

**JON A. PASTOR, PETITIONER, V. BIBBY SHIPPING PHILIPPINES, INC./  
CREW LINK INC./CSS CRUISE SHIP SOLUTIONS LTD., AND/OR  
JONATHAN M. PALMA, RESPONDENTS.**

*G.R. No. 238842. November 19, 2018*

Ponente: PERLAS-BERNABE, J.

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**PERLAS-BERNABE, J.:**

Assailed in the instant petition for review on certiorari[1] are the Decision[2] dated September 26, 2017 and the Resolution[3] dated April 18, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146267 which annulled and set aside the Decision[4] dated February 29, 2016 and the Resolution[5] dated April 21, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M)-02-000140-16, and instead, ordered respondents to pay petitioner Jon A. Pastor (petitioner) the amount of US\$9,600.00 representing his permanent partial disability benefit under the Collective Bargaining Agreement (CBA) Compensation Scale, and 10% attorney's fees.

**The Facts**

On May 29, 2014, petitioner was hired as Assistant Butcher by respondent Bibby Shipping Philippines, Inc. (Bibby)/Crewlink Inc. (Crewlink), for its principal, CSS Cruise Ship Solutions Ltd. (Cruise Ship Solutions), on board the vessel Thomson Celebration.[6] After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty,[7] petitioner boarded the vessel on June 18, 2014.[8]

On August 10, 2014, petitioner met an accident[9] during a general lifeboat drill when a crank handle hit and injured his left elbow and lower back.[10] He was brought to a hospital in Turkey and was found to have "left humerus medical epicondyle displaced fracture," for which he underwent surgery for "open reposition and internal fixation of fracture with 2 spongiose screws."[11] As a result, petitioner was repatriated on August 15, 2014 and referred to a company-designated physician for further treatment and therapy.[12]

After undergoing a series of physical therapy sessions and a surgery on December 19, 2014 to remove the metallic screws that were placed during his initial surgery in Turkey,[13] petitioner was referred to an Occupational Therapist for work simulation evaluation, which showed that his left hand grip has not returned to normal, and that slight pain and fatigue persisted during work simulation tasks. Consequently, the specialist recommended that petitioner continue his physical therapy treatment,[14] while the company-designated physician, in a Medical Report[15] dated March 3, 2015, assessed petitioner an interim disability grading of "Grade 11 – Disturbance of the carrying angle or weakness of an arm or a forearm due to deformity or moderate atrophy of muscles," pursuant to the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).

Unsure of his true condition as he was not restored to his pre-injury health status despite surgery and physiotherapy, petitioner consulted an independent physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who, in a Medical Report[16] dated April 13, 2015, declared him unfit in any capacity for further sea duties after his

physical examination revealed a limitation of flexion of the left elbow joint and muscle weakness on the left arm that resulted in a significant reduction of his pre-injury capacity level.[17]

On the other hand, the company-designated physician, in a Medical Report[18] dated April 14, 2015 addressed to respondent Cruise Ship Solutions, reported that the Orthopedic surgeon was disappointed with the way petitioner was recuperating as the latter still complained of pain.[19] The company-designated physician pointed out that petitioner's condition was only temporary and that he can resume work as seafarer "once he is pain free with continuous Physical therapy treatment." [20] For this reason, petitioner was assessed a partial disability grading of "12 percent – Left Elbow bending reduced to 90 degrees or less," based on the CBA Compensation Scale, or equivalent to US\$9,600.00.

Claiming that his injury impaired his work-efficiency and rendered him incapable of resuming work for more than 240 days from the time he was repatriated, and that he was not furnished copies of his medical records or post treatment assessment by the company-designated physician, petitioner filed a complaint for total and permanent disability benefits as well as damages and attorney's fees against respondents Bibby, its President, Jonathan M. Palma, Crewlink, and CSS Cruise Ship Solutions Ltd. (respondents), before the NLRC.

In their defense, respondents countered that petitioner was entitled only to partial permanent disability benefits since the company-designated physician assessed him a 12% compensation only pursuant to the CBA Compensation Scale for "elbow bending reduced to 90 degrees or less." [21] They also contended that petitioner failed to observe the third doctor referral procedure in case of disagreement in the assessment as provided under Section 20 (A) (3) of the 2010 POEA-SEC, and that the claims for damages and attorney's fees were without factual and legal bases.[22]

#### The Labor Arbiter's Ruling

In a Decision[23] dated November 27, 2015, the Labor Arbiter (LA) awarded petitioner permanent partial disability benefits, holding that the latter cannot be faulted for not following the conflict resolution provision under the 2010 POEA-SEC since respondents undeniably failed to furnish him copies of his medical treatments and evaluation, and as such, was unaware of the conflicting assessments that needed to be addressed.[24] Nevertheless, the LA gave more credence to the assessment of the company-designated physician, ruling that the same was arrived at after a series of tests and close monitoring of petitioner's condition, unlike that of petitioner's independent physician, Dr. Magtira, whose findings were mere presumptions and without medical basis. As such, having been assessed by the company-designated physician a Grade 12 impediment, petitioner was entitled to partial disability benefits only in the amount of US\$5,225.00 pursuant to the 2010 POEA-SEC. Petitioner's claims for damages and attorney's fees were denied for lack of factual basis.[25]

Aggrieved, petitioner elevated[26] the matter to the NLRC.

#### The NLRC Ruling

In a Decision[27] dated February 29, 2016, the NLRC set aside the LA's Decision and ordered respondents to pay petitioner total and permanent disability benefits in the amount of US\$80,000.00 in accordance with the CBA as well as 10% attorney's fees.[28]

In ruling as such, the NLRC pointed out that since the last Medical Report dated April 14, 2015 issued by the company-designated physician was beyond the 240-day period within which to make a final assessment of petitioner's fitness or disability, the latter's condition was conclusively presumed by law to be permanent and total.[29] It added that the Medical Report dated March 3, 2015 could not be deemed as final since the assessment given therein was clearly an "interim disability grade." [30] Besides, it ruled that even the Medical Report dated

April 14, 2015 was not a definite assessment of petitioner's fitness or disability since the latter was still incapacitated to perform his duties as he was still in pain and has to continue physical therapy treatment.[31] Finally, it noted that since respondents admitted in their own pleadings that petitioner was entitled to the benefits provided by the CBA, the latter was entitled to the maximum benefits provided thereunder equivalent to US\$80,000.00. It likewise awarded petitioner attorney's fees as he was forced to protect his rights and interests in accordance with Article 111 of the Labor Code and Article 2208 of the Civil Code.[32]

Respondents moved for reconsideration[33] which was denied in a Resolution[34] dated April 21, 2016. Aggrieved, respondents elevated the case to the CA via a petition for certiorari.[35]

#### The CA Ruling

In a Decision[36] dated September 26, 2017, the CA gave due course to the petition and set aside the NLRC's Decision, ruling that the assessment of the company-designated physician should be given more credence having been based on medical records and close monitoring of petitioner.[37] It disagreed with the findings of the NLRC that there was no definite assessment of petitioner's condition within the prescribed period, holding that the Medical Report dated April 14, 2015 issued by the company-designated physician, which assessed petitioner a grading of 12% under the CBA Compensation Scale, was a mere reconfirmation of the previous assessment made in the Medical Report dated March 31, 2015, which, as records show was presented only before the CA.[38] It added that the company-designated physician's disability grading was not arrived at arbitrarily, and that the mere fact that the medical assessment was issued beyond the 240-day treatment period did not automatically merit an award of permanent total disability, for to do so would disregard the application of the Schedule of Disability Compensation provided under the 2010 POEA-SEC, or in this case, the CBA Compensation Scale. Lastly, while the CA found no basis to grant petitioner's claim for attorney's fees, the dispositive portion nonetheless awarded 10% attorney's fees. Accordingly, respondents were ordered to pay petitioner partial disability benefits in the amount of US\$9,600.00 in accordance with the CBA Compensation Scale.[39]

Petitioner's motion for reconsideration[40] was denied in a Resolution[41] dated April 18, 2018; hence, the petition.

#### The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in finding that petitioner was not entitled to permanent total disability benefits.

#### The Court's Ruling

The petition is meritorious.

At the outset, there is no dispute that petitioner's injury was work-related and that he is entitled to disability compensation. The controversy, however, arises as to the degree of petitioner's disability and the amount of compensation he is entitled to.

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case since petitioner was employed in 2014, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract, to wit:

#### SEC. 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

2.

x x x 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.

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

Pursuant thereto, when a seafarer suffers a work-related injury or illness in the course of employment, the employer is obligated to refer the latter to a company-designated physician<sup>[42]</sup> who, in turn, has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation.<sup>[43]</sup> In assessing whether a seafarer's injury is partial or permanent, the same must be characterized not only under the Schedule of Disability found in Section 32 of the 2010 POEA-SEC, but also under the relevant provisions of the Labor Code and the Amended Rules on Employees' Compensation (AREC), in particular, Articles 197 to 199<sup>[44]</sup> (formerly Articles 191 to 193) of the Labor Code<sup>[45]</sup> in relation to Section 2 (a), Rule X<sup>[46]</sup> of the AREC.<sup>[47]</sup>

The responsibility of the company-designated physician to arrive at a definite assessment within the 120-day period necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. Thus, the foremost consideration should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein disregarded.<sup>[48]</sup> As case law holds, a final and definitive disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries to the seafarer and his or her capacity to resume work as such.<sup>[49]</sup>

Failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the

seafarer's fitness or unfitness to resume work within the prescribed period shall transform the latter's temporary total disability into one of total and permanent by operation of law. As aptly ruled in the case of *Orient Hope Agencies, Inc. v. Jara*,<sup>[50]</sup> without a valid final and definitive assessment from the company-designated physician within the prescribed periods, the law already steps in to consider the seafarer's disability as total and permanent.

Notably, during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on temporary total disability and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no definitive 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.<sup>[51]</sup> But before the employer may avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act to justify the extension of the original 120-day period.<sup>[52]</sup> Otherwise, the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance.<sup>[53]</sup> If this significant act is performed and an extension was duly made, the obligation of the company-designated physician to issue a final assessment is nevertheless retained, albeit in this instance may be discharged within the extended period of not exceeding 240 days reckoned from the seafarer's repatriation. The consequence for non-compliance within the extended period of the required assessment is likewise the ipso jure grant to the seafarer of permanent and total disability benefits, regardless of any justification.

In *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*,<sup>[54]</sup> the Court summarized the rules regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading, as follows:

- 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.<sup>[55]</sup> (Emphases supplied)

In the case at bar, it is not disputed that petitioner required further therapy sessions even after the lapse of 120 days from repatriation as the company-designated physician, in his Medical Report dated March 3, 2015 that was issued within the 240-day extended treatment period, noted that the former's "left hand grip has not returned to normal yet" and has performed the simulation tasks with "slight pain and fatigue," and that there was a need to continue his physical therapy treatment. The foregoing findings clearly constitute a significant act that justified the extension of petitioner's treatment period to 240-days, and for which the company-designated physician issued an "interim" assessment of "Grade 11 – Disturbance of the carrying angle or weakness of an arm or a forearm due to deformity or moderate atrophy of muscles" pursuant to the 2010 POEA-SEC. Unfortunately, the last

assessment issued by the company-designated physician was only on April 14, 2015, or beyond the 240-day extended treatment period, assessing petitioner's injury and resulting disability at "12 percent – Left Elbow bending reduced to 90 degrees or less" based on the CBA Compensation Scale. Worse, as correctly observed by the NLRC, the said medical report could not have been a final and definite assessment as mandated by law given that petitioner still complained of pain and has to undergo "continuous Physical therapy treatment" Thus, based on the foregoing, the required final assessment from the company-designated physician within the extended 240-day treatment period was not timely issued. Accordingly, the NLRC correctly adjudged that petitioner is entitled to permanent total disability benefits by operation of law.

At this juncture, the Court deems it apt to rectify the CA's mistaken notion that the April 14, 2015 assessment was a mere reiteration of the company-designated physician's Medical Report dated March 31, 2015. Firstly, the March 31, 2015 medical report relied upon by the CA cannot be given credence as the same was presented only for the first time on certiorari with no justification as to why respondents failed to present the same at the earliest opportunity. Moreover, the said March 31, 2015 report cannot be deemed as final since after its purported issuance, petitioner was still required to undergo physical therapy as observed in the April 14, 2015 medical certificate in view of the persistent pain. Evidently, it failed to fully assess petitioner's condition and cannot provide sufficient basis for the award of disability benefits in his favor. To reiterate, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day treatment period. Without a final and definite disability assessment from the company-designated physician within the prescribed periods, the seafarer's temporary total disability is transformed by operation of law into one of permanent and total,[56] as in this case.

It is well to point out that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[57] Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his job for more than 120 days or 240 days, if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.

Anent the matter of compliance with the third doctor referral procedure, Section 20 (A) (3) of the 2010 POEA-SEC provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and the seafarer, and the third doctor's decision shall be final and binding on both.[58] In case of non-observance by the seafarer of the third doctor referral provision in the contract, the employer can insist on the company-designated physician's assessment even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make a determination and whose decision shall be final and binding on the parties.[59]

It is noteworthy to point out at this stage that in the case of *Tradephil Shipping Agencies, Inc. v. Dela Cruz*,[60] the Court ruled that resort to a second opinion must be done after the assessment by the company-designated physician precisely to dispute the said assessment.[61] Such assessment from the company-designated physician, to reiterate, must be definite and timely issued. Otherwise, there is no valid medical assessment to be contested and it is the law that operates to declare a seafarer's resulting disability to be total and permanent.

Corollarily, should the seafarer signify his intent to challenge the company-designated physician's assessment through the assessment made by his own doctor, the employer must respond by setting into motion the process of

choosing a third doctor who, as the 2010 POEA-SEC provides, can rule with finality on the disputed medical situation.[62] In such case, no specific period is required by law within which the parties may seek the opinion of a third doctor, and may do so even during the conciliation and mediation stage to abbreviate the proceedings.[63]

Here, since the company-designated physician failed to timely issue a medical assessment of petitioner's disability within the 240-day extended treatment period, there is no valid assessment to be contested and the law steps in to transform the latter's temporary total disability into one of total and permanent, hence, the third doctor referral provision as provided in the 2010 POEA-SEC would not find application. As aptly ruled in the case of *Kestrel Shipping Co., Inc. v. Munar*,<sup>[64]</sup> absent the required final and definite assessment from the company-designated physician, as in this case, the seafarer need not comply with the third doctor referral provision under Section 20 (A) (3) of the 2010 POEA-SEC,<sup>[65]</sup> ratiocinating in this wise:

In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.<sup>[66]</sup> (Emphasis supplied)

In fine, as properly ruled by the NLRC, petitioner's disability is deemed to be total and permanent. Pursuant to the CBA Compensation Scale, the maximum allowable benefit provided thereunder is US\$80,000.00. Further, with respect to petitioner's claim for attorney's fees, the Court finds that the same is warranted as the latter was clearly compelled to litigate to satisfy his claims for disability benefits as provided under Article 2208<sup>[67]</sup> of the Civil Code. However, the claims for moral and exemplary damages were correctly denied for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims.<sup>[68]</sup>

WHEREFORE, the petition is GRANTED. The Decision dated September 26, 2017 and the Resolution dated April 18, 2018 of the Court of Appeals in CA-G.R. SP No. 146267 are hereby REVERSED and SET ASIDE. The Decision dated February 29, 2016 and the Resolution dated April 21, 2016 of the National Labor Relations Commission in NLRC LAC (OFW-M)-02-000140-16 are REINSTATED.

### **SO ORDERED.**

Carpio (Chairperson), Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[\*] JJ., concur.

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[\*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

[1] Rollo, pp. 3-33.

[2] Id. at 324-332. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela, concurring.

[3] Id. at 356-357.

[4] Id. at 260-267. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Pablo C. Espiritu, Jr. and Cecilio Alejandro C. Villanueva, concurring.

[5] Id. at 292-293.

[6] See Contract of Employment dated May 29, 2014; id. at 44.

- [7] See Medical Certificate for Service at Sea dated June 9, 2018; id. at 39.
- [8] Id. at 324-325.
- [9] See Medical Treatment Report Crew dated August 11, 2014; id. at 45-47.
- [10] Id. at 325.
- [11] See Discharge report dated August 14, 2014; id. at 48.
- [12] Id. at 325.
- [13] See Medical Report dated December 5, 2014; id. at 127-128
- [14] See Medical Report dated December 20, 2014; id. at 129.
- [15] Id. at 129.
- [16] Id. at 102-103.
- [17] Id.
- [18] Id. at 130.
- [19] Id.
- [20] Id.
- [21] Id. at 111-114.
- [22] Id. at 108-111 and 115-116.
- [23] Id. at 180-187. Penned by Labor Arbiter Michelle P. Pagtalunan.
- [24] Id. at 183.
- [25] Id. 187.
- [26] See Notice of Appeal with Memorandum of Appeal dated January 26, 2016; id. at 188-212.
- [27] Id. at 260-267.
- [28] Id. at 266.
- [29] Id. at 264.
- [30] Id. at 265.
- [31] Id. at 265-266.
- [32] Id. at 266.
- [33] Id. at 268-290.
- [34] Id. at 292-293.
- [35] Id. at 294-323.
- [36] Id. at 324-332.
- [37] Id. at 329.

[38] See *id.* at 334-335.

[39] *Id.* at 330-331.

[40] *Id.* at 333-354.

[41] *Id.* at 356-357.

[42] See *De Andres v. Diamond H. Marine Services and Shipping Agency, Inc.*, G.R. No. 217345, July 12, 2017.

[43] See *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017, 818 SCRA 663, 677-678.

[44] ART. 197. [191] Temporary Total Disability - (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than Ten Pesos nor more than Ninety Pesos, nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x

ART. 198. [192] Permanent Total Disability - (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: Provided, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x 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;

x x x x

ART. 199. [193] Permanent Partial Disability - (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability.

x x x x (Emphases and underscoring supplied)

[45] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[46]

#### 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.

x x x x (Emphasis supplied)

[47] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 247-248 (2015).

[48] *Id.* at 245.

[49] *Sunit v. OSM Maritime Services, Inc.*, *supra* note 43, at 680-681.

[50] See G.R. No. 204307, June 6, 2018.

[51] *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

[52] See *Talaroc v. Arpaphil Shipping Corporation*, G.R. No. 223731, August 30, 2017.

[53] *Elburg Shipmanagement Philippines, Inc. v. Quioque, Jr.*, 765 Phil. 341, 362 (2015).

[54] *Id.*

[55] *Id.* at 362-363.

[56] *Magsaysay Maritime Corporation v. Cruz*, 786 Phil. 451, 464 (2016).

[57] *Belchem Philippines, Inc./UnitedPhilippine Lines v. Zafra, Jr.*, 159 Phil. 514, 525 (2015).

[58] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

[59] See *Ilustricimo v. NYK-FIL Ship Management, Inc.*, G.R. No. 237487, June 27, 2018.

[60] G.R. No. 210307, February 22, 2017, 818 SCRA 476.

[61] *Id.* at 495.

[62] *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 190 (2015).

[63] *Sunit v. OSM Maritime Service, Inc.*, *supra* note 43, at 678.

[64] 702 Phil. 717 (2013).

[65] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

[66] *Kestrel Shipping Co., Inc. v. Munar*, *supra* note 64, at 737-738.

[67] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x (Emphases supplied)

[68] *Esguerra v. United Philippines Lines, Inc.*, 713 Phil. 487, 501 (2013).

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