

DESIDERIO C. CUTANDA, PETITIONER, V. MARLOW NAVIGATION PHILS., INC., AND/OR MARLOW NAVIGATION CO. LTD. AND/OR ANTONIO GALVEZ, JR., RESPONDENTS. D E C I S I O N*G.R. No. 219123. September 11, 2017*

Ponente: PERALTA, J.

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For this Court's consideration is the Petition for Review on Certiorari under Rule 45 of the Rules of Court dated August 26, 2015 of petitioner Desiderio C. Cutanda that seeks to reverse and set aside the Decision[1] dated March 19, 2015 and Resolution[2] dated July 1, 2015, both of the Court of Appeals (CA), reversing the Decision dated April 16, 2014 and Resolution dated May 23, 2014 of the National Labor Relations Commission (NLRC), 4th Division granting petitioner total and permanent disability benefits in the amount of US\$60,000.00; attorney's fees in the amount of US\$6,000.00; and moral damages in the amount of P50,000.00.

The facts follow.

Petitioner was hired by respondent Marlow Navigation Phils., Inc. (MNPI) to work as a Key Able Seaman on board vessel MV "Malte Rambow" for a period often (10) months and with a basic monthly salary of US\$680.00. Prior to his employment, he underwent a medical examination and was declared "fit to work" by the company-designated physicians. Incidentally, he was previously employed by respondents on different employment contracts for a period of fifteen (15) years.[3]

On April 3, 2012, petitioner departed from the Philippines to join the vessel earlier mentioned in which his duties included planning, controlling, executing and reporting all maintenance and repair works on deck, in close coordination and under the supervision of the Chief Officer of the vessel. He was also in charge of supervising the safety of the crew during working hours; taking charge of the tugboat line during mooring and unmooring operation; watching the bow of the vessel to avoid accidents and collisions; supervising the junior ratings; steering the ship manually or automatically or with the use of emergency steering apparatus as directed by the navigating officer, Chief Mate, or the Ship Captain; breaking out rigs; overhauling and stowing of cargo-handling gears, stationary riggings and running gears; overhauling lifeboats, winches and falls; manually greasing the wire of the crane; chipping off rust; and painting the deck and superstructure of the ship, as well as other duties as may be assigned by his superiors.[4]

Thereafter, on October 8, 2012, petitioner had an accident aboard the vessel while performing his duties at the Port of Tanjung, Pelepas, Malaysia wherein his left index and middle fingers were severely injured and also suffered laceration wounds, when his left hand was caught and crushed by the tug's line (rope) when the tugboat started pulling the line while the tug's line was not yet free from the ship. After the accident, he was immediately brought to Puteri Specialist Hospital (Johor) SDN BHD in Malaysia for emergency medical treatment.[5]

The day after the accident, on October 9, 2012, petitioner was medically repatriated and arrived in the Philippines on that same day. He immediately reported to the respondent MNPI's office and was referred to Notre Dame

Medical Clinic where he was diagnosed with "Lacerated Wounds 2nd& 3rd digits, Left Hand." Petitioner was then treated and later referred for rehabilitation/physical therapy. The said accident was supported by official records of the Social Security System (SSS). Petitioner then underwent continuous physical therapy until April 3, 2013, or for a period of six (6) months from the time of the occurrence of the accident on October 8, 2012 and was still found to be unfit to work, as shown by medical certificates dated January 4, 2013, April 2, 2013, and April 3, 2013, all issued by the Panay Orthopaedic and Rehabilitation Institute (PORI) in Iloilo City. However, despite medical intervention and months of therapy, petitioner's condition did not improve and he could not return to his work as Key Able Seaman because of the said injuries.[6]

Eventually, petitioner demanded from the respondents that he be paid his disability benefits, but to no avail. Respondents even stopped providing medical attention to petitioner after the lapse of 120 days despite the recommendation of PORI that the latter undergo further physical therapy. Respondents also refused to shoulder the expenses incurred for the medicine of petitioner.[7]

Aggrieved, petitioner filed a complaint for payment of total disability benefits, reimbursement of medical expenses, sick allowance, moral and exemplary damages and attorney's fees.[8]

Petitioner alleged that his injuries are work-related resulting to a loss of his earning capacity, and rendering him unfit to return to work for more than 240 days and that his continuing inability to pursue his usual work and earn therefrom constitutes permanent and total disability. According to him, he is entitled to the maximum or "Grade 1" disability compensation under the POEA Standard Employment Contract (POEA-SEC) corresponding to US\$60,000.00 under Sec. 20 (B) (6) thereof, and is also entitled to the payment of his medical expenses and sickness allowance. He also argued that respondents' actions in denying to pay him disability benefits is a gross violation of the POEA-SEC and that respondents acted in bad faith and in an oppressive manner and as such, petitioner must be awarded moral damages and attorney's fees.

Respondents, on the other hand, contended, among other things that when petitioner was eventually repatriated in the Philippines, he was referred to Dr. Orlino Hosaka, Jr. for medical care and treatment on October 10, 2012 and that the latter referred petitioner to an orthopaedic surgeon and rehabilitation specialist in which the treatment under the company-designated physician and specialist lasted for months. They also claimed that petitioner was regularly examined to check his recovery and that on February 11, 2013, under Dr. Hosaka's medical report, a conclusion was made that petitioner was suffering from a disability "Grade 10" based on POEA-SEC Schedule of Disability Gradings where it is specified that the loss of grasping power of small objects between the fold of the finger of one hand corresponds to a Grade 10 disability grading. Thus, according to respondents, since Dr. Hosaka is the company-designated physician, his finding of Grade 10 disability should prevail. They also insisted that they are not guilty of bad faith since petitioner was immediately given medical attention and care and never faltered in fulfilling their responsibilities.

The Labor Arbiter, on January 14, 2014, decided in favor of petitioner. The dispositive portion of the said Decision reads as follows:

WHEREFORE, respondent Marlow Navigation Phils., Inc. and/or Marlow Navigation Co., Ltd. are hereby ordered to pay the complainant the Philippine peso equivalent at the time of the actual payment of the awards denominated in foreign currency:

1. US\$60,000.00 representing permanent and total disability benefit;
2. US\$6,000.00 representing attorney's fees; and
3. P50,000.00 representing moral damages.

The liability of the respondents for the judgment awards is joint and several.

SO ORDERED.[9]

According to the Labor Arbiter, the respondents were mistaken in their notion that in determining the disability benefits due a seafarer, only the POEA SEC, specially its schedule of benefits, must be considered. Such is governed not only by medical findings but by contract and law. The Labor Arbiter found that the conflicting diagnoses were rendered, not by the company physician and the physician chosen by the petitioner, but by the company physician and his "Iloilo coordinating physician and surgeon." It must be noted that the company physician declared that the complainant suffered a Grade 10 disability 126 days after petitioner signed-off from the vessel, while the "Iloilo coordinating physician" declared him to be unfit to work exactly 240 days after sign-off.

Thus, according to the Labor Arbiter, petitioner is entitled to permanent total disability benefits of US\$60,000.00. The Labor Arbiter further ruled that respondents' refusal to pay petitioner's just claim smacks of bad faith and calls for an award of moral damages and attorney's fees.

On appeal, the NLRC, in its Decision dated April 16, 2014 affirmed the decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by respondents is DISMISSED for lack of merit. The Decision of Labor Arbiter Cheryl M. Ampil dated January 14, 2014 is AFFIRMED.

SO ORDERED.[10]

After respondents' motion for reconsideration was denied by the NLRC, they elevated the case to the CA and on March 19, 2015, the CA reversed the decision of the NLRC, thus:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The assailed Decision dated April 16, 2014 and the Resolution dated May 23, 2014 of the NLRC, Fourth Division in NLRC LAC OFW Case No. (M) 03-000230-14, NLRC NCR OFW Case No. (M) 02-02505-13 are hereby SET ASIDE.

Petitioners are hereby ORDERED to pay private respondent Cutanda the amount of USD10,075.00 in disability benefits, to be paid in Philippine currency equivalent at the exchange rate during the time of payment. The award of moral damages and attorney's fees are ordered DELETED.

SO ORDERED.[11]

The CA ruled that the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period from the time he suffered his injury, thus, such declaration effectively prevented petitioner's temporary disability from becoming permanent. It also held that based on the POEA-SEC, disability payments are compensated in accordance with the schedule of benefits enumerated under Section 32 thereof. Furthermore, the CA ruled that without successfully refuting the medical assessment of Dr. Hosaka by making use of the option provided for under Section 20 (A) (3) of the POEA-SEC, petitioner's claim must necessarily fail. As such, the CA opined that since the POEA-SEC expressly states that any item in the schedule of disabilities under section 32 with a classification Grade 1 shall be considered and shall constitute total and permanent disability, then all other grades, including the diagnosis of Dr. Hosaka that petitioner is suffering from Grade 10 disability cannot be considered total and permanent. It then added that injuries classified under Grade 1 disabilities are more severe and traumatic, and more pervasive in its effects and that needless to state, the severity of the injuries classified under Grade 1 will indubitably and completely render the worker incapable of earning livelihood from a job he is accustomed to is trained to perform, thus, the CA is not prepared to put in equal footing petitioner with those who suffered far worse, and to award him the same amount of benefits intended to those who are clearly and irrefutably, totally and permanently disabled. As to

deletion of moral damages and attorney's fees, the CA ruled that there is a lack of factual and legal bases to award such.

Hence, the present petition after the denial petitioner's motion for reconsideration. Petitioner assigns the following grounds/reasons for the allowance of his petition:

(1) THE HONORABLE COURT OF APPEALS ACTED IN A WAY NOT IN ACCORD WITH THE DECISIONS OF THIS HONORABLE SUPREME COURT IN HOLDING THAT SEAMAN CUTANDA DID NOT SUFFER PERMANENT TOTAL DISABILITY DESPITE THE FACT THAT HE HAS BEEN UNABLE TO RETURN TO HIS WORK AS SEAMAN FOR MORE THAN 240 DAYS BECAUSE OF HIS WORK-RELATED INJURY.

(2) THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PRESUMPTION OF PERMANENT TOTAL DISABILITY ENUNCIATED IN THE CASE OF ALPHA SHIP MANAGEMENT CORPORATION VS. CALO (G.R. NO. 192034, JANUARY 13, 2014)

(3) THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING ONLY SEC. 32 OF THE POEA STANDARD EMPLOYMENT CONTRACT IN MEASURING THE DEGREE OF SEAMAN CUTANDA'S DISABILITY WITHOUT REGARD TO THE LABOR CODE PROVISIONS WHICH ARE APPLICABLE TO SEAFARERS.

(4) THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE LABOR CODE CONCEPT OF PERMANENT TOTAL DISABILITY TO THE CASE AT BAR.

(5) THE HONORABLE COURT OF APPEALS ERRED IN ITS APPRECIATION OF EVIDENCE IN NOT FINDING THAT THERE IS NO NEED FOR SEAMAN CUTANDA TO SEEK THE OPINION OF HIS OWN DESIGNATED PHYSICIAN SINCE THE COMPANY- DESIGNATED PHYSICIAN ALREADY DECLARED HIM UNFIT TO WORK.

(6) THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF PROCEEDINGS IN REVERSING THE NLRC'S FINDINGS AFFIRMING THOSE OF THE LABOR ARBITER, WHICH ARE ENTITLED TO RESPECT AND FINALITY, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE.

(7) THE COURT OF APPEALS GRAVELY ERRED REVERSING THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT SEAMAN CUTANDA IS ENTITLED TO THE MAXIMUM OR "GRADE 1" DISABILITY COMPENSATION UNDER THE POEA STANDARD EMPLOYMENT CONTRACT.

(8) THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT THE RESPONDENTS ARE LIABLE FOR MORAL DAMAGES AND ATTORNEY'S FEES.[12]

In their Comment[13] dated November 23, 2015, the respondents insist that the CA did not err in ruling that petitioner is only entitled to the benefits under the classification of Grade 10 and that the arguments the latter presented in his petition are factual and cannot be the subject of a petition for certiorari under Rule 45 of the Rules of Court.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court[14] are reviewable by this Court.[15] 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.[16] However, a relaxation of this rule is made permissible by this Court 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 that 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;'
- 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.[17]

While the issue as to whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC. Hence, a resolution of the issues presented before this Court is necessary.

This Court finds this present petition meritorious.

The following are the applicable provisions of laws that govern a seafarer's disability claim as summarized in *Jebsen Maritime, Inc., et al. v. Ravena*:^[18]

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.

Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.

Pertinent to the resolution of this petition's factual issues of compensability (of amputary cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

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 by the company-designated physician or the degree of permanent disability has been assessed by the company-designated physician but in no case shall it 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.

4. Those illness not listed in Section 32 of this Contract are disputably presumed as work related.

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. (Emphasis and underscoring supplied)

x x x x

As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions.[19]

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a

disputably-presumed work-related disease to be compensable.[20]

This Court finds that the facts as found by the NLRC are accurate, indisputable and based on the evidence presented, thus:

Here, it is undisputed that on October 8, 2012, complainant had an accident on board respondents' vessel while in the performance of his duties as Key Able Seaman. Complainant's left hand was caught and crushed by the tug's line (rope). He sustained laceration wound on his left index and middle fingers which required toilet, debridement and suturing of wounds, and some medications at the Puteri Specialist Hospital (Johor) in Malaysia. The attending medications thereat found complainant unfit for sea duty, resulting to the latter's repatriation the following day, October 9, 2012, for further medical treatment and management. Complainant was examined by respondents' company-designated physician at the Notre Dame Medico Dental Clinics, Inc., who recommended him for physical therapy at the Panay Orthopaedic & Rehabilitation Institute in Iloilo City. Complainant underwent physical therapy sessions thereat from November 7, 2012 to March 1, 2013. On February 11, 2013, while complainant finished only 4 sessions out of the 12 sessions prescribed by the Rahab Medicine Specialist, the company-designated physician already assessed complainant's disability as Grade 10.

As such, it was duly proven that petitioner can claim the compensation and benefits that Section 20-B of the POEA-SEC provides. The issue then arises as to whether he is entitled to a permanent and total disability compensation or not. The CA, in ruling that he is not entitled, stated that the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period from the time he suffered his injury, thus, such declaration effectively prevented petitioner's temporary disability from becoming permanent.

In *Marlow Navigation Philippines, Inc. v. Osias*[21] this Court expounded on the 20-day and 240-day periods, thus:

As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil.*, in this wise: "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."

The present controversy involves the permanent and total disability claim of a specific type of labourer - a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

ART. 192. Permanent Total Disability.

x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules; [emphasis supplied]

The rule referred to 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. [Emphasis and Underscoring Supplied]

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) whose Section 20 (B) (3) states:

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. [Emphasis Supplied]

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. It was provided therein that:

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

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.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar (Kestrel)*. In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a maximum of 240 days. In *Kestrel*, however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara*, the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.* stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the

120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

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."

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.

In essence, the Court in *Elburg* 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 would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned 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

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.

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.[22]

In *Elburg Shipmanagement Phils., Inc. et al. v. Quiogue, Jr.*[23] this Court set forth the following guidelines, to wit:

1. 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;
2. 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;
3. 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
4. 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.

In the present case, the conflict arises in the findings of the company-designated physician and that of the "Iloilo coordinating physician and surgeon." Although the company-designated physician, Dr. Hosaka, was able to make a determination that petitioner has a Grade 10 disability within the 240-day period or on February 11, 2013, the attending physician at the company-designated Panay Orthopaedic & Rehabilitation Institute, Iloilo City, issued a Medical Certificate on April 2, 2013 or on the 174th day, stating that complainant is "not fit to work" as of that date, and recommended that he undergo rehabilitation treatment for another 3 to 6 months. As correctly observed by the NLRC, neither of the two, the company-designated physician and the coordinating physician and surgeon declared petitioner fit to work or has already regained full use of his injured fingers, thus:

However, the company-designated physician at the Notre Dame Medico Dental Clinic, Inc. never issued any certification declaring that complainant is already fit for sea duties as of February 11, 2012, when he issued the Grade 10 disability grading for complainant. Also, the company-designated physician thereat never lifted the finding of the company-designated physician in Puteri Specialist Hospital (Johor), Malaysia, that complainant is unfit for sea duty, which required his repatriation for further medical treatment and management. Hence, such finding of unfitness for sea duty remains.

In fact, the attending physician at the company-designated Panay Orthopaedic & Rehabilitation Institute, Iloilo City, issued a Medical Certificate on April 2, 2013, stating that complainant is "not fit to work" as of that date, and recommended that he undergo rehabilitation treatment for another 3 to 6 months. Unfortunately, there is no showing in the records that respondents heeded said recommendation. There is no showing in the records that

respondents directed complainant to undergo further much needed rehabilitation treatment after his last physical therapy session of March 1, 2013.

Notably,, from October 9, 2012 when complainant was disembarked from the vessel for further medical treatment and management, up to this writing, which is more that eighteen (18) months, and obviously more than 240 days, there is no showing in the records that he was able to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, any kind of work which a person of his mentality and attainment could do, much less, as a seaman. Indeed, no profit-oriented employer would ever employ as Key Able Seaman or Able Seaman in an ocean-going vessel, a person, like complainant, who has "limitation in motion of digits 2-3 (L) hand with poor grip." [24]

The very purpose of those periods is the proper determination as to whether the injured seafarer categorized as Grade 2 to 14 can, in legal contemplation, be considered as totally and permanently disabled. Indeed, under Section 32[25] of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent.[26] 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.[27] 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.[28] 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.[29] 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.[30] 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.[31] That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[32]

In this case, although petitioner has been assessed to fall under the category of Grade 10 within the period provided by law, such was not a definite assessment as to his fitness to work as shown by the medical certificates issued by the company-designated physician and the coordinating physician and surgeon. The findings of the Labor Arbiter accurately show such conclusion, thus:

x x x Based on the Accident Report dated October 8, 2012 rendered by the Master, it appears that the complainant's left hand was accidentally crushed while he was performing his duties on the date in question. Consequently, he was signed off from the vessel and was back in the Philippines on October 9, 2012. On the following day, he was seen by the company physician who rendered a report with the following remarks: debridement and suturing of the complainant's left index and middle fingers were done in Malaysia; x-ray was done and showed fracture. In his report dated January 9, 2013, the company physician stated that the complainant had "completed 24 sessions of physical therapy" and that he was recommending the continuation of his physical therapy for another month. The last reports rendered by the company physician are both dated February 11, 2013. The following contents thereof are noteworthy:

Report dated February 11, 2013:

- In the month of February, the complainant was seen by the Iloilo coordinating physician and surgeon.
- The complainant finished four (not 24) sessions of physical therapy.
- Findings: lacks full flexion of the index finger but has a good grip strength.
- Diagnosis: lacerated wounds, w2nd and 3[rd] digits, left hand.

- Recommendation: refer back to Rehab Medicine

Specialist on February 14, 2013

Report dated February 11, 2013

- Estimated length of further medical treatment: another one month of physical therapy which he needs to fully recover.
- Diagnosis and chances of returning to work: Good chance of returning to work.

At this point we are recommending him for disability grading 10 under hands: loss of grasping power for small object between the fold of the finger of one hand."

The complainant submitted four (4) medical certificates issued by physicians of the Panay Orthopedic & Rehabilitation Institute in Iloilo City, who are apparently the "Iloilo coordinating physician and surgeon" referred to by the company physician in his report dated February 11, 2013. The following contents of the above mentioned medical certificates are noteworthy:

Medical Certificate dated January 4, 2013:

- Complainant was first examined on January 4, 2013.
- Complainant's condition: limited full extension flexion of 2nd & 3^d digits.
- Recommendation: continuation of rehab for another 2-3 months.

Medical Certificate dated April 2, 2013

- Complainant was seen on April 2, 2013.
- Remarks: patient is not fit to work, still has limitation in motion of digits 2-3 left hand with poor grip; continued rehab treatment for another 3-6 months recommended.

Medical Certificate dated April 3, 2013

- The complainant underwent 24 treatment sessions from November 7, 2012 to February 26, 2013 and one such session in March 2013.

Medical Certificate dated June 5, 2013

- The complainant was seen on June 5, 2013. The complainant was declared unfit to work.[33]

From the above findings, it appears that petitioner had been unfit to work way beyond the 240 days provided by law, hence, petitioner can be legally considered as totally and permanently disabled and is entitled to permanent total compensation of US\$60,000.00 under Section 32 of the POEA-SEC.

In finding otherwise, the CA ruled that it is not prepared to put in equal footing petitioner with those who suffered far worse or those classified under Grade 1. This is a wrong sentiment and interpretation of the law. As stated earlier, 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.

As to the award of moral damages and attorney's fees, this Court, also finds it appropriate to sustain the ruling of the NLRC. As correctly ruled by the NLRC:

Anent the claim for moral damages, We find that respondents, in evident bad faith, discontinued complainant's much need rehabilitation treatment for three (3) to six (6) months more, as recommended on April 2, 2013 by the attending physician at the company-designated Panay Orthopaedic & Rehabilitation Institute, Iloilo City.

Hence, his award for moral damages must be sustained.

Complainant's award for attorney's fees equivalent to ten percent (10%) of his total monetary award must also be affirmed. This is pursuant to Article 2208 (8) of the Civil Code, which states that the award of attorney's fees is justified for indemnity under the workmen's compensation and employer's liability laws.[34]

WHEREFORE, the Petition for Review on Certiorari under Rule 45 of the Rules of Court dated August 26, 2015 of petitioner Desiderio C. Cutanda is GRANTED and the Decision dated March 19, 2015 and Resolution dated July 1, 2015, both of the Court of Appeals are REVERSED and SET ASIDE. Consequently, the Decision dated April 16, 2014 and Resolution dated May 23, 2014 of the National Labor Relations Commission, 4th Division granting petitioner total and permanent disability benefits in the amount of US\$60,000.00, attorney's fees in the amount of US\$6,000.00, and moral damages in the amount of P50,000.00, are AFFIRMED and REINSTATED.

SO ORDERED.

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

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz; rollo pp. 19-91.

[2] Id. at 99-101.

[3] Id. at 80.

[4] Id. at 80-81.

[5] Id. at 81.

[6] Id.

[7] Id.

[8] Id. at 102.

[9] Id. at 263-264.

[10] Id. at 351.

[11] Id at 96-97.

[12] Id. at 48-49.

[13] Id. at 485-518.

[14] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[15] Philippine Transmarine Carriers, Inc. v. Cristino, G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127,

citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

[16] *Id.*, citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

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

[18] 743 Phil. 371 (2014).

[19] *Jebsen Maritime, Inc. v. Ravena*, *supra*, at 385-387. (Citations omitted)

[20] *Id.* at 388-389.

[21] G.R. No. 215471, November 23, 2015, 775 SCRA 342.

[22] *Marlow Navigation Philippines, Inc., et al. v. Osias*, *supra*, at 352-359. (Citations omitted)

[23] G.R. No. 211882, July 29, 2015, 764 SCRA 431, 453-454.

[24] *Rollo*, pp. 349-350.

[25] NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

[26] *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015, 773 SCRA 592, 605, citing *Kestrel Shipping Co., Inc., et al. v. Munar*, 702 Phil. 717, 730 (2013).

[27] *Id.*

[28] *Id.*

[29] *Id.* at 730-731.

[30] *Id.* at 731.

[31] *Id.*

[32] *Id.*

[33] *Rollo*, pp. 257-260.

[34] *Id.* at 350.

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