

HENRY R. ESPOSO, PETITIONER, VS. EPSILON MARITIME SERVICES, INC., W-MARINE INC. AND MR. ELPIDIO C. JAMORA, RESPONDENTS.

G.R. No. 218167. November 07, 2018

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CAGUIOA, J:

This Petition for Review on Certiorari[1] (Petition) assails the Decision[2] dated January 22, 2015 and Resolution[3] dated May 12, 2015, both of the Court of Appeals (CA) Special Seventh (7[th]) Division, in CA-G.R. SP No. 136385, which set aside the Decision[4] dated March 28, 2014 and Resolution[5] dated May 22, 2014, both of the National Labor Relations Commission (NLRC), and reinstated the Decision[6] dated January 16, 2014 of the Labor Arbiter (LA) dismissing the complaint[7] filed by Petitioner Henry Esposo (Esposo) against respondents.

The Facts

The following facts are settled:

Esposo had been continuously hired by respondent Epsilon Maritime Services, Inc. (Epsilon), for and in behalf of its foreign principal, respondent W-Marine, Inc. (W-Marine) as Chief Engineer since September 8, 2011. He was last hired on October 25, 2012 under a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment (Contract) for six (6) months with the following terms and conditions:

1.1

Duration of Contract:

6 Months

1.2

Position:

CHIEF ENGINEER

1.3

Basic Monthly Salary:

USD 2,550.00 Per Month

1.4

Hours of Work:

44 Hours Per Week

1.5

Overtime:

USD 1,170.00 Per Month

1.6

Vacation Leave with Pay:

USD 765.00 Per Month

1.7

Point of Hire:

Makati City, Philippines

Prior to this, Esposito underwent a Pre-Employment Medical Examination (PEME) on October 19, 2012 and on October 25, 2012, wherein he was declared fit to work albeit with the recommendation, "Hypertension Controlled with medication." [8] On November 22, 2012, Esposito boarded the vessel M/V W-ACE (vessel). [9] On June 20, 2013, he returned to the Philippines after his contract expired. On October 2, 2013, he filed the present complaint for payment of disability benefits with the LA. [10]

Esposito and respondents differ in their version of the events that gave rise to this case, as follows:

According to Esposito, sometime in the last week of April 2013, while in the performance of his duties onboard the vessel, he felt uncomfortable and experienced severe chest pains, dizziness, difficulty of breathing, severe headache and persistent perspiration. He reported the matter to the Master of the vessel but was advised to just wait for his repatriation since his contract was then about to end. His discomfort continued and he was repatriated on June 20, 2013. The following day, he reported to Epsilon for his post-employment medical examination. However, Epsilon merely informed him to take a rest and to wait for their call. [11]

Due to his deteriorating condition, Esposito was not able to wait for Epsilon's call and instead sought medical examination and treatment from an independent physician – Dr. Romeo J. Santos (Dr. Santos) of the Philippine Heart Center. [12] In a Medical Certificate [13] dated June 22, 2013, Esposito was diagnosed with Coronary Heart Disease with a recommendation that he undergo further tests. Subsequently, a Medical Certificate dated November 7, 2013 was issued finding Esposito to be suffering from "S/P ACBG-4vessel" and declaring him unfit to work from October 1, 2013 – December 31, 2013. [14]

Esposito claims that Epsilon never communicated with him nor provided him with the necessary medical attention or financial assistance. Hence, he was compelled to shoulder all expenses for his examinations, medications and hospitalization. Thus, alleging that his health condition did not improve despite the lapse of more than one hundred twenty (120) days and having been found unfit for seafaring duties in any capacity by his independent physician, Esposito filed the present complaint, against respondents, for disability benefits, permanent disability compensation in accordance with his Collective Bargaining Agreement (CBA), sickness allowance for 130 days, reimbursement of medical and hospitalization expenses especially the cost of his coronary artery by-pass, moral and exemplary damages and attorney's fees and other benefits provided by law and his CBA. [15]

On the other hand, respondents aver that during the entire stay of Esposito on board the vessel, he never complained of, suffered from, nor requested for, medical assistance for any health concerns except for one incident on December 17, 2012 involving "skin burn" as reflected in the vessel logbook. Towards the expiration of his contract, Esposito executed a Resignation Report [16] dated April 29, 2013, requesting to be repatriated due to the impending expiration of his contract on May 21, 2013. [17]

After completion of his contract, Esposito signed off from the vessel and arrived in Manila on June 20, 2013.

Without submitting himself for mandatory post-employment medical examination within three (3) days from his arrival in the Philippines, Esposito filed the present complaint.

Ruling of the LA

In a Decision dated January 16, 2014, the LA dismissed Esposito's complaint for lack of merit, disposing of the case in the following manner:

WHEREFORE, premises considered, the above-entitled complaint for permanent disability benefits is hereby DISMISSED for lack of merit.

SO ORDERED.[18]

The LA held that Esposito failed to substantiate his allegation that he reported to Epsilon for post-employment medical examination by a company-designated physician within three (3) working days upon his return to the Philippines, as required under the POEA Standard Employment Contract (SEC). On the contrary, from the records, Esposito had no reason to seek post-employment medical examination as he was not medically repatriated; rather, his contract was terminated without any issues, much less medical problem. Moreover, he failed to prove that he experienced physical discomfort while on board the vessel and that he reported the same to the Master of the vessel. The medical logbook presented by respondents show that Esposito reported a single instance of skin burn on December 17, 2012. This, according to the LA, substantiates the version of respondents that Esposito never suffered from a medical condition while on board the vessel.[19]

On February 19, 2015,[20] Esposito filed a Memorandum of Appeal with the NLRC.

Ruling of the NLRC

In a Decision dated March 28, 2014, the NLRC reversed and set aside the appealed decision of the LA and ordered respondents to pay Esposito disability benefits corresponding to total and permanent disability under the 2010 POEA-SEC in the amount of US\$60,000.00, sickness allowance and attorney's fees, disposing of the case as follows:

WHEREFORE, premises considered, the appeal is hereby declared with merit and the appealed decision REVERSED and SET ASIDE; Respondents are hereby ordered to pay Complainant the following in Philippine Peso at the rate of exchange prevailing at the time of payment:

1. disability benefits -

US\$60,000.00

2. 130 days sick wage

(US\$2,550.00 X 130 days) -

11,050.00

30

Sub-total

-

US\$71,050.00

3.

10% attorney's fees which is due to Complainant himself only -

7,105.00

TOTAL -

US\$ 78,155.00

VVVVVVVVVVVVV

SO ORDERED.[21]

The NLRC ruled that Esposito's submission within 72 hours from repatriation for medical examination, albeit to a private physician, as proven by his Medical Certificate dated June 22, 2013, confirms his claims that he suffered his illness while on board the vessel and that with respondents having failed to provide him with the proper medical care within the required period, he was forced to seek medical treatment from a private physician.[22] According to the NLRC, it cannot be otherwise because his illness could not have been acquired by him between the date of his repatriation on June 20, 2013 to the date that he was issued a medical certification on June 22, 2013.[23]

Further, as Esposito was declared unfit to work until December 31, 2013 in his Medical Certificate dated November 7, 2013, he was unable to return to work for more than 120 days from his repatriation, hence entitled to total and permanent disability benefits under Section 20-A of the POEA-SEC.[24]

Anent his claims for permanent disability benefits under the CBA, the NLRC ruled that Esposito failed to prove his entitlement to the same as his permanent disability was not a result of an accident.[25] Esposito is, however, entitled to sickness allowance for 130 days pursuant to Article 23 of the CBA.[26] Finally, Esposito is entitled to attorney's fees in its extraordinary concept, that is as indemnity damage to be paid by the losing party to the winning party because the latter had to hire a lawyer to protect his interest.[27]

Respondents filed a Motion for Reconsideration, which was, however, denied for lack of merit in a Resolution of the NLRC dated May 22, 2014.[28] This prompted respondents to file a Petition for Certiorari before the CA.

Meanwhile, after the issuance of the Entry of Judgment respondent opposed the issuance of a Writ of Execution on the ground of newly-discovered evidence: a printed copy of a POEA-certified Overseas Filipino Worker (OFW) Information[29] showing that Esposito was processed for deployment by the POEA on February 10, 2014 or within 240 days from his repatriation on June 20, 2014. Allegedly, respondents learned that Esposito had served as Chief Engineer subsequent to the filing of his Complaint with the LA, hence negating his claim of total and permanent disability.[30] Nevertheless, the NLRC issued the Writ of Execution dated October 10, 2014.[31]

Subsequently, respondents filed a Satisfaction of Judgment with Urgent Motion to Lift Garnishment[32] informing the NLRC that, in order to avert the adverse effect of the Notice of Garnishment served to their depositary bank on their business operations, respondents voluntarily deposited the judgment award with the Cashier of the NLRC on November 3, 2014[33] and that such satisfaction was acknowledged by Esposito in the latter's Urgent Ex-parte Motion to Issue an Order of Release (Directing the NLRC Cashier to Release the Judgment Award)[34] filed before the NLRC on November 5, 2014. As such, respondents prayed that the NLRC terminate the present case without prejudice to the pending Petitions for Certiorari and Extraordinary Remedies

filed by respondents, and accordingly lift the garnishment issued by the Sheriff.[35]

Ruling of the CA

In the assailed Decision, the CA granted respondents' Petition for Certiorari, set aside the decision of the NLRC and accordingly reinstated the Decision of the LA which dismissed Esposito's complaint. The CA disposed of the case in this wise:

WHEREFORE, with the foregoing disquisition, the Petition for Certiorari dated July 22, 2014 is hereby GRANTED and the Decision dated March 28, 2014 and Resolution dated May 22, 2014 of the National Labor Relations Commission are hereby SET ASIDE. Accordingly, the Decision dated January 16, 2014 of the Labor Arbiter which dismissed private respondent Henry Esposito's Complaint for permanent total disability benefits and other money claims is hereby REINSTATED.

SO ORDERED.[36]

According to the CA, while the POEA-SEC considers heart disease as occupational, Esposito failed to present any evidence of the mandatory conditions that his heart disease was known to have been present during employment and that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work. The fact that he was repatriated for a finished contract and not for medical reasons undermined, if not negated, his claim of illness on board the vessel.[37] Moreover, even if his illness is to be considered work-related, his claim for disability benefits must still fail as he failed to comply with the mandatory post-employment medical examination by a company-designated physician within three (3) days from his repatriation.[38]

Esposito filed a Motion for Reconsideration on February 13, 2015[39] which was denied in the assailed Resolution dated May 12, 2015.[40]

Refusing to concede and after filing a Motion for an Extension of Time to File Petition Under Rule 45,[41] Esposito filed the present Petition on June 29, 2015, raising the following issues:

I

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT REVERSED AND SET ASIDE THE JUDICIOUS AND MERITORIOUS DECISION OF THE HONORABLE NLRC ALTHOUGH THE SAME IS ALREADY FINAL AND EXECUTORY AND IT IS JUDICIOUS AND MERITORIOUS AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARGUMENTS AND IT IS NOT TAINTED WITH PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION.

II

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DID NOT DISMISS THE PETITION OF RESPONDENTS ALTHOUGH RESPONDENTS HAD SETTLED VOLUNTARILY THE JUDGMENT AWARD IN THIS CASE DURING THE TIME THAT THIS CASE WAS UNDER CONCILIATION AND PRE-EXECUTION PROCEEDINGS BEFORE THE HONORABLE NLRC.

III

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT ERRONEOUSLY CONCLUDED THAT PETITIONER'S EMPLOYMENT CONTRACT HAD ALREADY COMPLETED ALTHOUGH IT IS CLEARLY ESTABLISHED BASED ON THE RECORDS OF THIS CASE THAT PETITIONER DURING THE TERM

OF HIS EMPLOYMENT CONTRACT HAD ALREADY FELT THE SYMPTOMS OF HIS CARDIOVASCULAR DISEASE AS HE WAS ALREADY COMPLAINING OF SEVERE HEADACHE, CHEST PAIN, DIZZINESS, RAPID PULSE BEAT AND PERSISTENT PERSPIRATION ON THE LAST WEEK OF APRIL 2013 WHICH ON THIS PERIOD THE EMPLOYMENT CONTRACT OF PETITIONER HAS NOT YET EXPIRED.

IV

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT CONCLUDED VERY ERRONEOUSLY THAT PETITIONER WAS NOT MEDICALLY REPATRIATED ALTHOUGH THE MASTER OF THE VESSEL OF RESPONDENTS HAD JUST ADVISED PETITIONER TO JUST WAIT FOR HIS REPATRIATION UPON THE EXPIRATION OF HIS EMPLOYMENT CONTRACT SO THAT HE COULD BE PROPERLY TAKEN CARE OF MEDICALLY IN MANILA.

V

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT ERRONEOUSLY SWALLOWED HOOK, LINE AND SINKER THE INACCURATE DECLARATION OF RESPONDENTS THAT ALLEGEDLY PETITIONER HAD FAILED TO REPORT FOR MANDATORY THREE DAY POST-EMPLOYMENT MEDICAL EXAMINATION. ALTHOUGH THE RECORDS OF THIS CASE WILL READILY REVEAL THAT PETITIONER HAD REPORTED TO RESPONDENTS' OFFICE ON JUNE 21, 2013, HOWEVER HE WAS NOT PROPERLY ATTENDED TO BY RESPONDENTS SO THAT PETITIONER WAS EVENTUALLY COMPELLED TO SUBMIT HIMSELF FOR IMMEDIATE MEDICAL ATTENTION TO DR. ROMEO SANTOS AT THE PHILIPPINE HEART CENTER BECAUSE OF RESPONDENTS' UNRESPONSIVE TO PETITIONER'S REQUEST FOR IMMEDIATE MEDICAL ATTENTION HAD FALLEN ON DEAF EARS.

VI

THAT PETITIONER, ON ACCOUNT OF THE BY-PASS OPERATION, IS ALREADY TOTALLY UNFIT FOR WORK AS HE COULD NO LONGER PERFORM THE USUAL PHYSICAL, STRENUOUS AND STRESSFUL ACTIVITIES WHICH IS THE USUAL FUNCTION OF THE SEAFARERS, SO THAT THE HONORABLE NLRC HAD ACTED PROPERLY AND JUDICIOUSLY WHEN IT GRANTED TO PETITIONER HIS FULL DISABILITY COMPENSATION UNDER THE POEA STANDARD EMPLOYMENT CONTRACT PLUS HIS SICK WAGES AND ATTORNEY'S FEES.[42]

The Court's Ruling

The Petition raises procedural and substantive issues, which are mainly factual in nature. At this juncture, it bears stressing that the Court's jurisdiction in a Rule 45 petition for review on certiorari such as this case is generally limited to resolving only questions of law. However, as this case involves essentially conflicting findings of fact by the tribunals a quo and the CA, it falls under admitted exceptions to the proscription on questions of fact which had developed in jurisprudence through the years.[43] The Court may and will, thus, take cognizance of this case without issue.

Nonetheless, the petition must fail.

First, the procedural matters raised.

The Entry of Judgment issued by the
NLRC and the Satisfaction of the
NLRC's Judgment made by the

respondents did not render moot and academic, and was without prejudice to, the respondents' Petition for Certiorari before the CA.

Petitioner contends that the CA erred in reversing the Decision of the NLRC when the same had already become final and executory, there being no appeal provided by law therefrom.[44] Likewise, Esposito faults the CA for refusing to dismiss respondents' petition when respondents had already voluntarily settled the judgment award in the present case.[45]

These contentions deserve scant consideration.

A judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed.[46] The period or manner of appeal from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. NLRC*.[47] Section 4 of Rule 65, as amended, states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed.[48] In the present case, it is not disputed that respondents timely filed their Rule 65 Petition for Certiorari of the NLRC Decision with the CA. Hence, the issuance of the Entry of Judgment by the NLRC cannot render moot and academic the Petition for Certiorari before the CA and the latter was correct in taking cognizance of the same.

Anent the issue of the satisfaction of judgment made by respondents which should have allegedly prompted the CA to dismiss respondents' petition filed before it, this contention is likewise untenable. The Satisfaction of Judgment with Urgent Motion to Lift Garnishment filed by respondents contains the categorical caveat that their prayer for the lifting of the garnishment over their depositary bank which hampered their business operations was without prejudice to the then pending petition with the CA. Likewise, such course of action by judgment creditors is expressly recognized by the 2011 NLRC Rules of Procedure, Rule XI on Execution Proceedings which provides for the remedy of restitution in similar situations, to wit:

Rule XI
EXECUTION PROCEEDINGS

x x x x

SECTION 14. EFFECT OF REVERSAL OF EXECUTED JUDGMENT. – Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court, the Labor Arbiter shall, on motion, issue such orders of restitution of the executed award, except wages paid during reinstatement pending appeal.

Hence, the satisfaction by respondents of the judgment award of the NLRC did not prejudice the proceedings before the CA. The CA correctly refused to dismiss the respondents' petition on this ground.

Esposito's Complaint for total and permanent disability benefits was prematurely filed.

Entitlement to disability benefits of seafarers is governed by law, contract and the applicable medical findings. The material legal provisions are Articles 191 to 193 of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees' Compensation. The relevant contracts are the POEA-SEC and the CBA, if any.[49]

Under Article 192(c)(1) of the Labor Code, permanent total disability includes temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided in the Rules. The rule adverted to is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, which states:

SECTION 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. (Underscoring supplied)

This must be read in conjunction with Section 20-B(3) of the POEA-SEC, which provides:

- 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. (Underscoring supplied)

Marrying the foregoing, the Court has held that in order for a claim for total and permanent disability benefits to prosper, any of the following circumstances must obtain:

(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;

(c)

the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d)

the company-designated physician acknowledged that he is partially permanently disabled but other doctors whom he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e)

the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f)

the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g)

the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h)

the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[50]

In the present case, it is not disputed that Esposito was repatriated on June 20, 2013. He filed the present complaint 104 days thereafter or on October 2, 2013.[51]

In other words, Esposito filed his complaint for total and permanent disability benefits before the lapse of the initial 120-day period from repatriation which the law affords a company-designated physician to determine the nature and extent of a seafarer's disability. This period may even be extended to a maximum period of 240 days on justifiable grounds. In this case, the company had no occasion at all to refer Esposito to its designated physician for assessment because, as will be discussed further, Esposito never submitted himself to the company physician for medical examination.

The medical certificate dated June 22, 2013 from Dr. Santos did not provide Esposito with a cause of action against respondents. While a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC,[52] this is on the assumption that there is already a certification by the company-designated physician as to his fitness or disability which he disagrees with.[53] It is the company-designated physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to contest his findings.[54]

Moreover, in their Comment,[55] respondents attached a POEA-certified OFW Information showing that Esposito was processed for employment on February 10, 2014 or within the maximum extended period of 240 days from his repatriation. Based on this evidence, Esposito was "engaged" as a Chief Engineer Officer by local manning agent Conautic Maritime Inc. in behalf of its principal HK Marine PTE, LTD. for six (6) months.[56]

The authenticity and the data contained in this evidence remains to be undisputed by Esposito whose Reply[57] is deafeningly silent on the matter. As such, the Court is left with no recourse but to seriously doubt the truthfulness of the allegations in his Petition that he is "totally unfit for work as x x x he has no more capacity to perform the usual physical, strenuous and stressful activities which is the usual function of the seafarers on board the vessel x x x [and with his] deteriorated physical and medical condition of petitioner, petitioner may not be qualified anymore to resume his seafaring duties as very certainly he may not pass or comply with the rigid and rigorous PEME that is being required under POEA regulation as a condition of redeployment abroad." [58] These appear to be falsehoods and cast serious questions on Esposito's general credibility.

Indeed, prior to his subsequent engagement as reflected in the OFW Information, Esposito underwent a PEME and was therein found fit for sea duty; otherwise, he would not have been hired. In other words, Esposito could have been found by Epsilon's designated physician as fit again for sea duty within the required period of time under the POEA-SEC had Esposito submitted himself for medical examination and such finding would have negated his claim for total and permanent disability benefits. In *Oriental Shipmanagement Co., Inc. v. Nazal*, [59] the Court dismissed the claim of a seafarer who was able to secure a seafaring job after his repatriation and ruled:

If Nazal was able to secure an employment as a seaman with another vessel after his disembarkation in November 2001, how can there be a case against the petitioners, considering especially the lapse of time when the case was instituted? How could Nazal be accepted for another ocean-going job if he had not been in good

health? How could he be engaged as a seaman after his employment with the petitioners if he was then already disabled?

Surely, before he was deployed by Crossocean, he went through a pre-employment medical examination and was found fit to work and healthy; otherwise, he would not have been hired. Under the circumstances, his ailments resulting in his claimed disability could only have been contracted or aggravated during his engagement by his last employer or, at the very least, during the period after his contract of employment with the petitioners expired.[60] (Emphasis supplied)

Esposito reneged on his duty to submit to a post-employment medical examination within three (3) working days from his repatriation.

As mentioned, the company was not at all able to assess Esposito's illness because he failed to submit himself for medical examination within the required three-day post-repatriation period under Section 20-B(3) of the POEA-SEC, which reads:

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

- 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. (Emphasis and underscoring supplied)

In *Jebsens Maritime, Inc., and/or Alliance Marine Services, Ltd. v. Undag*,^[61] the Court explained the rationale for the three-day mandatory requirement, thus:

x x x The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.

To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.^[62]

Hence, considering the allegations of Esposito that he had been suffering the symptoms of his illness while he was onboard the vessel, he should have then submitted himself to Epsilon for referral to a company-designated physician who could have conducted the necessary post-employment medical examination within three (3) days

from his repatriation on June 20, 2013 or until June 22, 2013.

Esposito's claim that, upon his repatriation, he immediately reported to Epsilon for medical examination but that the latter failed to provide him with any medical attention, does not inspire belief. The records are bereft of any proof that he reported to Epsilon. Being a veteran seafarer knowledgeable in the employers' obligations under compensation laws, as Esposito himself claims in his Petition,[63] Esposito must have known that bare allegations are hardly the required substantial evidence to warrant award of disability benefits. The Court fails to see why he did not obtain any tangible proof or evidence to corroborate his claims. Indeed, his self-serving and unsubstantiated declarations are insufficient to establish his case considering the required quantum of evidence in labor cases.

In labor cases, as in other administrative proceedings, substantial evidence, or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion, is required. The oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence.[64] Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent.[65]

Notably, as to this factual issue, the CA and the LA both arrived at the conclusion that Esposito did not submit himself to Epsilon for post-employment medical test. The NLRC, who gave credence to Esposito's claim of compliance, did not make any discussion as to how it arrived at its conclusion that respondents had indeed denied Esposito the medical care which the latter had asked for.[66] Hence, under the circumstances, it is reasonable for the Court to lean favorably towards the CA's and LA's findings on this factual matter.

Having failed to comply with the mandatory reporting requirements, Esposito's claim for disability benefits must fail. This holds true notwithstanding that he was examined by a private physician within the three-day period. Under the POEA-SEC, it is the company-designated physician who is required to assess a seaman's disability, as expounded by the Court in the following wise:

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.[67] (Emphases supplied)

Hence, for failing to comply with the three-day reporting requirement, Esposito effectively had forfeited his right to claim disability benefits as expressly provided under Section 20-B(3) of the POEA-SEC.

Esposito failed to present substantial evidence that his illness was work-related and was existing during the time of his employment; hence the same is not compensable.

Even if the requirement as discussed above is dispensed with, Esposito still failed to show that his illness was

work-related and compensable. For disability to be compensable under Section 20-B of the POEA SEC,[68] two (2) elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[69]

Relevantly, the 2000 POEA-SEC defines "[w]ork-[r]elated illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." [70] The conditions referred to are:

SECTION 32-A. OCCUPATIONAL DISEASES

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

1)

The seafarers work must involve the risks described herein;

2)

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

3)

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

4)

There was no notorious negligence on the part of the seafarer. (Emphasis supplied)

Cardio-Vascular diseases are explicitly listed by Section 32-A(11) as occupational diseases when contracted under the conditions therein set, thus:

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

x x x x

- Cardio-Vascular Diseases. Any of the following conditions must be met:

a)

If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

b)

The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship;

c)

If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. (Emphasis and underscoring supplied)

Hence, although cardio-vascular diseases are listed as occupational diseases, still, to be compensable under the POEA-SEC, all of the four (4) general conditions for occupational diseases under Section 32, plus any one (1) of the conditions listed under Section 32-A for cardio-vascular diseases, must nonetheless be proven to have

obtained and/or be obtaining. Moreover, the same must be work-related and must have existed during the term of the seafarer's employment.

In the present case, Esposito failed to substantially prove his claim that his illness was work-related or that it was existing during the time of his employment with Epsilon. He failed to show that his illness was known to have been present during his employment or that the nature of his work brought an acute exacerbation thereof as required under Section 32-A (11)(a).

Although there is no dispute that he was suffering from a cardiovascular disease at the time that he filed the complaint, no proof was presented that such illness subsisted prior to the expiration of his employment contract or even up to the day of his repatriation. Much as he claims that as early as in April 2013, during his employment, he was already feeling severe chest pains and other discomfort, Esposito never presented any written note, request or record about any medical condition to that effect or any medical check-up, consultation or treatment prior to his repatriation.

On the other hand, respondents submitted in evidence a copy of the Medical Vessel Logbook which shows that the only time Esposito complained of a medical condition was on December 17, 2012 when he reported experiencing "skin burn."^[71] It is difficult to believe that Esposito merely neglected to enter in the vessel logbook or sought assistance for his "severe chest pain, dizziness, difficulty of breathing, severe headache and persistent perspiration"^[72] which, to the Court, sound much graver than a simple skin burn. Likewise, the respondents presented Esposito's "Resignation Report" dated April 29, 2013 where he categorically affirmed that his health condition was not the cause of the termination of his employment contract and hence, his repatriation, thus:

The undersigned C/E HENRY R[.] ESPOSITO

I hereby inform you that my contract with the Company will be terminated on 21[st]May 2013. In this respect[,] I give notice of termination of my contract with the Company and I wish to be repatriated from Discharging Port Shanghai, China to my country Philippines.

This Notice of Termination is due to personal reasons having nothing to do with the condition of my health or the general condition on the vessel[.] In this respect, I declare that I do not have any claim for compensation[.] All the expenses of my repatriation as well as the expenses associated with the boarding of my replacement will be paid by the Company.^[73] (Emphasis supplied)

Indeed, the fact alone that Esposito was repatriated due to the termination of his contract and not due to a medical condition already weighs strongly against his claims. The Court had, in the past, ruled that repatriation for an expired contract belies a seafarer's submission that his ailment was aggravated by his working conditions and that it was existing during his term of employment.^[74]

Neither can the Court subscribe to the ratio of the NLRC that the lone evidence of Esposito – his June 22, 2013 medical certificate obtained from a private physician – outweighs all evidence and arguments proving that his illness was not work-related nor subsisting during his employment and that he failed to submit himself to a company-designated physician.^[75] The medical certificate does not prove the work-causation or work-aggravation of Esposito's disease. Neither does it prove that Esposito, prior to proceeding to a private doctor, asked for, and was refused, medical attention by respondents. This holds especially true in light of the substantial documentary evidence of respondents against which Esposito's medical certificate issued by a private physician cannot stand.

While the test of proof in compensation proceedings is merely probability, and not ultimate degree of certainty,^[76] the conclusions of the courts must still be based on real evidence and not just inferences and

speculations.[77] In *Scanmar Maritime Services, Inc. v. De Leon*,[78] the Court overturned the factual conclusions of the LA, NLRC and the CA that since there was no reported incident befalling the seafarer from the time he disembarked from the vessel to the time he underwent medical examination about two (2) months after, whatever causative circumstances led to his permanent disability must have transpired during his 22 years of employment. In that case, the Court likewise rejected the deduction that the illness subsisted during the seafarer's employment from medical reports and certifications issued after such employment and disembarkation. The Court therein discussed the need to have evidentiary bases, instead of speculations, to conclude the compensability of a seafarer's illness, to wit:

Noticeably, *Nisda* and *Seagull* did not use the proximity of the development of the injury to the time of disembarkation as the basis for compensability. This Court in those cases made an effort to find out the recognized elements in resolving seafarers' claims: the description of the work, the nature of the injury or illness contracted, and the connection between the two.

Here, the courts a quo merely speculated that because respondent worked for 22 years, it then follows that his injury was caused by his engagement as a seafarer. This blanket speculation alone will not rise to the level of substantial evidence. Whilst the degree of determining whether the illness is work-related requires only probability, the conclusions of the courts must be still be based on real, and not just apparent, evidence. Especially egregious is the error of the CA when it augmented the speculative conclusions of the LA and the NLRC, by referring to a medical website that has not even been vetted to introduce into the CA Decision a modicum presence of the causality requirement for compensable injuries. The tribunals should have gone beyond their inferences. They should have determined the duties of *De Leon* as a seafarer and the nature of his injury, so that they could validly draw a conclusion that he labored under conditions that would cause his purported permanent and total disability.[79] (Emphasis supplied)

Hence, given *Esposo's* utter lack of evidence to support his claim that he was already suffering his illness when he was onboard respondents' vessel and that his illness was work-related as against the undisputed documentary evidence of respondents belying such claims coupled with the established fact that he was not medically repatriated, he cannot be compensated for his illness.

In sum, *Esposo* cannot be awarded the total and permanent disability benefits that he seeks. His complaint was filed prematurely, he was in breach of his contractual obligation to submit to a company-designated physician within the required period, and he failed to prove by substantial evidence the compensability of his illness.

As a final word, while the Court commiserates with *Esposo*, it cannot ignore the fatal flaws of his case and grant his claims, lest a clear injustice be caused to respondents. As the Court has often held, "consistent with the purposes underlying the formulation of the POEA [Contract], its provisions must be applied fairly, reasonably and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect. This exhortation cannot, however, be taken to sanction the award of disability benefits and sickness allowances based on flimsy evidence and/or even in the face of an unjustified non-compliance with the mandatory reporting requirement under the POEA [Contract]."[80]

WHEREFORE, premises considered, the instant petition for review is hereby DENIED. The Decision dated January 22, 2015 and the Resolution dated May 12, 2015 of the Court of Appeals are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.
J. Reyes, Jr.,[*] J., on wellness leave.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018. On wellness leave.

[1] Rollo, pp. 10-30.

[2] Id. at 34-40. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Mario V. Lopez and Francisco P. Acosta, concurring.

[3] Id. at 41-43.

[4] Id. at 88-103.

[5] Id. at 104-108.

[6] Id. at 76-87.

[7] Id. at 71-73.

[8] Id. at 89.

[9] Id. at 35.

[10] Id.

[11] Id. at 15-16.

[12] Id. at 78.

[13] Id. at 51.

[14] Id. at 98-99.

[15] Id. at 71-72.

[16] Id. at 70.

[17] Id. at 61.

[18] Id. at 87.

[19] Id. at 83-84.

[20] Id. at 13.

[21] Id. at 101-102.

[22] Id. at 95-96.

[23] Id. at 96.

[24] Id. at 98-100.

[25] Id. at 100.

[26] Id.

[27] Id. at 101.

[28] Id. at 107.

[29] Id. at 110.

[30] Id. at 63.

[31] Id. at 61-62.

[32] Id. at 44-46.

[33] Id. at 48.

[34] Id. at 48-49.

[35] Id. at 45.

[36] Id. at 40.

[37] Id. at 38-39.

[38] Id. at 39.

[39] Id. at 14.

[40] Id. at 43.

[41] Id. at 3-8.

[42] Id. at 18-20.

[43] The ten (10) recognized exceptions, at present, were first listed in *Medina v. Mayor Asistio, Jr.*, 269 Phil 225, 232 (1990); *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016), to wit:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x; (2) When the inference made is manifestly mistaken, absurd or impossible x x x; (3) Where there is a grave abuse of discretion x x x; (4) When the judgment is based on a misapprehension of facts x x x; (5) When the findings of fact are conflicting x x x; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x; (7) The findings of the Court of Appeals are contrary to those of the trial court x x x; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents x x x; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x.

[44] Rollo, pp. 18-20.

[45] Id. at 18.

[46] *Phil. Veterans Bank v. Solid Homes, Inc.*, 607 Phil. 14, 21 (2009).

[47] 356 Phil. 811 (1998).

[48] *Dela Rosa v. Michaelmar Philippines, Inc.*, 664 Phil. 154, 162 (2011).

[49] *Gomez v. Crossworld Marine Services, Inc.*, G.R. No. 220002, August 2, 2017, 834 SCRA 279, 294.

[50] *Status Maritime Corporation v. Doctolero*, 803 Phil. 453, 461-462 (2017), citing *C.F. Sharp Crew Management, Inc. v. Taok*, 691 Phil. 521, 538-539 (2012).

[51] Rollo, p. 71.

[52] B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x

- 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 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. (Emphasis and underscoring supplied)

[53] *New Filipino Maritime Agencies, Inc. v. Despabeladeras*, 747 Phil. 626, 642 (2014).

[54] *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 65-66 (2011).

[55] *Rollo*, pp. 60-69.

[56] *Id.* at 110.

[57] *Id.* at 120-136.

[58] *Id.* at 29.

[59] 710 Phil. 45 (2013).

[60] *Id.* at 56.

[61] 678 Phil. 938 (2011).

[62] *Id.* at 948-949.

[63] *Rollo*, p. 24.

[64] *Jebsens Maritime, Inc., and/or Alliance Marine Services, Ltd. v. Undag*, *supra* note 61, at 946-947.

[65] *Panganiban v. Tara Trading Shipmanagement Inc.*, 647 Phil. 675, 688 (2010).

[66] *Rollo*, p. 98.

[67] See *Coastal Safeway Marine Services Inc. v. Esguerra*, *supra* note 54.

[68] 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: (Emphasis supplied)

[69] *De Leon v. Maunlad Trans, Inc.*, 805 Phil. 531, 539 (2017).

[70] Definition of Terms, par. (12); emphasis supplied.

[71] *Rollo*, p. 84.

[72] *Id.* at 15.

[73] Id. at 70.

[74] Villanueva v. Baliwag Navigation, Inc., 715 Phil. 299 (2013).

[75] Rollo, pp. 95-96.

[76] Villamor v. Employees' Compensation Commission, 800 Phil. 269, 281-282 (2016).

[77] See Scanmar Maritime Services, Inc. v. De Leon, 804 Phil. 279, 291-292 (2017).

[78] Id.

[79] Id.

[80] Coastal Safeway Marine Services, Inc. v. Esguerra, supra note 54, at 70.

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