

ORIENTAL SHIPMANAGEMENT CO., INC. AND/OR MOL TANKSHIP MANAGEMENT (EUROPE) LTD. AND/OR RAMON S. HERRERA, PETITIONERS, V. WILLIAM DAVID P. OCANGAS, RESPONDENT.*G.R. No. 226766. September 27, 2017*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-226766/>**REYES, JR., J:**

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 135103 dated March 9, 2016, and its and Resolution[2] dated August 31, 2016, denying the motion for reconsideration thereof. The assailed decision granted the petition for certiorari filed by the petitioners, reversed and set aside the Decision[3] dated January 15, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 09-000805-13, and reinstated the Decision[4] dated July 23, 2013 issued by the Labor Arbiter (LA) in NLRC NCR Case No. (M) 01-01253-13.

The Antecedent Facts

Respondent William David P. Ocangas was hired by Petitioner MOL Tankship Management (Europe) Ltd., through its local manning agency in the Philippines- Petitioner Oriental Shipmanagement Co., Inc.

Under the employment contract, Respondent was hired as a Pumpman on board the vessel M/T Phoenix Admiral, for a period of nine (9) months, with a basic monthly salary of US\$599.00.[5]

Prior to his employment, Respondent underwent a pre-employment medical examination (PEME) and was declared fit to work.[6]

Respondent was deployed on November 29, 2011. His tasks on board include the rebuild and repair of the valves, pumps, and leaks within the cargo system and extended to the maintenance and lubrication of all parts therein, such as glands, bearing, and the breach rods.[7]

On July 12, 2012, while on duty, Respondent suffered a broken spine and felt extreme pain on his lower back and numbness on his lower extremities, as a result of him having to lift the cover of the ballast pump manually, which he is then preparing for inspection and maintenance.[8] He was then advised to rest and given pain relievers.[9]

On August 16, 2012, Respondent was brought to Kozmino, Russia where he was diagnosed to be suffering from "Osteochondrosis, Regiolumbalis." He was then given proper medication and was advised to seek medical treatment in his home country.[10]

Respondent's condition did not improve despite medical attention. Thus, on August 20, 2012, Respondent was recommended to be repatriated to obtain further medical treatment.[11]

Upon his repatriation on September 4, 2012, Respondent immediately reported to Petitioner Oriental Shipmanagement Co., Inc., which then referred him to the company's accredited physician at the Marine Medical Services of the Metropolitan Medical Center. After a series of tests, Respondent was found to be suffering from

"Central Disc Protrusions L4-L5 and L5-S1, and Minimal Osteophytes, Lumbar vertebrae." [12] Respondent then underwent a series of treatments supervised by company-designated physicians.

On January 23, 2013, Respondent was declared by Dr. William Chuasuan, a company-designated and accredited physician, to have reached the maximum medical cure with Grade 11 disability impediment for 1/3 loss of lifting power and per the Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC) Schedule of Benefits, entitled to US\$7,465. [13]

On January 24, 2013, Respondent filed a Complaint against Petitioner for recovery of permanent total disability benefits, refund of medical expenses, sickness allowance, and claim for damages. [14]

On March 25, 2013, Respondent sought the medical opinion of Dr. Marcelino Cadag, orthopedic surgeon of the Loyola International Multi Specialty Clinics. Dr. Cadag recommended that the Respondent undergo further therapy and diagnosed him to be suffering from "Herniated Nucleus Pulposus L4-L5, L5-S1 with Nerve Root Compression; Lumbar Spondylosis," [15] and as such no longer fit for sea duty or for any work aboard seafaring vessel given his medical condition.

The LA's Decision

On July 23, 2013, the LA rendered his Decision [16] granting the Complaint, to wit:

WHEREFORE, premises considered, judgment is hereby rendered declaring the Complainant entitled to permanent and total disability benefit, and, therefore, holding all the Respondents jointly and severally liable to pay the Complainant his full disability benefit in the amount of US\$100,000.00 or their peso equivalent at the time of payment plus attorney's fee equivalent to 10% of the total judgment award.

All other claims are dismissed for lack of merit.

SO ORDERED. [17]

In his Decision, the LA held that contrary to the allegation of the Petitioners, the company-designated physician does not have the exclusive prerogative in the determination and assessment of the illness and/or injury of the seafarer. As such, the findings of the company-designated physician should not be taken as the only primary consideration, especially where there is a contrary opinion as in the instant case. [18]

All told, the LA ruled that the Respondent was rendered unfit to work as seaman for more than 120 days, by itself, already constitutes permanent total disability and entitles the latter to US\$ 100,000.00 pursuant to their collective bargaining agreement (CBA). [19]

However, the LA denied the Respondent's claim for medical expenses for failure to substantiate the same. Likewise, finding that the petitioners merely relied on the certification issued by the company-designated physician, the LA denied the claim for moral and exemplary damages. [20]

Petitioners appealed the July 23, 2013 Decision of the LA to the NLRC, asserting that while they admit liability for Respondent's disability, the latter is entitled only to benefits corresponding to permanent partial disability (Grade 11) as determined by the company-designated physician. [21]

Petitioners insisted that under the POEA-SEC, the company-designated physician has the primary if not the exclusive authority to assess the seafarer's disability. [22]

The NLRC's Decision

On January 15, 2014, the NLRC rendered its Decision [23] granting the appeal, and accordingly reversed and set

aside the July 23, 2013 Decision of the LA.

The NLRC stated that initially, the Respondent's complaint for permanent and total disability should have been dismissed for lack of cause of action as at the time it was filed the only assessment that was existing was that of permanent partial disability (Grade 11) as determined by the company-designated physician. It noted that the Respondent secured a certification from Dr. Marcelino Cadag attesting to his permanent total disability two (2) months after the filing of the Complaint.[24]

Furthermore, the NLRC claimed that even if it considers the medical certificate issued by the Respondent's doctor, it is still bound to uphold the Grade 11 disability assessment of the company-designated physician, as the latter is in a far better position to assess the Respondent who has been under his care and treatment from the time of the latter was repatriated on September 4, 2012 until January 23, 2012 when the assessment was issued.[25]

The NLRC also ruled that contrary to the LA's determination, the mere fact that more than 120 days elapsed since the Respondent's repatriation without him resuming from work as a seafarer does not automatically warrant the award of permanent total (Grade 1) disability benefits.[26]

Respondent filed motion for reconsideration of the said Decision but the same was denied by the NLRC in its March 24, 2014 Resolution[27]

Respondent then filed a petition for certiorari with the CA alleging that the NLRC committed grave abuse of discretion in ruling that he has no cause of action, in finding that he is merely entitled to Grade 11 disability benefits, and in not awarding attorney's fees and damages.

The CA's Decision

On March 9, 2016, the CA rendered the herein assailed Decision[28] which granted the petition for certiorari filed by the Respondent. The CA held that the primordial consideration in determining whether the disability is total and permanent rests on evidence establishing that the seafarer's continuous inability to work due to a work-related illness is for a period of more than 120 days.[29]

According to the CA, the NLRC closed its eyes to the fact that since Respondent was repatriated on September 4, 2012 up to the time he filed his complaint on January 24, 2013, more than 120 days has elapsed during which the Respondent was medically treated and unable to perform his duties as pumpman on board any sea vessel.[30]

Moreover, the CA declared that the NLRC erred in relying fully with the company-designated physician's assessment, as it is settled that the latter's findings are not binding on the labor tribunals and the courts.[31]

Petitioners sought a reconsideration of the March 9, 2016 Decision but the CA denied it in its Resolution[32] dated August 31, 2016.

Issues

In the instant petition, Petitioners submit the following issues for this Court's resolution:

DID THE COURT OF APPEALS COMMIT SERIOUS, GRAVE AND PATENT ERRORS IN REVERSING AND SETTING ASIDE THE DECISION OF THE NLRC AND REINSTATING THE LA'S ERRONEOUS AWARD IN FAVOR OF RESPONDENT OCANGAS OF FULL DISABILITY BENEFITS, CONTRARY TO THE RELEVANT LAW, RULE AND JURISPRUDENCE?[33]

The Court's Ruling

The petition is meritorious.

It bears to stress at the outset that there is no issue as to the compensability of Respondent's injury as the parties do not dispute that the same is work-related. What remains to be resolved in the instant petition is whether Respondent is entitled to the payment of permanent total disability benefits or to that which corresponds to Grade 11 disability in accordance with the assessment of the company-designated physician.

The CA, in ruling that the Respondent suffered permanent total disability relied primarily on the cases of *Crystal Shipping, Inc. v. Natividad*,^[34] *Philimare, Inc. v. Sukanob*,^[35] *Micronesia Resources v. Cantomayor*,^[36] and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*.^[37] The last three cases were decided within the purview of the doctrine laid down in *Crystal Shipping* that permanent and total disability consists mainly in the inability of the seafarer to perform his customary work for more than 120 days.

Notably, as elucidated in the case of *Splash Philippines Inc., et al. v. Ruizo*,^[38] the ruling in *Crystal Shipping* has already been modified in that the doctrine laid down therein cannot simply be lifted and applied as a general rule for all cases in all contexts.

Thus, the Court clarified and delineated in *Kestrel Shipping Co. Inc. v. Munar*,^[39] that if the complaint for maritime disability compensation was filed prior to October 6, 2008, the 120-day rule enunciated in *Crystal Shipping* applies. However, if such complaint was filed from October 6, 2008 onwards, as in the case at bar where the Complaint was filed by the Respondent on January 24, 2013, the 240-day rule provided in the case of *Splash Philippines, Inc.* and clarified in the case of *Vergara v. Hammonia Maritime Services Inc.*,^[40] applies.

Insofar as cases covered by the 240-day rule, the Court has repeatedly emphasized that the determination of the rights of seafarers to compensation for disability benefits depends not solely on the provisions of the POEA-SEC but likewise by the parties' contractual obligations set forth under their CBA, the attendant medical findings, and relevant Philippine laws and rules.^[41]

Pertinent to the entitlement of a seafarer to permanent and total disability benefits, Section 20(A) of the POEA-SEC provides:

SECTION 20. COMPENSATION AND BENEFITS

A. 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

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his 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.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid. (Emphasis supplied)

The provisions of the POEA-SEC notwithstanding, in light of the definition provided for under Article 192[42] of the Labor Code as well as that under Rule X, Section 2[43] of the Amended Rules on Employees Compensation, the Court clarified in *Alpha Shipmanagement Corporation v. Calo*,[44] that apart from illnesses that are classified as Grade 1 under the POEA-SEC, an illness may be considered as permanent and total, thus:

[W]hen so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability. This is true "regardless of whether the employee loses the use of any part of his body." [45] (Citations omitted)

Harmonizing the provisions of the POEA-SEC, Labor Code, and the Rules on Employee Compensation, the Court discussed in the case of *Vergara v. Hammonia Maritime Services, Inc.*[46] 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.[47] (Citations Omitted)

From the foregoing, it can be deduced that upon repatriation, the seafarer is regarded to be on temporary total disability, which then becomes permanent when a) it so declared by the company-designated physician; or b) when 120 days has elapsed from the onset of disability and there is no need for further medical treatment, and the company-designated physician fails to make a declaration either of fitness or permanent partial or total disability; or c) when even after the 120-day period further medical attention becomes necessary and continues after the maximum 240-day medical treatment period without any declaration of fitness or permanent disability.

Simply stated, a seafarer is conclusively presumed to be totally and permanently disabled when the company-designated physician fails to make a declaration regarding the seafarer's fitness or status of disability within the specified 120 or 240-day periods. "On the other hand, if the company-designated physician declares the seaman fit to work within the said periods, such declaration should be respected unless the physician chosen by

the seaman and the doctor selected by both the seaman and his employer declare otherwise." [48]

In this case, immediately after he was medically repatriated on September 4, 2012, Respondent reported to Petitioner Oriental Shipmanagement, which then referred him to the company-designated and accredited physicians. Thereupon, he was subjected to a series of tests and was initially diagnosed to be suffering from "Central Disc Protrusions L4-L5 and L5-S1, and Minimal Osteophytes, Lumbar vertebrae" for which he underwent medication, therapy sessions, and medical consultations, all of which under the supervision of company-designated physicians, until he reached maximum medical cure and was diagnosed a final disability impediment Grade 11 per Medical Report dated January 23, 2013. Clearly, from the time of repatriation, Respondent was diagnosed within the 240-day period of treatment, as only 141 days has lapsed.

The Court is bound by the Grade 11 disability grading and assessment by the company-designated physician rendered within the specified period, as Respondent never questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated physician's competence. [49]

Here, instead of expressing his disagreement to the findings of the company-designated physician, the Respondent filed a Complaint for permanent total disability benefits, without any corresponding medical certificate in support thereof but that of the Grade 11 disability assessment by the company-designated physician. In fact, it took Respondent two (2) months after the filing of the Complaint before he submitted himself for examination by a physician of his choice, who then issued a permanent and total disability (Grade 1) rating.

The POEA-SEC clearly provides that when the seafarer disagrees with the findings of the company-designated physician, he has the opportunity to seek a second opinion from the physician of his choice. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the parties may agree to jointly refer the matter to a third doctor, whose decision shall be binding between them. Ultimately, the failure of the Respondent to follow this procedure is fatal and renders conclusive disability rating issued by the company-designated physician. [50]

While it is true that the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in pursuit of their employment on board ocean-going vessels [51] consistent with the State's policy to afford full protection to labor, [52] the same must be weighed in accordance with the prescribed laws, procedure, and provisions of contract freely agreed upon by the parties, and with utmost regard as well of the rights of the employers.

In the instant case, compelling the Court to consider the opinion rendered by Respondent's physician of choice, submitted two (2) months after the filing of the complaint, would undermine the right of the Petitioners to refute the findings and avail of the option to jointly refer with the Respondent the disputed diagnosis to a third doctor of the parties' choice, as agreed upon by the parties under the POEA-SEC.

Furthermore, the NLRC's reliance on the assessment of the company-designated physician was justified not only by the law governing the parties under the contract, but as well by the time and resources spent as well as the effort exerted by the company-designated physician in the examination and treatment of the Respondent while still on board and as soon as he was repatriated in the Philippines. [53]

The Court's ruling in the fairly similar case of *Vergara v. Hammonia Maritime Services, Inc.*, [54] is enlightening. The Court therein stated:

Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's

certification is the final determination that must prevail. We do so mindful that the company had exerted real effort to provide the petitioner with medical assistance, such that the petitioner finally ended with a 20/20 vision. The company-designated physician, too, monitored the petitioner's case from the beginning and we cannot simply throw out his certification, as the petitioner suggested, because he has no expertise in ophthalmology. Under the facts of this case, it was the company-designated doctor who referred the petitioner's case to the proper medical specialist whose medical results are not essentially disputed; who monitored the petitioner's case during its progress; and who issued his certification on the basis of the medical records available and the results obtained. This led the NLRC in its own ruling to note that:

xxx more weight should be given to the assessment of degree of disability made by the company doctors because they were the ones who attended and treated petitioner Vergara for a period of almost five (5) months from the time of his repatriation to the Philippines on September 5, 2000 to the time of his declaration as fit to resume sea duties on January 31, 2001, and they were privy to petitioner Vergara's case from the very beginning, which enabled the company-designated doctors to acquire a detailed knowledge and familiarity with petitioner Vergara's medical condition which thus enabled them to reach a more accurate evaluation of the degree of any disability which petitioner Vergara might have sustained. These are not mere company doctors. These doctors are independent medical practitioners who passed the rigorous requirements of the employer and are more likely to protect the interest of the employer against fraud.

Moreover, as between those who had actually attended to petitioner Vergara throughout the duration of his illness and those who had merely examined him later upon his recovery for the purpose of determining disability benefits, the former must prevail.[55] (Emphasis supplied)

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on certiorari is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 135103 dated March 9, 2016, and its Resolution dated August 31, 2016, are hereby REVERSED and SET ASIDE. The Decision dated January 15, 2014 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 09-000805-13 is hereby REINSTATED.

SO ORDERED.

Peralta,[*] Perlas-Bernabe, and Caguioa, JJ., concur.
Carpio, J., on official leave.

[*] Acting Chairperson per Special Order No. 2487 dated September 19, 2017.

[1] Penned by Associate Justice Noel G. Tijam (now a Member of this Court), and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr.; rollo, pp. 33-45.

[2] Id. at 47-48.

[3] Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go concurring; id. at 58-70.

[4] Rendered by Labor Arbiter Eduardo J. Carpio; id. at 50-56.

[5] Id. at 34.

[6] Id. at 51,

[7] Id.

[8] Id. at 34, 51.

[9] Supra note 6.

[10] Id.

[11] Id.

[12] Id.

[13] Id. at 53, 60.

[14] Id. at 35.

[15] Id.

[16] Id. at 50-56.

[17] Id. at 56.

[18] Id. at 55.

[19] Id. at 55-56.

[20] Id. at 56.

[21] Id. at 61.

[22] Id.

[23] Id. at 58-70.

[24] Id. at 66-67.

[25] Id. at 67.

[26] Id. at 67-68.

[27] Id. at 72-73.

[28] Supra note 1.

[29] Id. at 41.

[30] Id. at 42.

[31] Id. at 43.

[32] Supra note 2.

[33] Rollo p. 10.

[34] 510 Phil. 332 (2005).

[35] 579 Phil. 706 (2008).

[36] 552 Phil. 130 (2007).

[37] 521 Phil. 380 (2006).

[38] 730 Phil. 162 (2014).

[39] 702 Phil. 717 (2013); *Montierro v. Rickmers Marine Agency Phils., Inc.*, 750 Phil. 937 (2013).

[40] 588 Phil. 895 (2008).

[41] Alpha Shipmanagement Corporation v. Calo, 724 Phil. 106 (2014).

[42] 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 for in the Rules;
 2. Complete loss of sight of both eyes;
 3. Loss of two limbs at or above the ankle or wrist;
 4. Permanent complete paralysis of two limbs;
 5. Brain injury resulting in incurable imbecility or insanity; and
 6. Such cases as determined by the Medical Director of the System and approved by the Commission.
- [Emphasis and underscoring supplied.]

[43] RULE X - TEMPORARY TOTAL DISABILITY

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.

xxx

[44] 724 Phil. 106 (2014).

[45] 724 Phil. 107, 106 (2014).

[46] Supra 40.

[47] 588 Phil. 897, 895 (2008).

[48] Kestrel Shipping v. Munar, 702 Phil. 717 (2013).

[49] Jebsens' Maritime, Inc., Sea Chefs Ltd., and Aboitiz v. Florvin Rapiz, G.R. No. 218871, January 11, 2017.

[50] Supra note 40.

[51] Panganiban v. Tara Trading Shipmanagement Inc. and Shinline SDN BHD, 647 Phil. 675 (2010).

[52] Section 3, Article XIII, 1987 Constitution

[53] See Wilhemsen-Smith Bell Manning/ Wilhemsen Ship Management, LTD./ Preysler, Jr. v. Suarez, 758 Phil. 540 (2015).

[54] Supra note 40.

[55] 588 Phil. 914-915, 895 (2008).

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