara on October 6, 2008, the Crystal Shipping doctrine should be applied, viz.:

This Court's pronouncements in Vergara presented a restraint against the indiscriminate reliance on Crystal Shipping such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.

Nonetheless, Vergara was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that Vergara should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.[66]

In the case at bar, petitioner was found by both the company-designated and independent physicians to have THS during the term of his employment contract that caused his eventual repatriation on February 4, 2005. THS is a rare neurologic disorder characterized by severe headache and pain often preceding weakness and painful paralysis of certain eye muscles. Its exact cause was unknown but the disease was thought to be associated with inflammation of the area behind the eyes.[67] A possible risk factor for THS is a recent viral infection.[68]

Records show that petitioner, as an Able Seaman, was called to keep watch at sea during navigation, and to observe and record weather and sea conditions, among others[69]. It was also not disputed that in the performance of his duties, petitioner was constantly exposed to cold, heat, and other elements of nature.[70] It was likewise in the exercise of his functions that he experienced major symptoms of THS, namely, severe headache, nausea, and double vision.[71] Clearly, while the exact cause of THS is unknown, it is reasonable to conclude that petitioner's illness was most probably aggravated due to the peculiar nature of his work that required him to be on-call twenty-four (24) hours a day to observe and keep track of weather conditions and keep watch at sea during navigation. These activities necessarily entail the use of eye muscles that can cause an eye strain as in fact, he experienced headache, nausea, and double vision that worsened when he looked at his right side. Considering further his constant exposure to different temperature and unpredictable weather conditions that accompanied his work on board an ocean-going vessel, the likelihood to suffer a viral infection - a possible risk factor - is not far from impossible, more so when no less than petitioner's independent physician, Dr. Pasco, diagnosed him to be suffering from cavernous sinus inflammation.[72]

Accordingly, it is apparent that while petitioner's illness appears to have been pre-existing, his work exposed him to the risk of aggravating the same. Further, it is also shown that the disease was contracted within a period of exposure and under such other factors necessary to contract it. As the LA aptly observed:

Respondents further argued that [petitioner] failed to disclose that he suffered from frequent headaches, stiffness, and eye trouble before he boarded the vessel.

[Petitioner] cannot be faulted in answering so when called to answer whether he suffered those conditions because it is possible that indeed he did not suffer from said conditions before boarding the [vessel, because] the history of his illness was way back in 1996 and has not recurred despite his several contracts with the respondents. It is only during his last contract that he experienced the said illness and it is unavoidable that his illness called "Right cavernous Sinus Inflammation" was aggravated by his working conditions on board including the lifestyle on board the vessel.[73] (Emphasis and underscoring supplied)

Moreover, there was no notorious negligence on the part of the seafarer. These findings square with the conditions of compensability under Section 32-A of the 2000 POEA-SEC, and hence, all appear to attend to this case. By and large, the tasks performed by petitioner and his constant exposure to the varying elements of nature have contributed to the development or aggravation of his illness while on board the M/V Cape Apricot and therefore, rendered his illness and resulting disability compensable. In *Canuel v. Magsaysay Maritime Corporation*,^[74] it was held that the pre-existing nature of the seafarer's illness does not bar compensation if the same was aggravated due to his working conditions:

Compensability x x x does not depend on whether the injury or disease was pre-existing at the time of the employment but rather if the disease or injury is work-related or aggravated his condition. It is indeed safe to presume that, at the very least, the arduous nature of [the seafarer's] employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be free from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury independent of any pre-existing weakness or disease.^[75] (Emphasis and underscoring supplied).

At any rate, records show that it was only on June 28, 2005^[76] that the company-designated physician issued a Medical Certificate declaring petitioner fit to work, which was 144 days after petitioner's repatriation on February 4, 2005. Considering that petitioner's complaint was filed on March 29, 2006, during which time the 120-day rule pronounced in *Crystal Shipping* was the prevailing doctrine, the failure of the company-designated physician to issue a final assessment within the 120-day period gave rise to a conclusive presumption that petitioner's disability is total and permanent.

In this case, the NLRC failed to account for the foregoing rules on seafarers' compensation and instead, cavalierly dismissed petitioner's claim on the supposition that petitioner failed to show a reasonable connection between his illness and his work as an Able Seaman, even if the records show otherwise. More significantly, the NLRC did not account for the employer's failure to comply with the 120 day-rule, by virtue of which the law conclusively presumes the seafarer's disability to be total and permanent. Thus, for these reasons, the Court finds that the NLRC's ruling is tainted with grave abuse of discretion and hence, should have been corrected by the CA through certiorari. Accordingly, the CA's ruling must be reversed and set aside.

In fine, petitioner should be paid by respondent Orophil Shipping International Co., Inc. (his employer) the maximum disability amount of US\$60,000.00 under the 2000 POEA-SEC, or its peso equivalent at the time of payment, as prayed for in his Position Paper^[77] and pursuant to existing jurisprudence:

Pursuant to the ruling in *Crystal Shipping*, the fact that the assessment was made beyond the 120-day period prescribed in the Labor Code is sufficient basis to declare that respondent suffered permanent total disability. This condition entitles him to the maximum disability benefit of USD 60,000 under the POEA-SEC.^[78] (Emphasis and underscoring supplied)

The Court likewise grants petitioner attorney's fees of US\$6,000.00, or its peso equivalent at the time of payment, since he was forced to litigate to protect his valid claim. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."^[79]

On the other hand, as the LA ruled, all other claims in petitioner's Position Paper are dismissed for lack of merit.[80]

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated September 30, 2009 and the Resolution dated January 22, 2010 of the Court of Appeals in CA-G.R. SP No. 106186 are hereby REVERSED and SET ASIDE. A new one is ENTERED ordering respondent Orophil Shipping International Co., Inc. to pay petitioner Tomas P. Atienza the aggregate amount of US\$66,000.00, or its peso equivalent at the time of payment. On the other hand, all other claims are dismissed for lack of merit.

SO ORDERED.

Leonardo-De Castro, Del Castillo, and Caguioa, JJ., concur.

Sereno, C.J., (Chairperson), see dissenting opinion.

[1] Rollo, pp. 13-45.

[2] Id. at 61-74. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Andres B. Reyes, Jr. and Vicente S.E. Veloso concurring.

[3] Id. at 76-77.

[4] Id. at 153-157. Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[5] Id. at 159-160.

[6] See Contract of Employment dated April 6, 2004; id. at 97.

[7] See Medical Report dated February 4, 2005; id. at 99 and 139-140.

[8] See id. at 62-63.

[9] Id. at 135.

[10] Id.

[11] Id. at 101.

[12] Id. at 102.

[13] Id. at 63.

[14] See id. at 148.

[15] Id. at 143-152.

[16] Id. at 152.

[17] Id. at 150.

[18] Id. at 151.

[19] See id. at 26-27.

[20] Id. at 153-157.

[21] Id. at 155.

[22] Id. at 156.

[23] See id. at 27.

[24] Id. at 159-160.

[25] Id. at 27.

[26] Id. at 61-74.

[27] See id. at 70-71.

[28] Id. at 71-72.

[29] Id. at 76-77.

[30] *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014, 740 SCRA 330, 340.

[31] *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 (2013).

[32] See Item 12, Definition of Terms, 2000 POEA-SEC.

[33] See *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 387-388 (2014).

[34] *Bautista v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206032, August 19, 2015, 767 SCRA 657, 669-670.

[35] G.R. No. 198408, November 12, 2014, 740 SCRA 122, 133.

[36] 695 Phil. 906, 921 (2012).

[37] See Section 5, Rule 133 of the Rules of Court.

[38] 738 Phil. 871 (2014).

[39] Id. at 888, citing *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 96 (2010); emphasis and underscoring supplied

[40] G.R. No. 213679, November 25, 2015, 775 SCRA 586.

[41] Id. at 597.

[42] *Supra* note 33.

[43] See id. at 391-392.

[44] See *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292 308-311.

[45] 692 Phil. 326 (2012).

[46] Id. at 339-350, citations omitted.

[47] 676 Phil. 313 (2011).

[48] Id. at 327.

[49] 707 Phil. 210 (2013).

[50] Id. at 227-228.

[51] G.R. No. 199568, June 17, 2015, 759 SCRA 209.

[52] Id. at 226.

[53] E.

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

[54] B.

Compensation and Benefits for Injury and Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x

3.

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.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[55] Formerly Article 192. See Department Advisory No. 01, Series of 2015, entitled "Renumbering of the Labor Code of the Philippines, As Amended" dated July 21, 2015.

[56] (June 1, 1987).

[57] See Article 198 (c) (1) of the LABOR CODE, and Section 2 (b), Rule VII of the AREC.

[58] See Vergara v. Hammonia Maritime Services, Inc., 588 Phil. 895, 911-912 (2008).

[59] See id. at 912.

[60] Id.

[61] Id.

[62] 510 Phil. 332 (2005).

[63] Id. at 340; emphasis supplied.

[64] Id. at 341.

[65] 702 Phil. 717 (2013).

[66] Id. at 738.

[67] Rollo, p. 136.

[68] < http://eyewiki.aao.org/Tolosa-Hunt_syndrome > (last visited August 25, 2017).

[69] Rollo, p. 81.

[70] Id.

[71] Id. at 82.

[72] Id. at 101.

[73] Id. at 150.

[74] 745 Phil. 252 (2014).

[75] Id. at 264-265, citing *More Maritime Agencies, Inc. v. NLRC*, 366 Phil. 646, 654-655 (1999).

[76] Rollo, p. 135.

[77] See id. at 91.

[78] *C.F. Sharp Crew Management, Inc. v. Obligado*, 770 Phil. 240, 249 (2015), citing Section 32 of the 2000 POEA-SEC.

[79] *United Phils. Lines, Inc. v. Sibug*, G.R. No. 201072, April 2, 2014, 720 SCRA 546, 556, citing *Fil-Pride Shipping Company, Inc., v. Balasta*, 728 Phil. 297, 314 (2014).

[80] Rollo, p. 152.

DISSENTING OPINION

SERENO, C.J:

To claim disability compensation, seafarers must establish that they suffered from a work-related injury or illness during the term of their contract.[1] Substantial evidence must be presented by claimants to prove a reasonable connection between their sickness and their occupation; that is, a link to show that the sickness was caused or aggravated by their working conditions.[2]

In my view, petitioner Tomas P. Atienza failed to prove a connection between his work as an Able Seaman and his alleged illness. Consequently, I am compelled to register my dissent and vote for the denial of the Petition for Review on Certiorari.[3]

FACTS

On 20 April 2004, petitioner was employed as an Able Seaman by respondent Orophil Shipping International Co., Inc. (Orophil) on behalf of its principal, respondent Hakuho Kisen Co., Ltd. (Hakuho).[4] He left the Philippines for deployment on 19 May 2004 to board his assigned ship, M/V Cape Apricot.[5]

On 19 January 2005, while the vessel was on its way to Japan, petitioner experienced severe headaches, nausea and double vision, he was brought to Kawasaki Shiritsu Kawasaki Hospital and to Higashiogishima Clinic, where he underwent various medical tests to ascertain his condition.[6] He was eventually diagnosed with right cavernous sinus inflammation, otherwise known as Tolosa Hunt Syndrome.[7]

Because of his illness, petitioner was repatriated on 4 February 2005.[8] He reported to Orophil one day after his arrival and was referred to the company-designated physician at the Manila Medical Center.[9] Petitioner was advised to continue the medication prescribed by his doctors in Japan.[10]

On 28 June 2005, Dr. Nicomedes G. Cruz issued a Certification declaring petitioner fit to resume work as a seafarer.[11]

Unsatisfied with the assessment made by Dr. Cruz, petitioner claimed that although he had continued with his medication as suggested by the company-designated physician, the symptoms persisted. Consequently, he went to another neurologist, Dr. Paul Matthew D. Pasco of the UP-PGH Medical Center for consultation and assessment. After examining petitioners, Dr. Pasco stated in a Medical Certificate[12] dated 15 March 2006 that (a) petitioner was suffering from Tolosa Hunt Syndrome; and (b) this condition was classified as a Grade IV disability, which rendered the latter unfit for sea duty.

On 29 March 2006, petitioner filed a Complaint[13] against respondents before the National Labor Relations Commission (NLRC). He claimed that he was entitled to a reimbursement of medical expenses, permanent disability benefits, carnages and attorney's fees because of his illness.[14] In his Position Paper,[15] he asserted that his employment as an Able Seaman involved strenuous assignments, heavy work load, exposure to the elements and irregular mealtimes.[16] This situation allegedly caused him to develop Tolosa Hunt Syndrome, which rendered him unfit for sea duty.[17]

Respondents opposed the claims of petitioner and denied his allegation that he was permanently disabled.[18] They instead agreed that (a) he had already been declared fit to work by the company-designated physician;[19] and (b) his illness, if any, was not work-related.[20] Respondents also contended that he maliciously concealed the fact that he had previously suffered from Tolosa Hunt Syndrome.[21] This misrepresentation supposedly barred him from claiming benefits under the Philippine Overseas Employment Administration (POEA) Contract.[22] Anent the claim for reimbursement of medical expenses, they alleged that they had paid for his treatment until he was finally declared fit for employment; hence, he could no longer claim compensation for these costs.[23] They also rejected his claim for damages and attorney's fees for lack of factual and legal basis.

RULING OF THE LABOR ARBITER

In a Decision[24] dated 30 April 2007, Labor Arbiter (LA) Lilia S. Savari ordered respondents to pay petitioner (a) permanent disability benefits for Grade IV disability, equivalent to USD 34,330; and (b) 10% of the award as attorney's fees.[25] All of his other claims were dismissed.[26]

LA Savari found sufficient proof that petitioner had incurred a work-related illness while on board M/V Cape Apricot.[27] In ruling in his favor, she explained:

It is a fact and established by records that complainant incurred an illness while on board and during the effectivity of his contract and was repatriated for medical reasons.

The contentions of the Respondents are without merit. On the defense that the illness is pre-existing and not work-related, the following jurisprudence finds application:

We have already recognized that any kind of work or labor produces stress and strain normally resulting in the

wear and tear of the human body. It is not required that the occupation be the only cause of the disease as it is enough that the employment contributed even in a small degree to its development.[28] (Citations omitted)

Both parties appealed the LA Decision to the NLRC.

RULING OF THE NLRC

The NLRC set aside the Decision of the LA and granted the appeal of respondents.[29] It ordered the dismissal of the Complaint upon finding that petitioner had failed to establish that his illness was work-related and to explain why he was incapacitated or unfit for sea duty.[30] He sought reconsideration of the Decision, but his motion was denied.[31] The denial prompted him to file a Petition for Certiorari with the CA to question the NLRC ruling.

RULING OF THE CA

In a Decision[32] dated 30 September 2009, the CA denied the Petition for Certiorari. It concluded that the NLRC did not act with grave abuse of discretion when the latter dismissed the Complaint of petitioner for disability benefits, allowances and damages. To the appellate court, it was evident that he failed to present proof that his illness was caused or aggravated by his employment conditions.[33]

The CA likewise emphasized that petitioner had been declared fit to work by the company-designated physician. Although petitioner eventually challenged that finding through the Medical Certificates issued by his personal doctors, the appellate court noted that he had been examined by these physicians only after a considerable lapse of time. Consequently, it accorded little weight to their evaluation of his condition.

Petitioner's Motion for Reconsideration of the Decision was denied by the CA on 22 January 2010.[34]

PROCEEDINGS BEFORE THIS COURT

Petitioner now comes to this Court[35] arguing that the CA erred in ruling that (a) his illness was not caused or aggravated by work;[36] (b) the medical assessment made by his personal doctors was unreliable and could not prevail over the company-designated physician's report;[37] and (c) he was not entitled to attorney's fees.[38] Petitioner also reiterates that he lost his capacity to work as a seafarer because of the illness he had sustained; and that he was only declared fit to work on 28 June 2005, or 144 days after his repatriation.[39] He claims that these circumstances entitle him to permanent disability benefits.[40]

In their Comment,[41] respondents assert that the arguments raised in the Petition involve factual issues that have already been resolved by the lower courts. They point out that both the NLRC and the CA confirmed that petitioner was not entitled to disability benefits, since he had not been able to establish that his illness was work-related.

I vote to DENY the Petition.

I find no reversible error on the part of the CA that would warrant the reversal of the assailed ruling. The failure of petitioner to prove that his illness was caused or at least aggravated by his work as an Able Seaman is fatal to his claims for disability benefits and attorney's fees.

Petitioner failed to present evidence that his illness was caused or at least aggravated by the conditions of his work as an Able Seaman.

At the outset, it must be emphasized that the Petition before us was filed under Rule 45 of the Rules of Court. As such, it may raise only questions of law.[42] Questions of fact or those involving the reevaluation of evidence are

generally beyond the scope of our review. In *Sarocam v. Interior Maritime Ent., Inc.*,^[43] we explained our mandate when it comes to labor disputes elevated to us under Rule 45:

It must be stressed that in a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised. The Court is not a trier of facts and is not to reassess the credibility and probative weight of the evidence of the parties and the findings and conclusions of the Labor Arbiter and the NLRC as affirmed by the appellate court. Moreover, the factual findings of the Labor Arbiter and the NLRC are accorded respect and finality when supported by substantial evidence, which means such evidence as that which a reasonable mind might accept as adequate to support a conclusion. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.^[44]

In this case, the principal issue raised by petitioner pertains to the existence of a reasonable connection between his alleged illness, Tolosa Hunt Syndrome, and his work conditions while on board M/V Cape Apricot. As explained in *Montoya v. Transmed Manila Corp.*,^[45] this issue is, at its core, a question of fact:

2. As framed by Montoya, the petition before us involves mixed questions of fact and law, with the core issue being one of fact. This issue — from which the other issues spring — is whether the tuberculosis afflicting the petitioner is work-related. Stated otherwise, can this illness be reasonably linked to, or reasonably be said to be caused by, Montoya's work as a seaman, his working environment, or incidents at work; or, is it an illness that Montoya contracted outside of his work, or because of genetic predisposition, or from another illness contracted out of work but which led to the tuberculosis? As a question of fact, this question of linkage or causation is an issue we cannot touch under Rule 45, except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating this factual issue.

Whether Montoya is entitled to disability [compensation] or to attorney's fees are issues that require the consideration and application of provisions of law and are essentially questions of law. In the context of this case, however, these are legal questions that spring from and cannot be resolved without the definitive resolution of the factual issue mentioned above.^[46] (Emphasis supplied and italics omitted)

On this particular question of fact, the tribunals in this case reached different conclusions.

LA Savari did not expressly resolve the question of whether or not the illness was related to the activities of petitioner while on board the vessel.^[47] Nevertheless, she reached a conclusion in his favor based on her finding that he had "incurred an illness while on board and during the effectivity of his contract and was repatriated for medical reasons."^[48]

On appeal, the NLRC reviewed the record and reached the opposite result.^[49] It noted the absence of (a) substantial evidence showing at least a reasonable connection between the illness of petitioner and his work as an Able Seaman; and (b) a credible reason why he was considered unfit for sea duty. The NLRC declared:

In the present case, We find no credible evidence presented by the complainant to show the existence, at least, a reasonable connection between his illness and his work as an Able Seaman. While his employment as a sea man entails the exertion of some physical and mental calisthenics, complainant has omitted to show how or in what manner has his work (sic) contributed to the development of Tolosa Hunt Syndrome. Apparently, complainant relies solely on his bare allegations which, unfortunately, cannot be given the same evidentiary weight of evidence.

It is also noted that the record is bereft of any showing of how or in what manner is the complainant incapacitated or unfit for sea duty. While complainant may have been certified by Dr. Paul Matthew D. Pasco of the UP-PGH Medical Center to be unfit for sea duty, there is no accompanying explanation or memorandum

which enlightens Us of the conditions which makes complainant unfit for sea duty. All that there is, is a one line phrase that declares complainant unfit for sea duty.[50] (Emphasis supplied)

In the assailed Decision and Resolution, the CA also observed the dearth of evidence that the illness of petitioner was reasonably connected with his work. This scarcity of proof prompted the appellate court to affirm the findings of the NLRC:

Except for his allegation, petitioner did not present proof that his illness was caused or aggravated by his employment. The underlying circumstances of the case show that petitioner has first incurred his illness way back in 1996 and it has not recurred during his previous contracts with private respondents. It was only during his last contract that his illness has manifested or has recurred.

The evidence available before the Labor Arbiter and public respondent are totally bare of essential facts on how petitioner contracted or developed such disease for the second time and on how and why his working conditions increased the risk of contracting the same. The Court found no substantiation that the progression of petitioner's ailment was brought about largely by the conditions of his job as an able seaman. His medical history and/or records prior to his deployment as able seaman with M/V Cape Apricot were neither presented nor alluded to in order to demonstrate that the working conditions on board said vessel increased the risk of contracting the same. Whilst the Court agrees with the petitioner that the exact cause of Tolosa Hunt Syndrome is not known, such fact does not abandon the primordial duty of petitioner to prove the reasonable connection between his illness and his employment. Having failed to do so, the element that the injury or illness must be work-related cannot exist in this case. Hence, the fact that petitioner's illness recurred during his contract with the private respondents cannot alone entitle him for (sic) his claims.[51](Emphases supplied)

In my opinion, there is no reason to deviate from the factual determinations of the CA and the NLRC.

As earlier explained, whether the illness suffered by the seafarer is related to his work on board the vessel is a question of fact. The findings of the NLRC on this point, as affirmed by the CA, are therefore beyond the scope of our review in a Rule 45 proceeding. In general, we only review its findings when these are relevant to our determination of whether or not the CA was correct in finding no grave abuse of discretion on the part of the NLRC.

To emphasize, both the CA and the NLRC found no substantial evidence to prove that the illness suffered by petitioner had a reasonable connection with his work as an Able Seaman. The LA, on the other hand, did not have any specific finding on the issue of work-relatedness. Given these premises, I find it proper to accord great weight and deference to the factual conclusions of the CA and the NLRC; in particular, their observation that no sufficient evidence was presented by petitioner.

Considering the failure of petitioner to prove that his illness was work-related, his disability is not compensable.

Pursuant to Section 20(B) of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Oceangoing Vessels[52] (Standard Terms and Conditions), a seafarer is entitled to disability benefits if he suffers "work-related injury or illness during the term of his contract." In turn, a "work-related illness" is defined in the Standard Terms and Conditions as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." [53]

Based on these two provisions, seafarers are only entitled to disability compensation once they prove that (a) they suffered from an injury or illness during the term of their employment contract; (b) their injury or illness is considered "work-related" under the Standard Terms and Conditions; i.e., their illness is consistent with the conditions in Section 32-A. When applicable, other procedural requirements must also be complied with.

Jurisprudence has expanded the definition of "work-related illness" to include other illnesses that are not listed,

but are proven to have been caused or at least aggravated by the particular working conditions involved.[54] Accordingly, a claimant suffering from an illness that is not included in the enumeration in Section 32-A may be granted disability benefits for as long as the conditions in that provision are met. While specific conditions are set forth for certain enumerated illnesses,[55] four general requirements must be met for all other illnesses in order for disability benefits to be awarded to the claimant. Section 32-A states:

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1)

The seafarer's work must involve the risks described herein;

(2)

The disease was contracted as a result of the seafarer's exposure to the described risks;

(3)

The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4)

There was no notorious negligence on the part of the seafarer.

At its core, the four general requisites in Section 32-A boil down to the requirement of proof of a reasonable connection between the injury or illness suffered by the seafarer and his activities while on board; i.e., proof of the risks presented by his duties and his exposure to these risks.[56] As claimants before the courts, seafarers are obligated to prove these conditions by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Here, the CA and the NLRC both concluded that petitioner failed to present substantial evidence that his illness (Tolosa Hunt Syndrome) was compensable under Section 32-A. My own examination of the records reveals that he only presented general allegations about his "strenuous job assignments," "heavy workload," and "exposure to cold, heat and other elements of nature." However, he failed to make an effort to explain how his working conditions as an Able Seaman actually caused or aggravated his illness. The nature and causes of the disease were never established; in fact, the only evidence on record describing it is a Medical Certificate[57]attesting to the fact that the exact cause of Tolosa Hunt Syndrome is unknown, and that its symptoms recur without distinct pattern. The physician thus concluded that the "illness is of inflammatory nature and considered not work-related." [58]

More important, the general statements made by petitioner remain uncorroborated by evidence. In fact, the Medical Certificate[59] issued by his own physician, Dr. Pasco, does not state that the sickness suffered by the former was caused or aggravated by, or was even merely related to, his work. The doctor only provided his diagnosis of petitioner's illness and a disability rating. For obvious reasons, the Medical Certificate cannot be considered evidence that the illness was contracted as a result of the exposure of the seafarer to certain risks in the course of his work.

While only probability and not absolute and direct connection is required, it must be emphasized that "[probability of work-connection must at least be anchored on credible information and not on self-serving allegations." [60] Here, petitioner has failed to provide the required credible information upon which the Court could have based its assessment of the probability of his claim. He alleges that he underwent physical exertion while on duty, and that he was on call 24 hours a day to keep track of weather conditions. His allegations are insufficient, since the

records are bereft of any proof that these risks caused or aggravated his specific illness.

I also note that petitioner has not denied the allegation that he suffered from the same illness in 1996,[61] prior to his employment as a seafarer on board the vessels operated by respondents in 1999.[62] There is likewise medical evidence that Tolosa Hunt Syndrome recurs randomly or without any distinct pattern.[63] This fact further militates against his claim that his disease had a reasonable connection with his work.

Given the failure of petitioner to discharge his evidentiary burden under Section 32-A, it is evident that his disability cannot be considered compensable. The NLRC therefore acted in accordance with law and jurisprudence when it denied his claim for disability benefits. In so ruling, it cannot be said to have acted with grave abuse of discretion. Consequently, it was only proper for the CA to dismiss the Petition for Certiorari.

My conclusion that petitioner has failed to prove that his illness is compensable renders it unnecessary to resolve his assertion regarding the failure of the company physician to issue a disability rating within 120 days from the date of his repatriation. On this point, suffice it to state that absent any finding of work-relatedness, the issue concerning the degree of disability does not even arise.[64]

The CA correctly declared that petitioner was not entitled to attorney's fees.

In seafarers' claims for disability benefits, this Court has awarded attorney's fees only in cases where claimants were forced to litigate and incur expenses to protect their rights and interests.[65] In light of my conclusion that petitioner has no right to be paid disability benefits, I find no basis to grant his claim for attorney's fees.

WHEREFORE, I vote to DENY the Petition for Review and AFFIRM the Court of Appeals Decision dated 30 September 2009 and Resolution dated 22 January 2010.

[1] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, 20 April 2015.

[2] *Doehle-Philman Manning Agency, Inc. v. Haro*, G.R. No. 206522, 18 April 2016.

[3] Rollo, pp. 13-49; Petition for Review on Certiorari dated 26 February 2010.

[4] *Id.* at 97; Contract of Employment dated 6 April 2004.

[5] *Id.* at 95; Certificate of Service dated 16 March 2006.

[6] *Id.* at 99; Medical Report dated 4 February 2005.

[7] *Id.* at 39; Referral dated 4 February 2005.

[8] *Id.* at 61-74; Decision dated 30 September 2009; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Andres B. Reyes, Jr. (now a Member of this Court) and Vicente S.E. Veloso.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 63; also see Fit-to-Work Certificate issued by Dr. Nicomedes G. Cruz, rollo , p. 135.

[12] *Id.* at 101; Certification issued by Dr. Paul Matthew D. Pasco.

[13] *Id.* at 102; Complaint.

[14] *Id.*

[15] Id. at 78-93; Position Paper for the Complainant.

[16] Id. at 81-82.

[17] Id. at 83.

[18] Id. at 103-104; Position Paper for the Respondents.

[19] Id. at 111-117.

[20] Id. at 119-123.

[21] Id. at 123-126.

[22] Id.

[23] Id. at 107.

[24] Decision dated 30 April 2007; penned by Labor Arbiter Lilia S. Savari; rollo , pp. 143-152.

[25] Id. at 152.

[26] Id.

[27] Id. at 149.

[28] Id. at 149-150.

[29] Decision dated 22 April 2008; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go; id. at 153-157.

[30] Id. at 155-156.

[31] Id. at 159.

[32] Supra note 8 at 61-74.

[33] Id. at 70-71.

[34] Resolution dated 22 January 2010; rollo , pp. 76-77.

[35] See Petition for Review on Certiorari, supra note 2.

[36] Id. at 29-31.

[37] Id. at 32-34.

[38] Id. at 42-43.

[39] Id. at 41-42.

[40] Id. at 42.

[41] Id. at 168-180.

[42] Rules of Court, Rule 45, Section I.

[43] 526 Phil. 448 (2006).

[44] Id. at 454.

[45] 613 Phil. 696 (2009).

[46] Id. at 707-708.

[47] Decision dated 30 April 2007, *supra* note 24.

[48] Id. at 149.

[49] Decision dated 22 April 2008, *supra* note 29

[50] Id. at 155-156.

[51] Id. at 70-71.

[52] Annex A, POEA Memorandum Circular No. 09, Series of 2000. This circular was in effect at the time of petitioner's employment with Orophil Shipping International Co.

[53] Id. Definition of Terms.

[54] In *Licayan v. Seacrest Maritime Management, Inc.*, G.R. No. 213679, 25 November 2015, the Court stated:

It must be borne in mind, however, that the list of illness/diseases in Section 32-A does not exclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties.

[55] See Section 32-A (1) to (21).

[56] *Phil. Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, 16 September 2015.

[57] See Medical Certificate dated 16 February 2006, rollo, p. 136.

[58] Id.

[59] Rollo, p. 101.

[60] See *Licayan v. Seacrest Maritime Management, Inc.*, *supra* note 56.

[61] Referral dated 4 February 2005, *supra* note 7

[62] See Certificate of Service dated 16 March 2006, rollo, p. 95.

[63] See Medical Certificate dated 16 February, *supra* note 57.

[64] For a discussion on how the Court first resolved whether an illness was work-related before determining the degree of disability involved, see *Kestrel Skipping Co., Inc. v. Munar*, 702 Phil. 717 (2013); *Magsaysay Maritime Corp. v. Mazaredo*, G.R. No. 201359, 23 September 2015; *Ico v. STI, Inc.*, 738 Phil. 641 (2014); and *Magsaysay Maritime. Corp. v. National Labor Relations Commission*, 711 Phil. 614 (2013).

[65] *C.F. Sharp Crew Management, Inc. v. Perez*, G.R. No. 194865, 26 January 2015, 748 SCRA 232; *Fil-Pride Shipping Co., Inc. v. Balasta*, G.R. No. 193047, 3 March 2014, 717 SCRA 624.

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