MAERSK-FILIPINAS CREWING, INC./A.P. MOLLER A/S, PETITIONERS, VS. ROMMEL RENE O. JALECO, RESPONDENT.

G.R. No. 201945. September 21, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Assailed in this Petition for Review on Certiorari[1] are: 1) the March 13, 2012 Decision[2] of the Court of Appeals (CA) granting the Amended and/or Supplemental Petition for Certiorari in CA-G.R. SP No. 118688; and 2) the CA's May 21, 2012 Resolution[3] denying reconsideration of its assailed Decision.

Factual Antecedents

On December 4, 2006, respondent Rommel Rene O. Jaleco was hired by petitioner Maersk-Filipinas Crewing, Inc. (Maersk), on behalf of its foreign principal and co-petitioner herein, A.P. Moller A/S (Moller), as Able Bodied Seaman on board the vessel "M/T Else Maersk."[4] Respondent boarded "M/T Else Maersk" on January 16, 2007 and commenced his work.

Sometime in February 2007, respondent complained of intermittent pain on the left buttock radiating to the. lower back and left groin.[5] When examined in Singapore on April 13, 2007, his lumbosacral spine x-ray generated normal results but he was diagnosed as having "suspected prolapsed intervertebral disc." Nonetheless, he was declared fit to sail.[6]

On April 29, 2007, respondent was once more examined in Dubai, United Arab Emirates, where the doctor diagnosed him with "acute lumbago with left-sided sciatica r/o disc prolapsed."[7] He was advised to obtain an MRI[8] scan of the lumbar spine, undergo neurosurgical review, and to avoid lifting heavy objects for one week. Moreover, he was declared unfit for duty.[9]

Respondent was repatriated on May 1, 2007 and was immediately referred to the company-designated physician, Dr. Natalio Alegre II (Dr. Alegre), who examined him on May 2 and 3, 2007. He found respondent to be suffering from "paralumbar spasm and limitation of movement due to pain. Straight leg raise is normal and sensation intact."[10] He prescribed medication and physical therapy at three sessions per week.[11]

On May 17, 2007, respondent was again examined, and found to still have "left buttock pain radiating to his lower back and lateral side of his left thigh which is most severe at 8/10 on a pain scale x x x (which) is slightly relieved with intake of his pain medications." MRI scan was recommended[12] as well as epidural steroid injection and further physical therapy.

When respondent was examined on June 4, 2007, Dr. Alegre found that he "still has low back pain radiating to his left lower extremity even with physical therapy. This is associated with numbness on the lateral aspect of his left leg and paralumbar spasm is still present."[13] Thus, further medication, physical therapy and epidural steroid injection were recommended.

Respondent was confined at the St. Luke's Medical Center from June 13 to 19, 2007 and from July 24 to 27, 2007.14 On June 16, 2007,[14] he underwent epidural steroid injection,[15] as well as electromyogram and nerve conduction velocity (EMG-NCV) testing.[16]

Respondent returned on June 20, 2007, complaining of headache and low back pain. He was diagnosed with stage 1 hypertension and given medication.[17]

On June 29, 2007, respondent was evaluated by a spine surgeon who recommended provocative discography to find out whether he will need a disc replacement.[18]

In his July 9, 2007 Progress Report,[19] Dr. Alegre noted the evaluation of respondent by a spine surgeon who declared that the EMG-NCV tests returned normal[20] and "beginning L5S1 disc herniation." Dr. Alegre further stated:

> The low back pain intensity is not commensurate with the alleged symptoms of back pain so that a Provocative Discography is recommended and the schedule will follow as the operating room right now is fully book [sic].
>
> Likewise an incidental note of a probable small cyst in the left kidney was noted. Since this is only an incidental finding, we would need your approval to evaluate this.[21]

On July 26, 2007, respondent underwent Provocative Discography[22] at the St. Luke's Medical Center which generated the following result:

> Finding: There is midposterior Grade 1 annular tear with contrast medium leakage more to the left.
>
> CONCLUSION: ELICITED AREAS ARE NOT CONCORDANT WITH USUAL PAIN BASED ON PATIENT'S EXPERIENCE.[23]

On July 27, 2007, Dr. Alegre issued another Progress Report[24] stating essentially as follows:

> Objective Findings:
> Tenderness over the loose paralumbar muscles.
> Truncal mobility restricted.
> Small Cyst in the left kidney.

Assessment:

> Beginning Disk Dessication, L5S1
> Small Cyst, Left

Urology evaluated the small kidney cyst and opined that it will be observed as it is small and no impairment of kidney function is noted.

Provocative Discography was done on 26 July 2007 and showed leakage of contrast material at the midposterior aspect of the disk more towards the left thru a mild posterior annular tear. It was opined by Interventional Radiology that the pain complained of is not commensurate with the Discography.

Plans:

As the pain is not commensurate with the discography, personality reasons should be evaluated to rule out malingering is for your approval the form of [sic] Minnesota Multiphasic Personality Test. Approximate cost is Phpl0,000.00.[25]

On August 15, 2007, respondent took the Minnesota Multiphasic Personality Inventory - 2 Test[26] (MMPI-2) at the St. Luke's Medical Center. The results of the test are contained in Dr. Alegre's August 30,2007 Progress

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Report,[27] thus:

> The MMPI-2 Test provides a number of validity indices that are designed to provide an assessment of factors that could distort the results of testing. Such factors could include failure to complete test items properly, carelessness, reading difficulties, confusion, exaggeration, malingering or defensiveness.
>
> During the interview phase, he was highly defensive finishing the test in more than 5 hours which is normally completed within 1 1/2 hours. He expressed doubts as to whether his injury or back pain will be cured doubting about his capacity and fitness to return to work. He already approached an attorney for disability claims and he is expecting a large sum of money from his claim. According to him, he was informed and-encouraged by the ship's "Master" on board regarding disability benefits.
>
> The test showed that he tried to create a favorable impression of himself by not being honest in responding to the items. He reported a number of vague physical complaints and the development of physical problems occur when he is under stress. The medical history is characterized by excessive and vague physical complaints, weakness and pain. He tends to rely on hysterical defenses or exaggeration in the face of conflict. The test also showed Mr. Jaleco converting psychological conflict into physical complaints.
>
> Based on the test protocol and interview, there are indicators that Mr. Jaleco is malingering and exaggerating hi [sic] symptoms. The essential feature is the intentional production of exaggerated physical symptoms motivated by external incentives - obtaining financial compensation and avoiding work.[28]

On September 4, 2007, respondent underwent another check-up. The results thereof are contained in Dr. Alegre's Progress Report[29] of even date, thus:

> Subjective Complaints:
> Complained of persistence of back pains
>
> Objective Findings:
>
> - Slightly spastic paraspinal muscles
>
> - Truncal mobility functional
>
> - Straight leg raising test normal
>
> - Personality test (MMPI) indicates malingering and exaggeration of symptoms
>
> Assessment:
> Mild Disc Dessication, L5S1
>
> Plans:
>
> Physical therapy
>
> If a disability is to be assessed now, a disability grade of 11 [would be obtained] based on the POEA Contract, Chest-Trunk-Spine #6 - Slight Rigidity or 1/3 loss of motion or lifting power of the trunk.[30]

On February 8, 2008, respondent underwent physical examination by an independent physician, Dr. Ramon Santos-Ocampo (Dr. Santos-Ocampo), at the Department of Radiology of the Makati Medical Center. Dr. Santos-Ocampo's Clinical Abstract[31] of the examination reads as follows:

> Physical Examination:
>
> There is no tenderness elicited when pressing on the left buttock. Slight tenderness and radiating pain was noted when the L5-S1 facet joints were pressed.

> Assessment;
> Sacro-iliitis, left and Bilateral facet joint arthropathy, L5-S1
>
> Plan:
>
> Local anesthesia injection into the left sacro-iliac joint to determine significance of the sacro-ilitis. If there is a slight improvement or complete improvement, then the sacro-iliac joint will be injected with steroids and long-acting local anesthesia. Then bilateral facet joint injections at L4-5 and L5-S1 will be performed on the same day.[32]

On April 28, 2008, respondent consulted another independent physician, Dr. Alan Leonardo R. Raymundo (Dr. Raymundo) - an orthopedic surgeon of the Philippine Orthopedic Institute - who issued a Medical Report[33] which states:

> This 37-year-old seaman was repatriated here last May 2007, because of low back pain after carrying a heavy load while on board a ship. He was first seen at St. Luke's Medical Center when he was repatriated x x x and has undergone an epidural shot for his low back pain. His MRI plates show no significant disc protrusion that might be impinging on the nerve and his EMG NCV results were also normal. However he continuous [sic] to have low back pain whenever he would walk for long distances and whenever he would sit for long periods. He claims that his pain is actually in the area of the sacroiliac joint radiating down the buttock area and posterior to the thigh when this would occur.
>
> He was referred to Dr. Ramon Santos Ocampo to look for the pain generator and injection of the Facet Joint and the Sacroiliac Joint of the Lumbar Spine were done. After the procedure the pain was relieved, however after three weeks the pain recurred.
>
> Because of the recurrence of the pain and considering the nature of his job as a seaman, I told him that it would be impossible for him to return to his previous work duties. I would therefore declare him not fit for duty.[34]

On October 8, 2009, respondent underwent a second MRI of the lumbar spine at the Makati Medical Center. The results are as follows:

> Examination of the sagittal imaging demonstrates normal alignment of the vertebral bodies. The lumbar curvature is maintained. The conus medullaris is seen to be normal and ends at T12-L1 level. No abnormal signal is seen within the conus.
>
> Focal T1W/T2W hyperintensity is noted in the anterosuperior corner of the L3 vertebral body. There is also a Tl W/T2W hyperintense focus in the L5 vertebral body. Examination of the intervertebral disc reveals no signal abnormality. No paraspinal or intraspinal mass noted.
>
> T12-L1: No evidence of disc bulge or herniation.
> LI-2: No evidence of disc bulge or herniation.
> L2-3: No evidence of disc bulge or herniation.
> L3-4: No evidence of disc bulge or herniation.
> L4-5: No evidence of disc bulge or herniation.
> L5-S1: Focal left of central disc protrusion mildly abutting the ipsilateral traversing nerve root.
>
> A 1.0 cm. cyst is noted in the superior pole of the left kidney.
>
> IMPRESSION:
>
> 1. Degenerative osteitis, L3 vertebral body
> 2. L5 vertebral body hemangioma
> 3. Focal left of central disc protrusion mildly abutting the ipsilateral traversing nerve root, L5-S1.
> 4. Above findings are generally unchanged from previous study.

5. Left renal cyst[35]

On October 12, 2009, respondent was again examined by Dr. Raymundo, who thereafter issued another Medical Report[36]stating as follows:

> The patient is here today with his new MRI results showing a disk protrusion at the level of L5-S1 with [sic] mildly abutting the ipsilateral traversing nerve root. I have already given this patient a rating of grade 8 with a moderate rigidity or total loss of motion or lifting power of the trunk.
>
> If I were to re-evaluate this, the functional capacity of the patient is actually more severe than this grading. However, the next grading which is grade 6 indicates or points to a fracture of the dorsal or lumbar spine which the patient does not have. However, the severity of his symptom is almost equal to a grade 6 with severe or total rigidity or total loss of lifting power of heavy objects.
>
> In my opinion, despite the absence of a fracture of the dorsal lumbar spine, I will still give this patient a rating of grade 6 in terms of pain and affectation of the spinal cord.[37]

No further attempt to secure the opinion of a third physician was made by the parties. Instead, respondent filed a complaint for illegal dismissal, non-payment of salaries/wages and other benefits, disability claims, medical expenses, damages, and attorney's fees against petitioners and Maersk General Manager Jerome P. delos Angeles (delos Angeles) before the National Labor Relations Commission (NLRC) docketed as NLRC-NCR Case No. (M) 12-17087-08.

In his Position Paper,[38] respondent claimed that in February 2007, while performing the difficult task of ship-to-ship mooring on deck - which involved lifting and pulling heavy wires and ropes thus placing pressure and stress on the back and spine - something in his spine snapped and he felt terrible lower back pain such that he could not stand erect or carry anything for more than a month. He averred that despite his protestations and appeals for medical intervention, petitioners - in bad faith and acting with inexcusable negligence - failed and refused to give him immediate medical attention. He was forced to continue working in spite of his injury and the excruciating pain it caused him. For this reason, his injury and pain were aggravated. It was only after two months from his injury - or in April 2007 - that he was medically attended to. Despite post-repatriation treatment and medication by the company-designated physician, his injury persisted and incapacitated him from returning to work. After consulting an independent physician, he was declared unfit for sea duty and was given a Grade 6 disability rating. For petitioners' acts and refusal to compensate him, he suffered injury for which he should be indemnified. Thus, he prayed that petitioners be declared liable for malice or inexcusable negligence which caused the aggravation of his injury, and that they be ordered to pay him a) disability benefits corresponding to a Grade 6 rating, b) reimbursement for his medical and other expenses, c) compensation for permanent injury based on the Consolidated Workers' Compensation Act of Denmark, d) P1 million actual damages, e) P1 million moral damages, f) P1 million exemplary damages, g) 20% attorney's fees, and h) costs of suit.

In their joint Position Paper,[39] petitioners and delos Angeles sought dismissal of the complaint, arguing that respondent is not entitled to a Grade 6 disability rating, but only Grade 11 as determined by the company-designated physician. They argued that it has been shown that respondent is merely malingering, feigning, and exaggerating his pain; that assuming arguendo that a different opinion was issued by an independent physician, the opinion of a third doctor should have been obtained by the parties pursuant to the provisions of the POEA[40] Standard Employment Contract.[41] Since no third opinion was obtained, then the company-designated physician's opinion prevails over the respondent's doctor's findings. They also contended that respondent is not entitled to reimbursement of his medical and other expenses, which were incurred after the company-designated physician declared his findings on September 4, 2007. Moreover, respondent is not entitled to his claim for damages, attorney's fees and costs, for being unfounded and in the absence of malice, bad faith, or

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negligence on their part.

In his Reply/Comment,[42] respondent insisted that he is entitled to disability benefits based on his physician's recommendation; that the company-designated physician's treatment was inadequate, and his findings inaccurate and based on fraud and malice, which thus prompted him to secure the opinion of an independent doctor; and that for these reasons, he should be paid all his claims as prayed for in his Position Paper.

In their Reply[43] to respondent's Position Paper, petitioners argued that there is no basis for the accusation of refusal or failure to give respondent immediate and proper medical attention after his injury, as he failed to show convincingly that indeed he suffered his injuries sometime in February 2007. His only basis for such claim - a supposed "Notification of Accident at Work" marked Annex "D" of his Position Paper[44] — is self-serving and hearsay, since it was not signed by him. Moreover, there is no truth to his allegation that he protested and appealed for medical intervention or that he was forced to work and endure excruciating pain for two months before proper medical intervention was done. On the contrary, he was able to work until his repatriation in May 2007. In addition, they gave him timely and extensive medical attention and treatment, with the company-designated physician closely monitoring his condition all throughout. Also, based on the medical findings of the company-designated physician, respondent was feigning his illness. Moreover, respondent's doctor's opinion cannot prevail over the company-designated physician's findings, as it was merely based on a single MRI report, and not on an extensive treatment and monitoring of respondent's condition over an extended period of time; and that for lack of legal basis, respondent cannot claim indemnity based on a supposed collective bargaining agreement or foreign law.

Ruling of the Labor Arbiter

On March 23, 2010, a Decision[45] was rendered by Labor Arbiter Catalino R. Laderas granting disability benefits and attorney's fees in favor of respondent. The Decision decrees as follows:

> Upon his repatriation on 01 May 2007, complainant was assessed and medically treated by respondents' company-designated physician and the latter's team of specialists and was never declared fit to work.
>
> Finding that complainant's illness is compensable, we now determine whether the same is permanent or total in order that he may claim full disability benefits.
>
> xxxx
>
> In the case at bar, x x x while respondents' company-designated doctor/s provided a disability rating for complainant's sustained injury, the former, nonetheless failed to make any declaration and/or assessment as to the latter's fitness for work and/or capability to render sea duty.
>
> Indubitably, the failure of respondents' company-designated doctor/s to declare complainant's fitness for work reasonably infers a scheme to evade full payment of disability benefits to the complainant, by merely declaring complainant partially disabled with a Grade 6 Impediment assessment.
>
> Verily, it was undisputed that despite continuous medical treatment, complainant continue[s] to suffer his ailment and the same remained uncured, until [the] present, which rendered him unable to work and earn income for his family.
>
> As a result therefore of the injury he sustained while on board the vessel "ELSE MAERSK DENMARK", complainant was unable to work for more than 120 days that resulted in the impairment of his earning capacity.
>
> xxxx

> Hence, this Office rules that notwithstanding the medical assessment of respondents' company-designated doctors, jurisprudence dictates that complainant be entitled to permanent total disability benefits by reason of his continued medical condition that rendered him incapacitated for work for more than 120 days from the date he was medically repatriated x x x to the Philippines.
>
> On the other hand, for lack of particulars, complainant's claim for medical expenses and for non-payment of wages, overtime pay, vacation leave and sick leave pay, the same could not be reasonably granted under the circumstances for lack of factual basis with which to make an appropriate award.
>
> xxxx
>
> Similarly, for lack of particulars as to complainant's claim for damages, the same could not be reasonably granted under the circumstances for lack of factual basis with which to make an appropriate award.
>
> xxxx
>
> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents, jointly and severally, to pay the complainant total disability benefits corresponding the [sic] schedule of rates provided for under the CBA between the AMOSUP and respondent manning agency.
>
> Respondents are likewise ordered to pay respondents [sic] attorney's fees equivalent to ten (10%) percent of the total judgment award.
>
> The computation unit of this Office is hereby directed to compute the monetary award of the complainant which forms part of this decision.[46]
>
> Other claims are DISMISSED.
>
> SO ORDERED.[47]

Ruling of the National Labor Relations Commission

Petitioners appealed before the NLRC which docketed the case as NLRC LAC No. OFW(M) 07-000539-10.

On November 30, 2010, the NLRC issued a Decision,[48] declaring as follows:

> The instant appeal is impressed with merit.
>
> At the outset, it should be pointed out that had the parties in the instant case complied strictly with the provisions of the POEA Standard Employment Contract, particularly on the appointment of a third physician in case of disagreement, a lot of controversy would have been averted, x x x
>
> xxxx
>
> We are thus compelled to evaluate the divergent opinions of the company-designated physicians and complainant's private physician.
>
> xxxx
>
> As can therefore be seen from the last MRI of complainant, the findings of the latter are basically unchanged. However, complainant's physician issued a disability grading of Grade 6 "in terms of pain and affectation of the spinal cord," observing that the severity of complainant's symptom is equivalent to said grading.
>
> A close perusal of the above finding of Dr. Raymundo shows that there is "severe or total rigidity or total loss of lifting power of heavy objects" based on complainant's symptom, that is, his pain. This however has been put in issue by the company-designated physician, who earlier observed that:
>
> "Provocative Discography was done on 26 July 2007 and showed leakage of contrast material in the

> midposterior aspect of the disk more towards the left thru a mild posterior annular tear. It was opined by Interventional Radiology that the pain complained of is not commensurate with the Discography."

This resulted in the following recommendation:

> As the pain is not commensurate with the discography, personality reasons should be evaluated to rule out malingering is for your approval the form of Minnesota Multiphasic Personality Test [sic]. Approximate cost is Php 10,000.00."

And the findings of said Minnesota Multiphasic Personality Test shows that:

> Based on the test protocol and interview, there are indicators that Mr. Jaleco is malingering and exaggerating hi [sic] symptoms. The essential feature is the intentional production of exaggerated physical symptoms motivated by external tendencies - obtaining financial compensation and avoiding work."

As the company-designated physician has opined that complainant is malingering and exaggerating his pain, the same pain made the basis for the disability grading of Dr. Raymundo, it was incumbent upon complainant to refute the same. He has failed to do so.

xxxx

We therefore uphold the disability grading of Grade 11 as opined by the company-designated physician, which amounts to US$7,465.00 corresponding to 14.93% disability as provided for in the POEA Standard Employment Contract.

Likewise, the mere fact that complainant was no longer able to return to work as a seaman, by itself, is no ground to automatically entitle him to Grade 1 permanent total disability benefits, x x x.

xxxx

As the instant complaint is clearly unfounded, complainant is not entitled to any attorney's fees.

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED, in that complainant Rommel Rene O. Jaleco is entitled only to disability benefits of US$7,465.00, corresponding to 14.93% disability (Grade 11) as provided for in the POEA Standard Employment Contract. The award of 10% attorney's fees is DELETED for lack of legal basis.

SO ORDERED.[49]

Respondent moved for reconsideration, but in a February 28, 2011 Resolution,[50] the NLRC held its ground.

Ruling of the Court of Appeals

In an Amended and/or Supplemental Petition for Certiorari[51] filed with the CA and docketed therein as CA-G.R. SP No. 118688, respondent sought to set aside the dispositions of the NLRC, arguing that since he was incapacitated to work since his repatriation up to the filing of his Petition, or for a period of more than three years, he should be entitled to permanent total disability benefits as adjudged by the Labor Arbiter. He also argued that he is entitled to reimbursement of medical and other expenses incurred for his continued treatment, rehabilitation and aid even after treatment by the company-designated physician because a) the company-designated physician's services proved to be inadequate and incomplete, and b) the collective bargaining agreement (CBA) between AMOSUP[52] and the Danish Shipowners Association, as well as the Consolidated Workers' Compensation Act of Denmark, mandates reimbursement of these expenses. Moreover, as a consequence of petitioners' bad faith and inexcusable negligence, he should also be entitled to moral and exemplary damages; and that as there is ground to

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award his pecuniary claims, he should likewise be awarded attorney's fees, since he was compelled to litigate and incur expenses as a result of petitioners' refusal to indemnify him.

On March 13, 2012, the CA issued the assailed Decision which contains the following pronouncement:

> The petition is meritorious.
>
> In this case, Dr. Alegre based his assessment of petitioner Jaleco's disability at Grade 11 on the spine surgeon's evaluation conducted on July 9, 2007 finding that the low back pain intensity was not commensurate to the alleged symptoms of back pain, the opinion of the Interventional Radiology that the pain complained of was not commensurate with the Provocative Discography performed on July 26, 2007 which showed "leakage of contrast material in the midposterior aspect of the disk more towards the left thru a mild posterior annular tear", and the Minnesota Multiphasic Personality Inventory - 2 Test (MMPI-2) which found petitioner Jaleco to be malingering and intentionally exaggerating his physical symptoms to obtain financial compensation and avoid work.
>
> On the other hand, Dr. Raymundo not only assessed petitioner Jaleco's disability at Grade 6 or Moderate Rigidity or two thirds (%) loss of motion or lifting power of the trunk, but also declared him to be unfit for duty because of the recurrence of pain and the nature of his job as a seaman.
>
> x x x x x x x x x
>
> The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.[53]
>
> Dr. Alegre may have referred petitioner Jaleco's case to the proper medical specialist, monitored the latter's case during its progress and issued a certification based on the medical records available and the results obtained. However, there is no showing that he made a categorical declaration as regards petitioner Jaleco's fitness to resume sea-duty.
>
> The POEA Standard Employment Contract for Seamen is designed primarily for the protection and benefit of Filipino seaman [sic] in the pursuit of their employment on board ocean-going vessels. Its provisions must, therefore, be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect.
>
> Hence, petitioner Jaleco is entitled to the US$60,000.00 for Impediment Grade 1 award.
>
> As regards the award of attorney's fees, this Court finds that petitioner Jaleco is entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.
>
> x x x x x x x x x
>
> Petitioner Jaleco averred that as a registered member of AMOSUP, he is necessarily covered by the CBA (Ratings) between the AMOSUP-FIGWO-ITF and the Danish Shipowners Association. But there is no showing that he was able to prove by substantial evidence his positive assertions that he is a registered member of the said union and the said CBA is applicable to him in this case.
>
> x x x x x x x x x
>
> Petitioner Jaleco invokes protection under the Consolidated Workers' Compensation Act of Denmark by merely quoting its pertinent provisions in his position paper, x x x
>
> Foreign laws do not prove themselves in our courts. Foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven.
>
> Besides, the snap on petitioner Jaleco's back was an injury sustained from carrying and pulling the heavy wires

> that allegedly got stuck and messed up everything during a mooring operation, which injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although petitioner Jaleco may not have expected the injury, yet, it is common knowledge that carrying heavy objects can cause back injury, as what happened in this case.
>
> x x x x x x x x x
>
> Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term "accident" as defined above.
>
> With respect to the award for moral and exemplary damages, there is no showing of bad faith or malice on the part of private respondents when they relied on Dr. Alegre's assessment of petitioner Jaleco's disability in denying the latter's claim.
>
> Petitioner Jaleco's claim for actual damages was premised on his bare allegation that he was deprived of his sole source of livelihood as a consequence of his dismissal without due process, by private respondents in violation of the Labor Code and their failure and refusal to grant him the correct disability benefits. A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved. It is a basic rule that to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof.
>
> WHEREFORE, premises considered, the petition is GRANTED. The Decision dated November 30, 2010 and Resolution dated February 28, 2011 of public respondent NLRC, First Division in NLRC NCR Case No. OFW(M) 12-17087-08 NLRC LAC No. OFW(M) 07-000539-10 are hereby REVERSED and SET ASIDE. Judgment is hereby rendered ordering private respondents, jointly and severally, to pay petitioner Jaleco US$60,000.00 as total permanent disability benefit and to pay him attorney's fees equivalent to ten percent (10%) of the total judgment award.
>
> SO ORDERED.[54]

Petitioners filed a Motion for Reconsideration,[55] but the CA denied the same in its May 21,2012 Resolution. Hence, the present Petition.

Issues

Petitioners submit that -

> THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE AND GROSS ERROR IN LAW BASED ON THE FOLLOWING GROUNDS:
>
> - In granting disability benefits based on the erroneous application of the case of Crystal Shipping v. Natividad (G.R. No. 154798, October 20, 2005) and equally erroneous interpretation of the case of Jesus Vergara v. Hammonia Maritime Services, Inc. (G.R. No. 172933, October 6, 2008)
>
> - In awarding attorney 's fees without legal and factual basis.[56]

Petitioners' Arguments

Praying that the assailed CA pronouncements be set aside and that the NLRC's November 30, 2010 Decision be reinstated, petitioners maintain in their Petition and Reply[57] that the company-designated physician's findings and recommendation relative to disability grading and compensation should be upheld, the same being accurate, reliable, and reflective of respondent's true state of health. They also insist that there should be no reason to doubt

the results of the tests indicating that respondent deliberately exaggerated the physical symptoms of his illness to obtain financial compensation and avoid work as these tests are scientific and accurate. They posit that the CA erroneously applied the doctrine in the Crystal Shipping case and that since the opinion of a third physician was not obtained, the company-designated physician's assessment should prevail. Moreover, what happened to respondent was not an accident. Since there is no ground to grant respondent's claims, and absent bad faith on their part, no attorney's fees may be awarded to him.

Respondent's Arguments

In his Comment,[58] respondent counters that his permanent total disability benefits should be increased to US$105,761.00 in accordance with the Consolidated Workers' Compensation Act of Denmark; that the opinion of Dr. Raymundo should prevail, as it correctly reflects his true state of health, while the findings of the company-designated physician are inadequate and inaccurate; that he is likewise entitled to additional reimbursement of medical expenses; and that he should be paid moral and exemplary damages. Thus, he prays that petitioners be ordered to pay disability benefits in the amount of US$105,761.00; reimbursement of his medical expenses; combined actual, moral and exemplary damages in the amount of P3 million; and 10% of said amounts as attorney's fees.

Our Ruling

The Court grants the Petition.

The evidence indicates that contrary to the findings of the CA, the company-designated physician made a categorical declaration relative to respondent's fitness to resume duty - approximately one hundred and twenty-seven (127) days from his repatriation. Thus, in his September 4, 2007 Progress Report, Dr. Alegre declared:

> If a disability is to be assessed now, a disability grade x x x 11 [would be obtained] based on the POEA Contract, Chest-Trunk-Spine #6 - Slight Rigidity or 1/3 loss of motion or lifting power of the trunk.[59]

In addition, Dr. Alegre concluded - after conducting extensive tests - that respondent was malingering or feigning his illness. For these reasons, respondent sought the opinion of an independent physician, who came up with a Grade 6 disability rating.

"An employee's disability becomes permanent and total [only 1)] when so declared by the company-designated physician, or, [2)] in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment periods, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability."[60] The "mere lapse of the 120-day period itself does not automatically warrant the payment of permanent total disability benefits."[61] "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."[62]

Since the company-designated physician, Dr. Alegre, arrived at an assessment that respondent's disability rating was only a Grade 11 prior to the expiration of the maximum 240-day period prescribed, then there is no permanent total disability to speak of. The appellate court erred in not considering that the mere lapse of the 120-day period itself does not automatically warrant the payment of permanent total disability benefits, as said period may be extended up to 240 days.

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Moreover, pursuant to Section 20(B)(3) of the POEA Standard Employment Contract, the parties should have secured the opinion of a third doctor jointly appointed by them, whose decision shall be final and binding. However, this procedure was not observed, and instead, respondent went on to file his labor complaint. Such misstep should prove costly for him. In Philippine Hammonia Ship Agency, Inc. v. Dumadag,[63] it was held that -

> We are confronted, once again, with the question of whose disability assessment should prevail in a maritime disability claim - the fit-to-work assessment of the company-designated physician or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work. A related question immediately follows - how are the conflicting assessments to be resolved?
>
> x x x x x x x x x
>
> The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In Magsaysay Maritime Corp. v. Velasquez, the Court said: "The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued her fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.
>
> x x x x x x x x x
>
> The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. x x x
>
> x x x x x x x x x
>
> Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 - whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division) and similar other cases, or sustained the opinion of the seafarer's chosen physician as in HFS Philippines, Inc. v. Filar, cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.
>
> Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld. In Santiago v. Pacbasin Ship Management, Inc., the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding, x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability." (Emphasis and underscoring supplied)

The above pronouncement was reiterated in subsequent cases, particularly Veritas Maritime Corporation v. Gepanaga, Jr.;[64] Daraug v. KGJS Fleet Management Manila, Inc.;[65] Bahia Shipping Services, Inc. v. Hipe;[66] Magsaysay Maritime Corporation v. Simbajon;[67] and Ayungo v. Beamko Shipmanagement Corporation.[68]

Thus, following the ruling in Dumadag, this Court rules that for respondent's disregard of the conflict-resolution procedure under the parties' POEA Standard Employment Contract, his claims against petitioners should have been denied, since the company-designated physician Dr. Alegre's assessment necessarily stands. Indeed, since respondent was the one pursuing a claim, as he did by filing a labor complaint before the NLRC, then it was he - and not petitioners - who should have taken the initiative to secure the opinion of a third physician prior to seeking intervention by the labor tribunals.

Besides, there is no reason to doubt Dr. Alegre's medical opinion regarding respondent's condition. Prior to his final declaration, he took pains to address respondent's condition and did his best to reconcile the conflicting medical evidence with respondent's declared symptoms. His objective resolve led him so far as to require respondent to undergo a comprehensive battery of tests - EMG-NCV test, provocative discography, and even MMPI-2 - just to make sure that respondent's complaints are addressed, while at the same time insure that an objective diagnosis of his illness is obtained. There is thus merit in Dr. Alegre's finding that respondent is malingering; medical evidence obtained after the battery of tests is to the effect that respondent's supposed excruciating back pain is not supported by or commensurate to the results of the provocative discography and MMPI-2 tests. Being scientific medical procedures, the accuracy and reliability of these tests cannot be doubted; besides, they have not been questioned in these proceedings.

As for respondent's claim that petitioners should answer for greater amounts than that adjudged by the appellate court - that is, disability benefits in the amount of US$105,761.00; reimbursement of his medical expenses; and combined actual, moral and exemplary damages in the amount of P3 million -this Court may not allow it. In order for such claims to be considered, respondent should have filed the corresponding petition for review questioning the judgment of the CA. Settled is the rule that a party is barred from assailing the correctness of a judgment not appealed from by him. In an appeal, an appellee may argue only to sustain the appealed judgment, but not introduce arguments that would modify the same; in order to do that, he likewise should have seasonably filed an appeal. The rule is rooted in the presumption that a party who did not interpose an appeal is satisfied with the judgment rendered by the lower court.

WHEREFORE, the Petition is GRANTED. The assailed March 13,2012 Decision and May 21, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 118688 are REVERSED and SET ASIDE. The November 30, 2010 Decision of the National Labor Relations Commission in NLRC LAC No. 0FW(M) 07-000539-10 is REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Brion, Peralta,[*] and Leonen, JJ., concur.

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[*] Per Special Order No. 2170 dated September 10, 2015.

[1] Rollo, pp. 3-40.

[2] Id. at 42-59; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino.

[3] Id. at 61-62.

[4] Id. at 142.

[5] Id. at 102

[6] Id. at 153.

[7] Id. at 154.

[8] Magnetic resonance imaging.

[9] Rollo, p. 154.

[10] Id. at 102.

[11] Id.

[12] Id. at 156.

Respondent's MRI scan revealed as follows:

> FINDINGS:
> L1-L2 down to L4-L5 intervertebral disks are normal. Disk materials are within normal confines. The spinal and neural canals are adequate.
> L5-S1 intervertebral disk shows mild decrease in signal on the FSE T2-weighted study.
> Negative for frank disk herniation. The spinal and neural canals are adequate.
> Conus medullaris ends at LI. Cauda equine is not thickened.
> Vertebral height and marrow signals are preserved. There are few Schmorf s nodes seen.
> Normal lordotic curvature of the spine is maintained. Clear paravertebral spaces.
> Incidental note of probable small cyst in the left kidney.
> IMPRESSION:
> BEGINNING DISK DESICCATION, L5-S1. Id. at 166.

[13] Id. at 103.

[14] Id. at 127,179-180.

[15] Id. at 159, 169.

[16] Id. at 170-172.

WebMD, an online source of "medical news, features, and reference material," briefly describes in its article, Electromyogram (EMG) and Nerve Conduction Studies, what an EMG-NCV test is, as follows:

> An electromyogram (EMG) measures the electrical activity of muscles at rest and during contraction. Nerve conduction studies measure how well and how fast the nerves can send electrical signals.
>
> Nerves control the muscles in the body with electrical signals called impulses. These impulses make the muscles react in specific ways. Nerve and muscle problems cause the muscles to react in abnormal ways.
>
> If you have leg pain or numbness, you may have these tests to find out how much your nerves are being affected. These tests check how well your spinal nerves and the nerves in your arms and legs are working. Why It Is Done An EMG is done to:
>
> - Find diseases that damage muscle tissue, nerves, or the junctions between nerve and muscle. These problems may include a herniated disc, amyotrophic lateral sclerosis (ALS), or myasthenia gravis (MG).

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- Find the cause of weakness, paralysis, or muscle twitching. Problems in a muscle, the nerves supplying a muscle, the spinal cord, or the area of the brain that controls a muscle can cause these symptoms. The EMG does not show brain or spinal cord diseases.

A nerve conduction study is done to:

- Find damage to the peripheral nervous system, which includes all the nerves that lead away from the brain and spinal cord and the smaller nerves that branch out from those nerves. This test is often used to help find nerve problems such as carpal tunnel syndrome or Guillain-Barre syndrome.

WebMD Medical Reference from Healthwise. © 1995-2015 Healthwise, Incorporated. http://www.webmd.com/brain/electromyogram-emg-and-nerve-conduction-studies Accessed July 6,2015.

[17] Rollo, p. 160.

[18] Id. at 161.

[19] Id. at 162.

[20] Id. at 170-172; results of the EMG-NCV tests.

[21] Id. at 162.

Provocative discography is an imaging-guided procedure in which a contrast agent is injected into the nucleus pulposus of the intervertebral disc. It provides both anatomical and functional information about a disc suspected to be diseased. Following intradiscal contrast injection, disc morphology is usually assessed on radiographs or computed tomography (CT), or both. The functional evaluation consists of pain provocation and careful assessment of the patient's response to pain. The discography results influence the surgical decision-making process and selection of disc levels to be operated on. WCG Peh, Provocative Discography: Current Status, © 2005 Biomedical Imaging and Intervention Journal http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3097593/ Accessed July 6, 2015 from the National Center for Biotechnology Information, U.S. National Library of Medicine, 8600 Rockville Pike, Bethesda MD, 20894 USA

[23] Rollo, p. 176.

[24] Id. at 164-165.

[25] Id.

[26] The original Minnesota Multiphasic Personality Inventory (MMPI) was published in 1940 and the second revised version — the MMPI-2 — was published in 1989. It is the most widely used psychometric test for measuring adult psychopathology in the world. The MMPI-2 is used in mental health, medical and employment settings.

The test developers Hathaway and McKinley used an empirical test construction technique to develop the MMPI. This involved basing the test scales (for example the hypochondriasis scale) on the actual test items that differentiate people with hypochondriasis from 'normals.' Often, the questions that do this most reliably are not concerned with health issues as such. This has two advantages. First, it makes it very difficult for subjects to 'fake' responses, deny problems or give a particular impression. Second, the MMPI-2 is based on empirical research and not on a clinician's assumptions about what answers indicate particular personality traits.

The data from MMPI-2 assessments are particularly useful in occupational health settings in complex presentations where doubt as to what is really wrong with the patient exists. For example, the MMPI-2 should

normally be able to detect unconsciously somatizing or consciously malingering in patients. (Schretlen DJ. The use of psychological tests to identify malingered symptoms of mental disorder. Clin PsycholRev 1988; 8:451-476.) x x x

It takes most people between 1 h and 90 min to complete the MMPI-2. xxxx

The MMPI-2 is a 567 item, true/false self-report measure of a person's psychological state. It has nine validity scales (or 'lie' scales), assessing for lying, defensiveness, faking good and faking bad and among others (Butcher JN, Dahlstrom WG, Graham JR, Tellegen AM, Kreammer B. The Minnesota Multiphasic Personality Inventory-2 [MMPI-2] Manual for Administration and Scoring. Minneapolis, MN: University of Minneapolis Press; 1989). These scales make it very difficult to fake the MMPI-2 results. The measure has many clinical scales assessing mental health problems (i.e. depression, anxiety, post-traumatic stress disorder), personality characteristics (i.e. psychopathy) and general personality traits such as anger, somatization, hypochondriasis, 'type A behaviour' addiction potential, poor ego strength and many others. Drayton, M., The Minnesota Multiphasic Personality Inventory-2 (MMPI-2), © The Author 2009. © 2015 Society of Occupational Medicine. Published by Oxford University Press on behalf of the Society of Occupational Medicine.

http://occmed. oxfordiournals. org/content/59/21 135.full Accessed July 9, 2015 from Oxford JournaIs>Medicine & Health>Occupational Medicine>Volume 59, Issue 2>Pp. 135-136.

[27] Rollo, p. 105.

[28] Id.

[29] Id. at 106.

[30] Id.

[31] Id. at 181.

[32] Id.

[33] Id at 182.

[34] Id.

[35] Id. at 183.

[36] Id. at 184.

[37] Id.

[38] Id. at 123-141.

[39] Id. at 80-99.

[40] Philippine Overseas Employment Administration.

[41] SECTION 20 (B) (3), which states:

> 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.

[42] Rollo, pp. 186-194.

[43] Id. at 111-122.

[44] Id. at 152.

[45] Id. at 196-208.

[46] Id. at 208; the NLRC Computation/Examination Unit entered an award of US$88,000.00.

[47] Id. at 202-207.

[48] Id. at 210-229; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

[49] Id. at 217-229.

[50] Id. at 231-232.

[51] Id. at 233-261.

[52] Associated Marine Officers and Seamen's Union.

[53] Citing Crystal Shipping, Inc. v. Natividad, 510 Phil. 332 (2005).

[54] Rollo, pp. 51-58.

[55] Id. at 63-79.

[56] Id. at 16.

[57] Id. at 389-404.

[58] Id. at 358-387.

[59] Id. at 106.

[60] AlphaShip Management Corporation v. Cab, G.R. No. 192034, January 13,2014,713 SCRA 119,120.

[61] OSG Ship Management Manila, Inc. v. Pellazar, G.R. No. 198367, August 6,2014,732 SCRA 280,293.

[63] Id., citing Vergara v. Hammonia Maritime Services, Inc., 588 Phil. 895, 912 (2008) and Magsaysay Maritime Corporation and/or Waslfel-Larsen Management A/S v. Lobusta, 680 Phil. 137, 150-151 (2012). G.R. No. 194362, June 26, 2013, 700 SCRA 53, 63-68.

[64] G.R. No. 206285, February 4, 2015.

[65] G.R. No. 211211, January 14, 2015.

[66] G.R. No. 204699, November 12, 2014.

[67] G.R. No. 203472, July 9, 2014, 729 SCRA 631.

[68] G.R. No. 203161, February 26, 2014, 717 SCRA 538.

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