# ELBURG SHIPMANAGEMENT PHILS., INC., ENTERPRISE SHIPPING AGENCY SRL AND/OR EVANGELINE RACHO, PETITIONERS, VS. ERNESTO S. QUIOGUE, JR., RESPONDENT.

*G.R. No. 211882. July 29, 2015*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the July 5, 2013 Decision[1] and the March 25, 2014 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 125064, which affirmed the February 16, 2012 and March 30, 2012 Resolutions of the National Labor Relations Commission (NLRC), in LAC No. 01-000014-12, a case where the certification of the company-designated physician on the claimed disability of the seafarer was issued beyond the 120-day period.

The Facts:

Respondent Ernesto S. Quiogue Jr. (Quiogue) was hired by Elburg Shipmanagement Philippines, Inc., for and on behalf of its principal Enterprise Shipping Agency SRL (petitioners), to work as Able Bodied Seaman on board the vessel MT Filicudi M with a basic salary of US$363.00. The employment contract was governed by the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) and the International Transport Workers Federation Total Crew Cost Collective Bargaining Agreement (ITF TCC CBA), providing for higher benefits in the event of disability or death of a worker.

On November 11, 2010, while Quiogue was on duty transferring the fire wire, his co-worker accidentally dropped it on his left foot. He was immediately given first aid and thereafter sent to a hospital in Tarragona, Spain. The x-ray examination on his injured foot showed that one of his metatarsal bones was fractured. On November 19, 2010, as his injury prevented him from performing his duties on board, he was repatriated and immediately referred to the Metropolitan Medical Center where he was diagnosed to have sustained "non-displaced Fracture of the Cuneiform Bone, Left Foot."

Quiogue underwent treatment and therapy with the company-designated physician from November 2010 to April 2011. On April 13, 2011, he was certified as "fit to work" by the company-designated physician. Notwithstanding the treatment procedures, Quiogue continued to feel pain and discomfort. Consequently, he sought a second opinion from Dr. Nicanor Escutin (Dr. Escutin), an orthopedic surgeon. After a battery of tests, the latter concluded that the extent of his injury rendered him permanently and totally incapable to perform his work as a seafarer. The medical certificate issued by Dr. Escutin reads:

> "FINAL DIAGNOSIS:
>
> - FRACTURE, CUNEIFORM, LEFT FOOT
> - TRAUMATIC ARTHRITIS, LEFT FOOT
>
> He is given a PERMANENT DISABILITY. He is UNFIT FOR SEADUTY in whatever capacity as a

SEAMAN."[3]

Quiogue sought compensation based on total permanent disability from petitioners, but the latter refused, insisting that he was not entitled to total permanent disability benefits because he was declared as fit to work by the company-designated physician. This prompted Quiogue to file a complaint before the NLRC.

On September 26, 2011, the Labor Arbiter (LA) ruled in Quiogue's favor on the ground that his left foot injury affected his dexterity and flexibility in walking and enduring weights. This became a liability to Quiogue's employment as he could no longer endure the manual and laborious work required of him as a seafarer. The dispositive portion of the LA decision[4] reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents, jointly and severally, to pay complainant the amount of USD89,000.00 representing his permanent and total disability benefit in accordance with the existing CBA and 10% of this total award as attorney's fees.
>
> Other claims are hereby denied for want of sufficient evidence hereof.
>
> SO ORDERED.[5]

On appeal, the NLRC affirmed in toto the above decision and later denied petitioners' motion for reconsideration.[6] According to the NLRC, a seafarer was not precluded from engaging the services of the physician of his own choice as it was clear from Section 20 B (3)[7] of the POEA-SEC. In work-related injury or illness during the term of the contract of a seafarer, the concerned seafarer was required to have himself examined by the company-designated physician for purposes of confirmatory medical evaluation to determine the gravity of the illness and injuries. Nonetheless, the NLRC stated that it was the competence of the attending physician, not the designation, which determined the true health status of the patient-seafarer and what was needed for the purpose of the grant of compensation. In situations where the certification of the company-designated physician would clash with the findings of the doctors of the seafarer, it would be the findings favorable to the complainant that must be adopted. Moreover, from the time that Quiogue had been injured until the time that he was allegedly certified to be fit to work by the company-designated physician on April 13, 2011, more or less five (5) months had already transpired. His disability was already considered permanent and total in accordance with the ruling in Oriental Shipmanagement Co., Inc. v. Bastol.[8]

In their petition for certiorari with the CA, petitioners insisted that Quiogue was not entitled to receive permanent and total disability benefits because he was assessed as "fit to work" by the company-designated physician, whose evaluation was more accurate for having treated him for almost five (5) months. Petitioners claimed that the NLRC committed grave abuse of discretion when it gave greater weight to the diagnosis of Dr. Escutin than to that of the company-designated physician who was in a better position to determine Quiogue's physical fitness. They also pointed out that the NLRC should not have awarded attorney's fees in favor of Quiogue as its basis was not discussed in the LA decision.

For his part, Quiogue insisted that he was entitled to permanent and total disability benefits since he was not able to pursue his usual work and earn therefrom for more than 120 days.

In its Reply, petitioners informed the CA that Quiogue had previously filed a complaint where he was also claiming permanent disability benefits against his previous employer for injuries he sustained when he accidentally slipped from the vessel's stairway while on duty. The favorable findings of the labor tribunal pertaining to his entitlement to permanent disability benefits were affirmed by the CA, thus, showing Quiogue's propensity to make legal processes a money-making venture.

In the assailed decision, the CA affirmed the ruling of the NLRC that Quiogue was entitled to permanent and total


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disability benefits but deleted the award of attorney's fees. It held that notwithstanding the company-designated physician's assessment private respondent is already fit to work, his disability is considered permanent and total because he was only certified fit to work after the lapse of more than 120 days from the time he was repatriated on November 19, 2010.[9] Further, the fact the Quiogue had already received permanent disability benefits from his former employer for an injury he had sustained in the past did not nullify his claim against his succeeding employers. The CA disposed the case as follows:

> WHEREFORE, premises considered, the petition is PARTLY GRANTED. The judgment of the NLRC in LAC NO. 01-000014-12 sustaining the decision of the Labor Arbiter is AFFIRMED with MODIFICATION in that the award of attorney's fees is hereby DELETED for lack of sufficient factual and legal basis.
>
> SO ORDERED.[10]

After their motion for reconsideration was denied, petitioners filed this petition for review, presenting the following:

> ARGUMENTS
>
> 1] Quiogue had previously filed a claim for total and permanent disability benefits for which he was found to be suffering from permanent disability.
>
> 2] The fact that Quiogue was awarded permanent total disability benefits in the amount of US$150,000.00 plus attorney's fees of US$15,000.00 in 2007 must bar the claim for disability benefits against petitioners.
>
> 3] Dr. Escutin's disability report cannot prevail over the company-designated physician's findings, absent any showing that the declaration of fitness to work was tainted with fraud or irregularity. The ruling in Vergara v. Hammonia Maritime Services, Inc.,[11] shows that more weight should be given to the assessment made by company doctors because they were the ones who attended and treated the seafarer throughout his illness than to the findings by those who had merely examined him upon recovery and only for the purpose of determining the degree of disability. While the seafarer is entitled to seek second or third opinion from his private doctors, this does not automatically set aside the findings of the company-designated physician.
>
> 4] It is of no moment that petitioners never objected to Quiogue's pre-employment medical examination (PEME), declaring him fit to work. A PEME is not exploratory in nature. It is not indicative of a seafarer's complete and whole medical condition.
>
> 5] The award of total and permanent disability benefits to Quiogue would have the effect of establishing a dangerous precedent.
>
> 6] Quiogue is not entitled to permanent and total disability benefits on the pretext that his medical treatment lasted for more than 120 days or he was unable to return to seafaring duties for the same period.

In his Comment,[12] Quiogue countered that his previous receipt of disability compensation from his former employer was irrelevant to his present claim for permanent disability benefits against petitioners. He argued that the two claims for total and permanent disability came from different employment contracts which were years apart and not simultaneous. Also, the injuries were different and it was plain bad luck that he was injured in both employment contracts. He posited that under the POEA-SEC, the seafarer may object to the company-designated physician's assessment by securing a second opinion from a doctor of his choice. Thus, the company-designated physician's declaration of fitness, despite recurring pains in his left injured foot, could not be considered as absolute determination of his health condition. Dr. Escutin's assessment of permanent total disability as he was already incapable to perform his work as seaman due to his injury deserved full credence.

Quiogue further asserted that there was no basis for petitioners' allegation that the permanent disability claim of

Quiogue was only due to his inability to work for 120 days. He claimed that he suffered permanent disability due to a work-related injury which prevented him from returning to his sea duties until the present time. According to him, it was not the period that was being compensated but the fact that he was rendered incapable to work due to disability. Thus, the fear of petitioners that the Court, in affirming the award of disability compensation to Quiogue, would set a dangerous precedent should not be given any credence.

In their Reply,[13] petitioners reiterated their arguments and prayer that the petition be given due course and that the assailed decision and resolution of the CA be reversed and set aside.

It should be noted that the LA found that Quiogue's left foot injury had rendered him incapable to return to his seafaring occupation, hence, entitled him to permanent total disability as substantiated by the assessment of Dr. Escutin. Such finding was affirmed by the NLRC which regarded Quiogue's disability as permanent and total due to his inability to perform his job for more than 120 days. In sustaining the award of permanent and total disability benefits to Quiogue, the CA ratiocinated:

> In Quitoriano v. Jebsens Maritime, Inc. (624 Phil. 523 [2010]), the High Court held that:
> Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers, xxx
>
> xxxx
>
> There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:
> Sec. 2. Disability, xxx
>
> (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.
>
> xxxx

In Vicente v. ECC (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

> xxx the test of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.
>
> xxxx

In Quitoriano, the Supreme Court held that the disability of petitioner therein is considered permanent and total by reason of the fact that it was only after more than five months from the time petitioner therein was medically repatriated that the "fit to work" certification was issued by the company-designated physician. This ruling finds application in the present case. Herein private respondent had medical treatment and physical therapy under the company designated physician from the time he was repatriated on November 19, 2010 but it was only on April 13, 2011 or after a period of 145 days that the company physician declared him fit to work. Hence, similar with the pronouncement in Quitoriano, the disability of herein private respondent should be considered permanent and total since the "fit to work" certification was issued by the company physician only on April 13, 2011 or more than 120 days after he was repatriated in the Philippines on November 19, 2010.[14]

The Court's Ruling

The 120/240-day medical

treatment or assessment

period of permanent and

total disability claims of

seafarers

The law that defines permanent and total disability of laborers would be Article 192(c)(l) of the Labor Code, which provides that:

> ART. 192. Permanent Total Disability, xxx
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

On the other hand, the rule referred to - Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code (IRR) - states:

> Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime 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.

The 120-day rule under the Labor Code on permanent and total disability of seafarers was initially discussed in Crystal Shipping, Inc. v. Natividad[15] (Crystal Shipping). It was stated therein that "permanent 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. As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent."[16]

Consequently, Crystal Shipping was cited by litigant-seafarers to claim permanent and total disability due to the mere fact that they were not able to work for 120 days.[17] The ruling in Crystal Shipping was, however, modified by Vergara v. Hammonia Maritime Services, Inc. (Vergara).[18]

Vergara was the first case that harmonized Section 20 of POEA-SEC,[19] Article 192(c)(l) of the Labor Code, and Rule X, Section 2 of the IRR. In the said case, it was written:

> 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


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> 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 if such declaration is justified by his medical condition.[20]
>
> [Emphasis and Underscoring Supplied]

Thus, in Vergara, the Court clarified that even though the 120-day period for medical evaluation was exceeded, the seafarers could not automatically claim permanent and total disability because it was possible to extend the evaluation or treatment period to 240 days.

Cases of medical treatment

exceeding 240 days

Following Vergara, the Court ruled in subsequent cases that if the medical treatment exceeded 240 days, then the seafarer should receive permanent and total disability benefits. In Philasia Shipping Agency v. Tomacruz,[21] the seafarer was granted permanent and total disability benefits. "[F]rom the time Tomacruz (seafarer) was repatriated on November 18, 2002, he submitted himself to the care and treatment of the company-designated physician. When the company-designated physician made a declaration on July 25, 2003 that Tomacruz was already fit to work, 249 days had already lapsed from the time he was repatriated."[22]

Likewise, in Magsaysay Maritime Corp. v. Lobusta,[23] the seafarer was granted permanent and total disability benefits because the medical treatment lasted for more than 240 days. The seafarer therein was examined by the company-designated physician on May 22, 1998. On February 16, 1999, however, the seafarer was still prescribed medications for his lumbosacral pain and was advised to return for reevaluation. From May 22, 1998 to February 16, 1999, 264 days elapsed or 6 days short of 9 months.

Thus, it is a well-settled rule that if the medical treatment or evaluation exceeds 240 days, the seafarer is entitled to permanent and total disability benefits. The doctrine recognizes that, in awarding disability benefits to the seaman, disability should not be understood more on its medical significance but on the loss of earning capacity.[24]

The rules on permanent and total disability of seafarers, however, becomes confusing when the medical treatment or assessment of the company-designated physician exceeds 120 days but not 240 days. Citing the Vergara case, some decisions declared that the seafarer could not claim such benefits, while others held that the seafarer was entitled to the said benefits.

Medical treatment exceeded

120 days but not 240 days;

no entitlement to permanent

and total disability benefits

Millan v. Wallem Maritime Services, Inc.[25] held that the seafarer was not entitled to permanent and total disability benefits despite the lapse of the 120-day period. In the said case, from the time the seafarer was repatriated, 129 days had lapsed when he last consulted with the company-designated physician. Concededly, the said period already exceeded the 120-day period under Section 20(B) of the POEA-SEC and Article 192 of the Labor Code. It cannot be denied, however, that the company-designated physician had determined that the petitioner's condition required further medical treatment in the form of physical therapy sessions, which he had

subsequently completed, thus, justifying the extension of the 120-day period to 240 days.

In Magsaysay Maritime Corporation v. NLRC,[26] the company-designated physician issued her last progress report after 197 days from the seafarer's date of repatriation. Hence, the seafarer was legally under temporary total disability, since the 240-day period had not yet lapsed. There was no assessment yet because the seafarer was still undergoing treatment and evaluation by the company doctors, especially the orthopedic surgeon, within the 240-day maximum period. The seafarer was supposed to see the orthopedic surgeon for re-evaluation, but he did not honor the appointment. Thus, the permanent and total disability benefits being sought were denied.

Likewise in Magsaysay Maritime Corp. v. Simbajon,[27] the seafarer's claim of permanent and total disability was not upheld. A finding by the company-designated doctor that the seafarer would need further treatment beyond the initial 120-day period resulted in the extension of the period for the declaration of the existence of a permanent partial or total disability to 240 days. Thus, contrary to the seafarer's claim in the said case, his inability to resume work after the lapse of more than 120 days from the time he suffered his illness did not by itself automatically entitle him to permanent and total disability benefits.

In that case, the seafarer's consultation with the company-designated doctors revealed that his DM Type II was asymptomatic. Because of this finding, the company-designated doctors had to conduct further treatments and prescribe his continuous medication before finally concluding that he was fit to return to work after 172 days from his disembarkation. The period was 68 days short of the 240 days provided in Vergara. Within this period, the company-designated doctor could continue to treat the employee or conduct an observation period, before the Vergara deadline was reached.

In Dalusong v. Eagle Clark Shipping,[28] the Court said that "[j]ust because the seafarer is unable to perform his job and is undergoing medical treatment for more than 120 days does not automatically entitle the seafarer to total and permanent disability compensation."[29] In that case, the seafarer's medical treatment lasted more than 120 days but less than 240 days, after which the company-designated doctor gave him a Grade 11 - final disability grading.

Recently, in INC Shipmanagement, Incorporated v. Rosales[30] (INC Shipmanagement), the Court held that it was the doctor's findings which should prevail over the simple lapse of the 120-day period. It added that the extent of a seafarer's disability was determined, not by the number of days that he could not work, but by the disability grading the doctor recognized based on his resulting incapacity to work and earn his wages. Further, the Court stated:

> It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.
>
> In light of these distinctions, to confuse the concepts of permanent and total disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous to delay treatment for more than one hundred twenty (120) days to avail of the more favorable award of permanent total disability benefits.[31]

Medical treatment exceeded

120 days but not 240 days;

Seafarers entitled to total

disability benefits

In APQ Shipmanagement v. Caseñas,[32] the Court granted total and permanent disability benefits to a seafarer when the medical diagnosis and treatment exceeded 120 days, but not 240 days. The Court held:

> xxx From the time of Caseñas' diagnosis by the company-designated physician, he was under the state of temporary total disability, which lasted for at least 120 days as provided by law. Such period could be extended up to 240 days, if further medical attention was required.
>
> There was, however, no showing of any justification to extend said period. As the law requires, within 120 days from the time he was diagnosed of his illness, the company-designated physician must make a declaration as to the fitness or unfitness of Caseñas. As correctly observed by the CA, however, the 120 day period lapsed without such a declaration being made. Caseñas is now deemed to be in a state of permanent total disability and, thus, clearly entitled to the total disability benefits provided by law.[33]

In Krestel Shipping Co., Inc. v. Munar (Krestel),[34] the Court clarified that under Section 32 of the POEA-SEC, only those injuries or disabilities that were classified as Grade 1 might be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he was, under legal contemplation, totally and permanently disabled.

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

Recently, in Carcedo v. Maine Marine Philippines, Inc. (Carcedo),[35] which cited Krestel and Vergara, the seafarer was discharged from the hospital after 137 days from repatriation. Nine days later, the seafarer returned to the hospital for a follow-up consultation, where the company-designated physician noted that the seafarer's wound was still open and that he was to continue his medications. That was 146 days from repatriation, and the company-designated physician still had nearly 100 days within which to give the final disability assessment, yet none was issued. The Court concluded that:

> The company-designated physician failed to give a definitive impediment rating of Carcedo's disability beyond the extended temporary disability period, after the 120-day period but less than 240 days. By operation of law, therefore, Carcedo's total and temporary disability lapsed into a total and permanent disability.[36]
>
> [Emphasis Supplied]

Harmonizing the decisions

An analysis of the cited jurisprudence reveals that the first set of cases did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required further medical treatment or (2) the seafarer was uncooperative with the treatment. Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the company-designated physician additional time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

The second set of cases, on the other hand, awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other


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words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

The above-stated analysis indubitably gives life to the provisions of the law as enunciated by Vergara. Under this interpretation, both the 120-day period under Article 192 (2) of the Labor Code and the extended 240-day period under Rule X, Section 2 of its IRR are given full force and effect. This interpretation is also supported by the case of C.F. Sharp Crew Management, Inc. v. Taok,[37] where the Court enumerated a seafarer's cause of action for total and permanent disability, to wit:

> (a)
>
> The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
>
> (b)
>
> 240 days had lapsed without any certification being issued by the company-designated physician;
>
> xxxx

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.

Summation

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (rules) shall govern:

- The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

- If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

- If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

- If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

The Court is not unmindful of the declaration in INC Shipmanagement that "[t]he extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages."[38] Indeed, the disability

benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days. The treatment period can be extended to 240 days if the company-designated physician provided some sufficient justification. Equally eminent, however, is the Court's pronouncement in the more recent case of Carcedo that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law."[39]

Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took in consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Likewise, the Court's concern in INC Shipmanagement to avoid a system which would "[i]nevitably induce the unscrupulous to delay treatment for more than one hundred twenty (120) days to avail of the more favorable award of permanent total disability benefits" is agreeably addressed herein. The rules clearly provide that the company-designated physician can extend the original 120-day period only if a sufficient justification exists, such as that the seafarer required further medical treatment or that the seafarer was uncooperative. Thus, the devious cannot simply delay the treatment for more than 120 days and acquire the loot, for the seafarer's uncooperativeness is a good reason to apply the extended 240-day period.

The Present Case

In this case, the records show that despite the medication and therapy with the company-designated physician, Quiogue still experienced recurring pains in his injured left foot. The company-designated physician, however, even with the recurring pains, declared him as fit to work. Thus, Quiogue sought the opinion of his own physician, Dr. Escutin, who after the necessary tests and examination declared him unfit for sea duty in whatever capacity as a seaman.

The right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims.[40]

Here, the credibility of the findings of Quiogue's private doctor was properly evaluated by the NLRC when it found that the findings of Dr. Escutin who gave Grade 1 disability rating was more appropriate and applicable to the injury suffered by Quiogue. With these medical findings and the fact that Quiogue failed to be re-deployed by petitioners despite the fit to work assessment, Dr. Escutin's assessment should be upheld.

Even in the absence of an official finding by Dr. Escutin, Quiogue is deemed to have suffered permanent total disability pursuant to the following guidelines, thus:

> Permanent disability is 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.
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.
>
> A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days.[41]

To recapitulate/from the time Quiogue was medically repatriated on November 19, 2010, he was unable to work for more than 120 days. The company-designated physician was silent on a need to extend the period of diagnosis

and treatment to 240 days. Hence, it is the 120-day period under Article 192 (c) (1) of the Labor Code that shall apply in the present case.

The fact that Quiogue was declared "fit to work" by the company-designated physician (with whom he underwent treatment and therapy from November 2010 to April 2011) on April 13, 2011 does not matter because the certification was issued beyond the authorized 120-day period.[42] As aptly ruled by the CA, the assessment of fitness to return to work by the company-designated physician notwithstanding, his disability was considered permanent and total as the said certification was issued after the lapse of more than 120 days from the time of his repatriation.

Similarly, there is no merit in petitioners' argument that Quiogue's entitlement to permanent total disability benefits was merely based on his inability to return to work for 120 days. He was entitled to permanent and total disability benefits not solely because of his incapacity to work for more than 120 days, but also because the company-designated physician belatedly gave his definite assessment on Quiogue medical condition, without any justifiable reason therefor.

Moreover, as correctly noted by Quiogue, his entitlement to permanent total disability compensation, as determined by the LA, the NLRC and the CA, was due to his inability to work/return to his seafaring occupation after 120 days until the present time. Significantly, as aptly found by the NLRC, he remained unemployed even after the time he filed the complaint to recover permanent total disability compensation. In the aforecited case of Carcedo, it was stated that should the company-designated physician fail to give his proper medical assessment and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[43]

The Court likewise finds no basis for petitioners' contention that Quiogue's previous award of permanent disability benefits bar his present claim for disability benefits against petitioners. As suitably concluded by the CA, the fact that Quiogue had previously received permanent disability benefits from his former employer for an injury he sustained during the said employment was immaterial and did not nullify a similar claim against his succeeding employers. As held in Micronesia Resources v. Cantomayor:[44]

> The possibility that petitioner could work as a drummer at sea again does not negate the claim for permanent total disability benefits. In the same case of Crystal Shipping, Inc., we held:
> Petitioners tried to contest the above findings [of permanent total disability] by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. 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.

[Emphasis Supplied]

Considering that Quiogue had not been able to resume his work for more than 120 days and that his disability did not fall within the exception provided for by the Rules, the CA cannot be faulted for sustaining the award of permanent disability benefits.

The CA was also correct when it deleted the award for attorney's fees for failure of the LA to explain Quiogue's entitlement thereto. It must be stressed, as correctly observed by the CA, that there must always be a factual basis for the award of attorney's fees. In fine, the factual, legal or equitable justification for the award must be set forth in the text of the decision. The matter of attorney's fees cannot be touched once and only in the fallo of the decision or else, the award should be thrown out for being speculative and conjectural. In the absence of a stipulation, the attorney's fees are ordinarily not recoverable; otherwise a premium shall be placed on the right to


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litigate.[45]

WHEREFORE, the petition is DENIED.

**SO ORDERED.**

Carpio,(Chairperson), Brion, Perlas-Bernabe,[*] and Leonen, JJ., concur.

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[*] Designated Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 2115, dated July 22, 2015.

[1] Rollo, pp. 73-82. Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Apolinario D. Bruselas, Jr. and Agnes Reyes-Carpio, concurring.

[2] Id. at 105-106.

[3] As quoted in the CA decision, id. at 74.

[4] Id. at 108-110.

[5] Id.

[6] Id. at 112-123.

[7] 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.

[8] 636 Phil. 358 (2010).

[9] Rollo, p. 80.

[10] Id. at 81-82.

[11] 588 Phil. 895 (2008).

[12] Rollo, pp. 131-153.

[13] Id. at 158-173.

[14] Rollo, p. 78-80.

[15] 510 Phil. 332 (2005).

[16] Id. at 340.

[17] See Micronesia Resources v. Cantomayor, 522 Phil. 130 (2007) and Wallem Maritime Services, Inc. v.

NLRC, 588 Phil. 27 (2008).

[18] Supra note 11.

[19] Sec. 20 - 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.

[20] Supra note 11, at 912.

[21] G.R. No. 181180, August 15, 2012, 678 SCRA 503.

[22] Id. at 519.

[23] G.R. No. 177578, January 25, 2012, 664 SCRA 134.

[24] GSIS v. CA, 349 Phil. 357, 364 (1998).

[25] G.R. No. 195168, November 12, 2012, 685 SCRA 225.

[26] G.R. No. 191903, June 19, 2013, 699 SCRA 197.

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

[28] G.R. No. 204233, September 3, 2014, 734 SCRA 315.

[29] Id. at 332.

[30] G.R. No. 195832, October 1, 2014, 737 SCRA 438.

[31] Id. at 449.

[32] G.R. No. 197303, June 4, 2014, 725 SCRA 108.

[33] Id. at 128.

[34] G.R. No. 198501, January 30, 2013, 689 SCRA 795, 809.

[35] G.R. No. 203804, April 15, 2015.

[36] Id.

[37] G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

[38] Supra note 30, at 449.

[39] Supra note 35.

[40] Maersk Filipinos Crewing Inc. v. Mesina, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 616.

[41] Id. at 619, citing Fil-Star Maritime Corporation v. Rosete, G.R. No. 192686, November 23, 2011, 677 SCRA 262.

[42] See United Philippine Lines, Inc. v. Beseril, 521 Phil. 380 (2006).

[43] G.R. No. 203804, April 15, 2015, citing Kestrel Shipping Co., Inc. v. Munar, G.R. No. 198501, January 30, 2013, 689 SCRA 795, 810.


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[44] 552 Phil. 130, 145 (2007).

[45] Delos Santos v. Jebsen Maritime, Inc., 512 Phil. 301, 315-316 (2005).

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