

CAREER PHILIPPINES SHIPMANAGEMENT, INC.; COLUMBIA SHIPMANAGEMENT LTD. LIBERIA; AND/OR SAMPAGUITA D. MARAVE, PETITIONERS, VS. DONARD P. SILVESTRE, RESPONDENT.

G.R. No. 213465. January 08, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

For this Court's resolution is the petition for review on certiorari filed by herein petitioners Career Philippines Shipmanagement, Inc., Columbia Shipmanagement Ltd. Liberia and Sampaguita D. Marave (petitioners) assailing the Decision[1] and Resolution,[2] dated March 25, 2014 and July 11, 2014, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 128194, which granted respondent Donard P. Silvestre (Silvestre) US\$60,000.00 permanent disability benefit, US\$1,720.00 sickness allowance and attorney's fees equivalent to 10% of the total monetary award.

The facts follow.

On November 2, 2010, petitioners hired Silvestre as an ordinary seaman on board the vessel M/V Gallia under the following terms and conditions:

- 1.1 Duration of Contract: 9MOS+/-1MO.
- 1.2 Position: ORDINARY SEAMAN
- 1.3 Basic Monthly Salary: US\$430.00
- 1.4 Hours of Work: 44 hrs per week
- 1.5 Overtime: US\$239.00 Lumpsum Guaranteed OT US\$2.83 after 85 hours
- 1.6 Vacation Leave with Pay: 11 days per month
- 1.7 Point of Hire Manila, Philippines

Entitled to 1[st] yr Service Incentive US\$5.25[3]

Around 3:45 p.m. on May 6, 2011, the bosun directed Silvestre to sound the bilge in Hold No. 2 and while he was climbing out of the cargo hold, he was hit in the head by the closing hatch cover and sustained an avulsed wound on his right forehead. Blood steadily dripped on his face, and he experienced blurred vision. He was brought to the CMC Medico Hospital in Pointe Noire, Congo where his wound was treated. He was discharged from the hospital after five (5) days of confinement and was given medication for pain relief and antibiotics. Thereafter, he was declared unfit to work and was recommended for repatriation.[4] He arrived in the Philippines on May 19,

2011.

Upon arrival,, respondent Silvestre immediately sought medical attention at the NGC Clinic and was seen by company-designated physician Dr. Nicomedes Cruz (Dr. Cruz). He underwent a CT scan on May 20, 2011[5] with the following findings:

Impression:

Unremarkable unenhanced CT scan of the brain.

Extracalvarial soft tissue swelling, right frontal region.

Mucus retention cyst versus polyp, left maxillary sinus.[6]

Subsequently, Silvestre was advised to undergo revision of the scar as the previously sutured wound was not healing as expected. He was admitted at Manila Doctors Hospital on June 27, 2011, and was discharged on July 1, 2011.[7] Despite the procedures, Silvestre had complaints of intermittent pain and throbbing headaches. He was advised to continue taking pain relievers, and was further observed.

On September 20, 2011, Silvestre filed a complaint for disability benefits and damages against petitioners.[8] Initially, the case was dismissed for lack of interest to prosecute given that the parties failed to appear during the second mandatory conference.[9] However, the Labor Arbiter (LA) re-opened the case upon motion of Silvestre, and ordered the parties to file their position papers.[10]

In his Position Paper[11] dated February 13, 2012, Silvestre alleged that he has not been able to pursue his employment as an ordinary seaman from the time of his repatriation on May 19, 2011. Thus, he was deemed suffering from permanent total disability since his disability lasted for more than 120 days.[12]

Silvestre presented the Neurological Evaluation[13] dated October 7, 2011 issued by Dr. Ramon Carlos Miguel L. Alemany declaring that he was no longer fit for sea duty, an excerpt of which reads:

Presently, Mr. Silvestre is complaining of decreased sensation on the right hemicrania and experiences abnormal sensation such as hyper sensitivity to touch on the said area, exacerbated by movement and exertion. He also complains of intermittent pain on the said area. He also complained of throbbing headaches that is aggravated by exertion and movement of the head laterally.

Current neurologic examination of the patient only showed abnormal perception of touch, (decreased by 50%), with hyperesthesia on the right hemicrania, otherwise normal neurologic examination.

His present condition was work aggravated / related and may be permanent. Because of this, my opinion is, he is no longer fit for sea duty.[14]

Silvestre also presented the Medical Evaluation Report[15] dated October 12, 2011, wherein Dr. Renato P. Runas made the finding that the former was suffering from Grade 9 permanent disability, viz.:

At present, [Silvestre] is still complaining numbness of the right side of the head. Frequent pain is also felt on the injured area. He is also experiencing throbbing headache aggravated by exertion and moving his head from side to side. He also claims that he is unable to hold on to his grip long enough thereby letting things fall out of his hand. Physical examination revealed decreased sensation to touch on the injured scalp and hyperesthesia on the right side of the head. Pupils are equal in size and briskly reactive. No visual impairment noted. Gait is normal. Based on the extent of the injury and symptomatic complaints of the patient, he is no longer fit for sea duty with permanent partial disability rating of Grade 9 under POEA contract.

Justification of Impediment:

Seaman Silvestre developed a permanent disability as a result of the injury sustained onboard. The right frontal

scalp avulsion injury resulted in facial disfigurement and also damaged the sensory nerves on the affected side. The frequent episode of pain and throbbing headache aggravated by physical exertion greatly affected his capacity level to perform and will be a cause of frequent sick in quarters if allowed to return to his previous job. Being an Ordinary Seaman, he is tasked with hectic and heavy jobs on board which he can no longer tolerate because of his present impediment His preinjury (sic) capacity status is lost. His overall performance as a seaman is greatly compromised and will not be able to perform at 100%. He is not fit for further sea duty permanently in whatever capacity with a permanent disability rating of Grade 9 based on POEA contract.[16]

For their part, petitioners denied any liability for permanent total disability benefits. In their Position Paper[17] dated February 7, 2012, petitioners alleged that after continuous treatment, medication, and monitoring, Silvestre's lacerated wound has healed, thus, he was found fit to work by company-designated physician Dr. Cruz.[18] They averred that proper medical tests were conducted which showed normal results to disprove Silvestre's subjective complaints of pain and headache. They insisted that the company-designated physician was entrusted with the task of providing medical care and thereafter declare the fitness to work of the seafarer or otherwise give an assessment of the degree of his disability. Thus, such physician is in the best position to assess Silvestre's condition.

In the Decision[19] dated March 5, 2012, the LA dismissed Silvestre's complaint. The LA based the dismissal on Silvestre's evidence, which is the Crew Member Accident Report[20] dated May 7, 2011. According to the LA, the circumstances enumerated in the report, e.g., Silvestre lost his helmet while the hatch was falling, and his admission that he forgot to put the safety pin of the cargo hold entrance, fairly demonstrate that he willfully did not observe the safety procedures. As an ordinary seaman for more than six (6) months, it should have been a normal routine for him to don his safety gear and follow the usual safety precautions.[21] The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for permanent and total disability benefits and other money claims for lack of merit.

SO ORDERED.[22]

On appeal, the National Labor Relations Commission (NLRC) affirmed the ruling of the LA in its August 31, 2012 Decision,[23] thus:

It is clear in the Crew Member Accident Report that there was in fact a shipboard rule on the placing of the safety pin in order to secure the cargo hatch, and of the wearing of a helmet, and that [Silvestre] admitted that he forgot to put the safety pin in position. In fact, said report also stated:

"Recommendations:

Crew will be briefed again about proper use of hatches and personal safety equipment." (underscoring and italics supplied)

Complainant's non-observance of the shipboard rule or regulation with respect to safety is therefore a violation not only of Section 28 of the POEA Standard Employment Contract, but will also result in his non-recovery of benefits pursuant to Section 20(D) of the same. He thus cannot claim that he should be entitled to benefits just because his non-observance of said shipboard regulation was allegedly unintentional.

x x x x

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit, and the appealed Decision dismissing the instant complaint is hereby AFFIRMED.

SO ORDERED.[24]

Aggrieved, Silvestre sought recourse before the CA. Ruling in favor of Silvestre, the CA disagreed with the LA and the NLRC that his injury was a product of his willful or criminal act, or a result of an intentional breach of his duty. It ruled that the accident report established that Silvestre was actually wearing his helmet when the incident happened and merely lost the same when he was climbing out of the cargo hold. Also, that Silvestre forgot to put the safety pin in its position merely meant that he failed to remember the same.[25] Furthermore, he is deemed to have suffered permanent disability because of his inability to work for more than 120 days. The dispositive portion of the decision reads:

WHEREFORE, the August 31, 2012 Decision and November 6, 2012 Resolution of the National Labor Relations Commission, as well as the March 5, 2012 Decision of the Labor Arbiter Thomas T. Que, Jr., are REVERSED AND SET ASIDE. [Petitioners] Career Philippines Shipmanagement, Inc. and Shipmanagement Ltd./Limassol, Cyprus are hereby DIRECTED to pay, jointly and severally, [Silvestre] his claims for permanent disability benefits in the sum of US\$60,000.00, his sickness allowance in the sum of US\$1,720.00, and attorney's fees equivalent to 10% of his total monetary award.

SO ORDERED.[26]

In its July 11, 2014 Resolution, the CA denied petitioners' motion for reconsideration. Thus, petitioners elevated the matters before this Court and raised the following issues:

THE FINDINGS OF FACT OF THE HONORABLE COURT OF APPEALS DO NOT CONFORM TO THE EVIDENCE ON RECORD AND CONTRARY TO THE FINDINGS OF THE LABOR ARBITER AND NLRC.

MOREOVER, THERE WAS A MISAPPRECIATION AND/OR MISAPPREHENSION OF FACTS AND THE HONORABLE COURT FAILED TO NOTICE CERTAIN RELEVANT POINTS WHICH IF CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION.

A. RESPONDENT SILVESTRE WAS DIAGNOSED WITH A LACERATED WOUND AND HIS REMAINING COMPLAINT WAS HYPERESTHESIA. HYPERESTHESIA REFERS TO "EXCESSIVE SENSITIVITY OF SKIN IN A PARTICULAR AREA." BOTH CONDITIONS ARE CURABLE AND CANNOT CAUSE A TOTAL AND PERMANENT DISABILITY TO RETURN TO SEA DUTIES.

IN FACT SILVESTRE'S OWN PRIVATE DOCTOR DETERMINED A PARTIAL GRADE 9 DISABILITY ONLY.

B. A FINAL FIT TO WORK ASSESSMENT WAS DETERMINED BY THE COMPANY-DESIGNATED PHYSICIAN WELL WITHIN THE 240-DAY PERIOD.

C. RESPONDENT SILVESTRE WAS GROSSLY NEGLIGENT IN ADMITTEDLY FAILING TO SECURE THE SAFETY PIN OF THE HATCH COVER. HENCE, THE ALLEGED INJURY WAS THE DIRECT RESULT OF HIS WILLFUL AND INTENTIONAL BREACH OF DUTIES.

D. THERE IS NO BASIS FOR THE AWARD OF ATTORNEY'S FEES.[27]

This Court finds the instant petition without merit.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[28] By way of exception, however, the Court resolves factual issues whenever any of the following circumstances is present:

- [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
- when the inference made is manifestly mistaken, absurd or impossible;
- when there is grave abuse of discretion;
- when the judgment is based on a misapprehension of facts;
- when the findings of fact are conflicting;
- when in making its findings [,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- when the findings are contrary to mat of the trial court;
- when the findings are conclusions without citation of specific evidence on which they are based;
- when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
- 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
- when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[29]

This case falls under one of the said exceptions as the findings of the LA and the NLRC differed from those of the CA. Thus, this Court shall now proceed to resolve the issues raised in the instant petition.

Citing Section 20 (D) of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), the LA and the NLRC ruled that Silvestre was not entitled to recover disability benefits by virtue of his willful non-observance of the shipboard rule. As stated, both the LA and the NLRC based their findings on Silvestre's evidence, the Crew Member Accident Report, which states in part viz.:

Description of the incident:

On the 06.05.2011 at 15:45 It. while climbing out of cargo hold no. 2 OS Silvestre was hit by the closing hatch when he [grabbed] it. When the hatch was falling down he lost his helmet.

While questioning OS Silvestre he said that he forgot to put the safety pin in its position (that means the cargo hold entrance was not properly secured.)[30]

Anchoring their allegation on the said rulings, petitioners aver that the CA erred in granting Silvestre the full and maximum disability benefits despite his admission of failure to observe ship's safety rules and regulation. Petitioners insist that he was undisputedly grossly negligent when he failed to put the safety pin in its position in accordance with the safety procedures.

This Court, however, disagrees. Section 20 (D) of the 2000 POEA-SEC provides:

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.[31]

From the abovementioned provision, the onus probandi falls on the petitioners to establish or substantiate their claim that Silvestre's injury was caused by his willful or intentional act with the requisite quantum of evidence. In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a

reasonable mind might accept as sufficient to support a conclusion is required.[32] As can be gleaned from the records, petitioners never presented any evidence before the LA to support the conclusion that Silvestre's injury is directly attributable to his willful or criminal act or intentional breach of duty. The accident report, by itself, does not support the finding that Silvestre's act was willful or intentional. We quote with approval a portion of the CA's decision:

But no such findings can be inferred from the facts of this case. For here, the Crew Member Accident Report already admits that "when the hatch was falling down, he lost his helmet," meaning Silvestre was actually wearing his helmet when the incident happened but merely lost the same when he was climbing out of the cargo hold. It was also aptly argued by Silvestre in this petition that he used the word "forgot" in a manner that could not have disqualified him from the subject benefit. When he said that "he forgot to put the safety pin in its position," he meant that he merely "failed to remember" to put the safety pin in its position. His complained act, was therefore far from being intentional and deliberate. And even if indeed, his use of the word forgot is to be taken in its literal sense, still, his forgetting could have been far from being deliberate. It could not have been willful.

A willful act differs essentially from a negligent act. The one is positive and the other one is negative. Intention is always separated from negligence by a precise line of demarcation. If at all, there was merely inadvertence or negligence on the part of [respondent] Silvestre but not a willful or intentional breach of duty, as opined by both the NLRC and the Labor Arbiter.[33]

Clearly, Silvestre suffered an injury that is work-related during the term of his, employment contract and such is compensable. The issue now is whether or not Silvestre was declared fit to work within the allowable periods.

Petitioners maintain that the CA erred in applying the 120-day period despite numerous decisions which clarified that the said rule is all but obsolete, modified or superseded. Invoking the case of Vergara v. Hammonia Maritime Services, Inc. (Vergara),[34] petitioners allege that the company-designated physician has 240 days to determine the fitness to work or proper disability assessment of the seafarer in accordance with the POEA Contract. Dr. Cruz issued his assessment declaring Silvestre as fit to work on November 23, 2011, well within 240 days. Hence, Silvestre cannot be deemed to be suffering from a total and permanent disability by the mere lapse of 120 days from treatment.

Permanent disability transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body. On the other hand, total disability means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do. It does not mean absolute helplessness.[35]

Accordingly, permanent total disability means the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury per se which is compensated but the incapacity to work.[36]

The entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract.[37] The law that defines permanent and total disability of laborers would be Article 192 (c) (1) of the Labor Code, which provides that:

ART. 192. Permanent Total Disability. —

(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;

The rule referred to by Article 192 (c) (1) of the Labor Code is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[38]

As per Silvestre's contract[39] with petitioners, his employment is covered by the 2000 POEA-SEC. Section 20(B) of the 2000 POEA-SEC[40] reads:

Section 20-B. Compensation and Benefits for Injury or Illness.—

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

x x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated.

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

3. 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.

x x x x

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[41]

It was held in Vergara that the seafarers could not automatically claim permanent and total disability even though the 120-day period for medical evaluation was exceeded for it was possible to extend the evaluation or treatment period to 240 days.[42] Thus:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time if such declaration is justified by his medical

condition.[43]

However, this Court, in *Elburg Shipmanagement Phils., Inc., et al v. Quiogue*,^[44] no longer agreed that the 240-day period provided by Vergara, which was sourced from the IRR, should be an absolute rule. The company-designated physician is now expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. As such, he must perform some significant act before he can invoke the exceptional 240-day period under the IRR. In other words, he must provide a sufficient justification to extend the original 120-day period of assessment.^[45] The Court ratiocinated that:

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.

x x x x

Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into 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.^[46]

Contrary to petitioners' allegation that the 120-day rule is obsolete, the current general rule is that company-designated physicians must issue a final medical assessment on the seafarer's disability grading within a period of 120 days. The period, as an exception, may be extended to 240 days if there is a sufficient justification, such as when the seafarer required further medical treatment or when the seafarer was uncooperative.^[47]

This Court, in the case of *Marlow Navigation Philippines, Inc. v. Osias*,^[48] extensively discussed the 120-day and 240-day periods medical treatment and assessment of the company-designated physician, to wit:

In *Crystal Shipping, Inc. v. Natividad*, (*Crystal Shipping*) the Court ruled that "[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body." Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The Court in *Vergara v. Hammonia Maritime Services, Inc.* (*Vergara*), however, noted that the doctrine expressed in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations.

x x x x

In effect, by considering the law, the POEA-SEC, and especially the IRR, Vergara extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

x x x x

Then came *Carcedo v. Maine Marine Phils., Inc.* (*Carcedo*). Although the said case recognized the 240-day rule in *Vergara*, it was pronounced therein 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." *Carcedo* further emphasized that "[t]he 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. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled." (emphasis supplied).

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* (*Elburg*), it was affirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated — that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

- 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.

x x x[49]

In the case at bar, *Silvestre* was medically repatriated on May 19, 2011. He underwent a CT scan on May 20, 2011. He was admitted at Manila Doctors Hospital on June 27, 2011, and was discharged on July 1, 2011.[50] On August 31, 2011, or after 105 days of treatment, the company-designated physician declared that *Silvestre's* lacerated wound has healed. Subsequently, on November 23, 2011 or after 188 days, the company-designated physician issued a medical report[51] declaring *Silvestre* as fit to work.

Petitioners insist that the final medical assessment by Dr. Cruz was issued within the exceptional 240 days. Inasmuch as mere allegation is not evidence, the basic evidentiary rule is to the effect that the burden of evidence lies with the party who asserts the affirmative of an issue has the burden of proving the same with such quantum of evidence required by law.[52] It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.[53]

As discussed earlier, the company-designated physician must provide a sufficient justification to extend the original 120-day period of assessment.

From the evidence offered, there was no indication that the company-designated physician declared that further medical treatment would address *Silvestre's* temporary total disability. In fact, petitioners were adamant that *Silvestre* was cleared from his condition on August 31, 2011. There was no medical report from the company-designated physician as to the treatment which *Silvestre* underwent after August 2011. The November 14, 2011 MRI was conducted to discount *Silvestre's* complaints of pain and headache. Petitioners cannot invoke the exceptional 240-day period for medical treatment and assessment for failure to present substantial evidence

that the company-designated physician justified the extension of assessment. The Court cannot likewise consider the November 23, 2011 certification as a timely medical assessment for being issued 188 days from repatriation, and for being presented only on appeal before the NLRC to rebut Silvestre's assumption that the company-designated physician's affidavit was the fit to work declaration.[54]

Moreover, records are bereft of evidence supporting petitioners' contention that Silvestre was earlier declared fit to work on August 31, 2011. There was no medical certificate or evaluation report issued to substantiate the averment that there was a fit to work declaration within the authorized 120 days. The company-designated physician's affidavit merely stated that Silvestre's lacerated wound has healed. It did not contain a definite assessment that Silvestre was fit to resume sea duty at least as of September 16, 2011 (120 days), unlike the November 23, 2011 certification which categorically declared him fit to work as of the said date.

Petitioners assert that there was no basis for the award of maximum disability benefits for Silvestre given that his own doctor opined that he suffers from partial permanent disability Grade of 9. On the contrary, a partial and temporary disability could, in legal contemplation, become total and permanent. In *Kestrel Shipping Co., Inc. v. Munor*,[55] the Court ruled that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, to wit:

Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may 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 is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed 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. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[56]

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 is considered permanent and total for the purposes of the award. Here, petitioners failed to establish that the company-designated physician declared Silvestre's fitness to work within 120 days or to sufficiently justify the application of the 240-day period in the case. The disability is deemed total and permanent due to the lack of timely medical assessment of Silvestre's fitness for sea service regardless of his own physician's disability assessment.

The CA ordered the payment of US\$1,720.00 sickness allowance to Silvestre based on his basic monthly salary of US\$430.00 for the 120-day period. However, it is noted that petitioners presented before the LA in their Reply[57] to Silvestre's position paper three vouchers as proof of payment of sickness allowance amounting to US\$1533.66, wherein Silvestre received US\$602.00 for May 20 to June 30, 2011; US\$444.33 for July 2011; and US\$487.33 for August 1 to September 3, 2011.[58] Silvestre simply alleged that he is entitled to sickness allowance for 120 days. However, he did not contest or disprove petitioners' claim that the allowance was paid as

proven by the vouchers. As such, the amount already paid should be deducted from the total sickness allowance award. Thus, Silvestre is only entitled to US\$186.34 as sickness allowance.

The CA correctly awarded attorney's fees in favor of Silvestre. Under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws.[59]

Lastly, pursuant to the case of *Nacar v. Gallery Frames*,[60] the Court imposes on the monetary award for permanent and total disability benefit an interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.[61]

WHEREFORE, premises considered, the petition is DENIED. The Decision and Resolution of the Court of Appeals, dated March 25, 2014 and My 11,2014, respectively, in CA-G.R. SP No. 128194 are AFFIRMED with MODIFICATIONS: petitioners Career Philippines Shipmanagement, Inc., Columbia Shipmanagement Ltd. Liberia and/or Sampaguita D. Marave are ORDERED TO PAY, jointly and severally, Donard P. Silvestre sickness allowance in the amount of US\$186.34 or its Peso equivalent at the exchange rate prevailing at the time of payment; and to pay interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full satisfaction.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, Caguioa, and Reyes, Jr., JJ., concur.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring; rollo pp. 58-73.

[2] Id. at 75.

[3] Id. at 150.

[4] CA rollo pp. 148-149.

[5] Per radiographic report dated May 20, 2011 issued by Dr. Jarold Pauig; records p. 53.

[6] Id.

[7] As per Medical Abstract/Discharge Summary dated July 1, 2011; id. at 77.

[8] Id. at 1-2.

[9] Id. at 12.

[10] Id. at 18.

[11] Id. at 59-67.

[12] Id. at 64.

[13] Id. at 79.

[14] Emphasis in the original.

[15] Id. at 80-81.

[16] Emphasis in the original.

[17] Id. at 25-46.

[18] Id. at 32.

[19] Penned by Labor Arbiter Thomas T. Que, Jr.; CA rollo pp. 101-109.

[20] Records, pp. 73-74.

[21] CA rollo p. 108.

[22] Id. at 109.

[23] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; id. at 147-154.

[24] Id. at 153-154. (Citation omitted)

[25] Rollo, p. 69.

[26] Id. at 73.

[27] Id. at 36-37. (Citation omitted)

[28] Philippine Transmarine Carriers, Inc. v. Cristino, G.R.No. 188638, December 9, 2015, 777 SCRA 114, 127, citing MerckSharp and Dohme (Phils.), et al. v. Robles, et al., 620 Phil. 505, 512 (2009).

[29] Id. at 127-128, citing Co v. Vargas, 676 Phil. 463, 471 (2011).

[30] Records, p. 73.

[31] Emphasis and underscoring supplied.

[32] INC Shipmanagement, Inc., et al. v. Moradas, 724 Phil. 374, 393 (2014).

[33] Rollo pp. 68-69. (Citation omitted; emphases omitted)

[34] 588 Phil. 895, 913 (2008).

[35] INC Shipmanagement, Inc. v. Rosales, 744 Phil. 774, 785 (2014).

[36] Olidana v. Jebbens Maritime, Inc., 772 Phil. 234, 244 (2015).

[37] Austria v. Crystal Shipping, Inc., G.R. No. 206256, February 24, 2016, 785 SCRA 89, 97.

[38] Emphasis supplied.

[39] Supra note 3.

[40] Department Order No. 4, series of 2000, "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels."

[41] Id. (Emphases supplied).

[42] Vergara v. Hammonia Maritime Services, Inc., supra note 30.

[43] Id. at 912.

[44] 765 Phil. 341 (2015).

[45] Id. at 362.

[46] Id. at 362-363 (Emphasis supplied)

[47] Hanseatic Shipping Philippines, Inc., et al. v. Ballon, 769 Phil. 567, 585 (2015).

[48] 773 Phil. 428 (2015).

[49] Id. at 439-442. (Citations omitted)

[50] As per Medical Abstract/Discharge Summary dated July 1, 2011; records p. 77.

[51] Id. at 179.

x x x

He was seen by our neurologist and noted his latest cranial MRI which is normal. He is cleared to go back to work.

Diagnosis:

Lacerated wound, frontal area

S/P Suturing of wound

S/P Revision of scar

Recommendation:

He is fit to work effective November 23, 2011.

[52] General Milling Corporation-Independent Labor Union v. General Milling Corporation, 667 Phil. 371, 393 (2011).

[53] Aldaba v. Career Philippines, G.R. No. 218242, June 21, 2017.

[54] As an attachment to petitioners' Comment; records p. 179.

[55] 702 Phil. 717 (2013).

[56] Id. at 730-731. (Emphases supplied)

[57] Records, pp. 86-96.

[58] Id. at 98-100.

[59] Gomez v. Crossworld Marine Services, Inc., G.R. No. 220002, August 2, 2017.

[60] 716 Phil. 267 (2013).

[61] Acomarit Phils., et al v. Dotimas, 767 Phil. 338, 354 (2015).

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