



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**DOHLE-PHILMAN MANNING
 AGENCY, INC., DOHLE (IOM) LIMITED
 and/or CAPT. MANOLO T. GACUTAN,**
Petitioners,

G.R. No. 199568

Present:

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA, *and*
 JARDELEZA, * *JJ.*

- versus -

**HEIRS OF ANDRES G. GAZZINGAN,
 represented by LENIE L. GAZZINGAN,**
Respondents.

Promulgated:

17 JUN 2015

X ----- X

DECISION

DEL CASTILLO, J.:

Under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), an illness suffered by a seafarer during the term of his contract is presumed to be work-related and compensable. This rule is in consonance with the POEA's mandate to secure the best terms and conditions of employment of Filipino contract workers and to promote and protect their well-being.

By this Petition for Review on *Certiorari*,¹ Dohle-Philman Manning Agency, Inc., Dohle (IOM) Limited and/or Capt. Manolo T. Gacutan (petitioners) assail the May 26, 2011 Decision² and November 25, 2011 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 103580, which nullified the January 31, 2008 Decision⁴ and March 12, 2008 Resolution⁵ of the National Labor Relations Commission (NLRC) and ordered petitioners to pay respondents, as legal heirs of Andres G. Gazzingan (Gazzingan), total permanent disability

* Per Special Order No. 2056 dated June 10, 2015.

¹ *Rollo*, pp. 3-44.

² *CA rollo*, pp. 305-313; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Rodil V. Zalameda.

³ *Id.* at 349-352.

⁴ *Records*, pp. 272-275; penned by Commissioner Gregorio O. Bilog, III and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

⁵ *Id.* at 297-298.

benefits in the amount of US\$50,000.00 and sickness allowance of US\$1,300.00 plus 10% thereof as attorney's fees.

Antecedent Facts

On October 14, 2005, petitioners hired Gazzingan as a messman for a period of nine months on board the vessel *M/V Gloria* with a basic monthly salary of US\$325.00.⁶ Prior to his engagement, Gazzingan underwent a pre-employment medical examination (PEME) which yielded normal results except for a finding of left ventricular hypertrophy in his electrocardiogram test (ECG). Gazzingan was thus pronounced fit for sea duty⁷ and on November 4, 2005, he boarded the vessel *M/V Gloria*.

In May 2006, while *M/V Gloria* was docked at the port of Cartagena, Colombia, Gazzingan experienced chest pains. On July 16, 2006, he was confined at the Cartagena de Indias Hospital due to chest pain, shortness of breath and back pain. The hospital's cardiovascular and thoracic surgeon, Dr. Hernan Fernandez Cuartas, diagnosed him to have Acute Type-B Dissection.⁸ On August 3, 2006, Gazzingan was medically repatriated.

Upon arrival in Manila on August 5, 2006, Gazzingan was brought directly to Manila Doctors Hospital for further medical evaluation under the care of Dr. Justo Cammayo (Dr. Cammayo). On August 8, 2006, petitioners received a letter from its company-designated physician, Dr. Raymond C. Banaga (Dr. Banaga), stating that Gazzingan is suffering from a non-work-related illness. Thus:

DATE: AUGUST 08, 2006
TO: DOHLE PHILMAN MANNING AGENCY, INC.
ATTN: Ms. Estrella R. Aguilar
GM-Finance Admin
FROM: PHYSICIANS DIAGNOSTIC SERVICES CENTER, INC.
RE: Mr. Andres Gazzingan

Dear Ms. Aguilar,

This is with [regard] to your request for our opinion if the subject seafarer's illness is work-related or not.

Mr. Gazzingan is presently confined at Manila Doctors Hospital because of Aortic Dissection. Aortic Dissection results from [a] tear in the inner walls lining this great artery. This condition has potential for rupture or tamponade. Based on his pre-employment medical examination dated August 30, 2005 he was not found to be hypertensive with normal blood pressure at 110/70. The other risk

⁶ Id. at 18.

⁷ See Physical Examination Report/Certificate dated August 30, 2005 signed by Dr. Leticia C. Abesamis, id. at 25.

⁸ See Gazzingan's Medical Record signed by Dr. Hernan Fernandez Cuartas dated July 17, 2006, id. at 15-16.

factors associated with this condition like Marfans Syndrome, Coarctation of the Aorta, Aortic valve abnormalities are congenital in nature and are not work related in this case (for a ship messman).

Truly yours,
(Signed)
RAYMOND C. BANAGA, M.D.

Noted by,
(Signed)
PEDRO S. DE GUZMAN, M.D., FPCOM
Medical Director⁹

At the Manila Doctors Hospital, Gazzingan underwent numerous diagnostic tests and treatment.¹⁰ However, his confinement thereat lasted only until September 9, 2006 as Gazzingan had no financial capacity to defray his hospital expenses since petitioners refused to further shoulder the same in view of Dr. Banaga's declaration that his illness is not work-related. He was discharged from the hospital over the objection of his physician. In a medical certificate dated October 7, 2006,¹¹ Dr. Cammayo's final diagnosis of Gazzingan's illness was Dissecting Aneurysm.

Proceedings before the Labor Arbiter

On August 25, 2006, Gazzingan filed a Complaint¹² for non-payment or under payment of salaries/wages, sickness allowance, disability benefits and reimbursement of medical expenses and attorney's fees.

Petitioners disclaimed Gazzingan's entitlement to his claims by arguing that his medical condition is pre-existing for which no compensation is warranted under the POEA-SEC. They alleged that the ECG test conducted during his PEME confirmed that his illness was brought about by a physiological abnormality from birth. This, coupled with Gazzingan's admission of being a smoker,¹³ proved that his illness is not work-related. Besides, Gazzingan's work could not have in any way contributed to the development of his condition because his work as a messman created no risk to produce such. Petitioners further pointed out that they shouldered Gazzingan's medical expenses; however, when Dr. Banaga declared his condition as not work-related and therefore not compensable, their obligation to provide medical assistance ceased. Petitioners explained that under the POEA-SEC, the company-designated physician is the one mandated to assess the medical condition of a seafarer upon medical repatriation.

⁹ Id. at 77.

¹⁰ Id. at 95-111.

¹¹ Id. at 94.

¹² Id. at 2.

¹³ See Medical Examination Report: Pre-Employment Questionnaire-Personal Medical History, id. at 27.

Gazzino, on the other hand, disputed Dr. Banaga's declaration for being self-serving and for lack of basis. He asseverated that his illness is not congenital but was caused by hypertension which was not immediately detected for being asymptomatic. He emphasized that during the previous deployments abroad, he was declared fit for sea duties therefore, his illness could not be pre-existing. Gazzino attributed his sickness to his work as a messman which entailed waking up very early in the morning, lifting heavy stocks/supplies and serving the crew members on board, and being on-call for the arrival of supplies. Thus, Gazzino invoked his right to compensation for his ailment which he claimed to be work-connected.

In a Decision¹⁴ dated September 18, 2007, the Labor Arbiter opined that although the cause of or the risk of contracting aortic dissection is uncertain, this uncertainty does not, however, eliminate the probability that such illness is work-connected. And since actual proof of causation is not necessary to justify compensability and it is enough that the nature of the seafarer's work had contributed even in a small degree to the development of the disease, as in this case, the Labor Arbiter granted Gazzino's claims, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering the [petitioners] to pay jointly and solidarily, [Gazzino] his total permanent disability benefits in the amount of US\$50,000.00 and his sickness allowance of US\$1,300.00, in Philippine currency, at the rate of exchange prevailing at the time of payment. [Petitioners] are likewise ordered to pay [Gazzino] attorney's fees equivalent to 10% of the total monetary awards.

All other claims are dismissed.

SO ORDERED.¹⁵

Proceedings before the National Labor Relations Commission

In their appeal to the NLRC, petitioners claimed that the Labor Arbiter erred (1) in declaring Gazzino's illness as work-related despite the contrary opinion of the company-designated physician who is the one mandated by law to determine and assess a seaman's disability; (2) in disregarding Gazzino's failure to challenge Dr. Banaga's declaration by not seeking the opinion of another doctor in accordance with the procedure laid down in the POEA-SEC; (3) in awarding US\$50,000.00 to Gazzino as permanent total disability benefits since the POEA-SEC provides for the grant of such amount only for death benefits; (4) in awarding sickness allowance when the same has already been paid by petitioners to Gazzino; and, (5) in awarding attorney's fees.

¹⁴ Id. at 117-127; penned by Labor Arbiter Romelita N. Rioflorido.

¹⁵ Id. at 126-127.

On January 30, 2008, Gazzingan died of hemorrhagic shock secondary to dissecting aortic aneurysm.¹⁶

In a Decision¹⁷ dated January 31, 2008, the NLRC gave weight to the opinion of the company-designated physician that Gazzingan's illness is not work-related. It ruled that the Labor Arbiter's Decision is not rooted on legal and factual basis. It explained that as Gazzingan did not seek and present a second opinion from another physician, he left the NLRC with no option but to consider the certification issued by Dr. Banaga as an accurate assessment of his medical condition. The NLRC took note that Gazzingan is a smoker and has a prior surgery for the excision of lipoma, a hereditary disease. Thus, it concluded that his aortic dissection developed due to hereditary susceptibility, is not work-related and, consequently, not compensable. The NLRC disposed of the appeal as follows:

WHEREFORE, on the basis of the foregoing, the decision appealed from is hereby reversed and set aside. A new one is entered dismissing the complaint for lack of merit.

SO ORDERED.¹⁸

Gazzingan's counsel filed a motion for reconsideration which was denied for lack of merit in the NLRC Resolution¹⁹ of March 12, 2008.

Proceedings before the Court of Appeals

Respondents, as heirs of Gazzingan, filed a Petition for *Certiorari*²⁰ with the CA. They imputed grave abuse of discretion amounting to lack of jurisdiction on the NLRC in ruling that Gazzingan's illness is congenital and not compensable; and in giving credence to Dr. Banaga's assessment, which was not based on a thorough, exhaustive and complete examination of Gazzingan but is merely an opinion on the nature of the illness. Respondents further argued that compensability of disability claims is presumed and this presumption cannot be defeated by an opinion plucked out of thin air just to favor the employer.

On May 26, 2011, the CA rendered a Decision²¹ granting the Petition, setting aside the NLRC ruling, and reinstating the Labor Arbiter's Decision. It found no substantial evidence to prove that the illness of Gazzingan is congenital. It noted that Gazzingan, who had previously worked abroad for a similar job, had

¹⁶ See Certificate of Death and Autopsy Report, id. at 284 and 285, respectively.

¹⁷ Id. at 272-275.

¹⁸ Id. at 275.

¹⁹ Id. at 297-298.

²⁰ CA *rollo*, pp. 2-23.

²¹ Id. at 305-313.

no record of having suffered from, or was treated for, dissecting aneurysm or any other heart ailment. The CA thus concluded that his illness is presumed to have been acquired or aggravated by his strenuous job on board *M/V Gloria*. In view of the same, it upheld the Labor Arbiter's awards of permanent disability benefits, sickness allowance and attorney's fees in favor of respondents.

Petitioners sought reconsideration of the CA Decision. They argued that Gazzingan's smoking habits and history of a congenital condition of lipoma, as both revealed in his PEME, and the unchallenged expert opinion of Dr. Banaga constitute more than enough substantial evidence to conclude that his ailment is not work-related.

In a Resolution²² dated November 25, 2011, the CA denied petitioners' Motion for Reconsideration. It noted that Gazzingan's lipoma has no relation or causal connection to the ailment that caused his death. Anent Dr. Banaga's assessment, the CA ruled that it cannot be relied upon because it was a mere opinion based solely on the PEME results. Dr. Banaga did not perform any prior assessment of Gazzingan's health condition while he was confined at Manila Doctors Hospital or any exhaustive post-employment medical examination on him. The CA reiterated that the physical stress that Gazzingan suffered while he performed a strenuous job on board the vessel exposed him to injuries caused by dissecting aneurysm.

Issues

Hence, the present Petition raising the following issues:

- A. WHETHER THE DECEASED'S ILLNESS IS WORK-RELATED.
- B. WHETHER THE COMPANY-DESIGNATED PHYSICIAN, TO WHICH GROUP DRS. BANAGA AND CAMMAYO ARE PART OF, HAS THE AUTHORITY TO ESTABLISH IF THE ILLNESS IS NOT WORK-RELATED.
- C. WHETHER RESPONDENTS HAVE THE BURDEN OF PROOF TO PROVE WORK RELATION.
- D. WHETHER RESPONDENTS COULD RELY ON THE DISPUTABLE PRESUMPTION OF WORK RELATION TO SUPPORT THEIR CASE WITHOUT ANY MEDICAL EVIDENCE TO CONTRADICT THE COMPANY DOCTOR'S OPINION.
- E. WHETHER PAYMENT OF SICKNESS ALLOWANCE UNTIL SUCH TIME THAT THE NATURE OF THE ILLNESS HAS BEEN ESTABLISHED AS NOT WORK CONNECTED EXTINGUISHED

²² Id. at 349-352.

PETITIONERS' OBLIGATIONS AS REGARDS THE PAYMENT THEREOF.

- F. WHETHER RESPONDENTS ARE ENTITLED TO 10% ATTORNEY'S FEES IN THE ABSENCE OF BAD FAITH ON THE PART OF THE PETITIONERS.²³

Petitioners maintain that there is substantial evidence to support their contention that Gazzingan's ailment has no work-connection. They contend that Gazzingan's condition was caused, not by hypertension, but by atherosclerosis, a congenital disease, the development of which was hastened by Gazzingan's smoking habits. The congenital nature of Gazzingan's ailment is further buttressed by the result of his PEME indicating a history of lipoma excision and a finding of left ventricular hypertrophy. Petitioners aver that respondents cannot simply rely on the presumption of work-relation; they have to present adequate evidence to overcome Dr. Banaga's declaration that Gazzingan's ailment is congenital. However, they failed to present evidence to prove that Gazzingan's work caused or contributed to the development of his ailment.

Our Ruling

The Petition is devoid of merit.

The core issue to be resolved is whether Gazzingan's illness is work-related and therefore compensable.

Deemed written in the contract of employment between Gazzingan and petitioners is the 2000 POEA-SEC,²⁴ which was issued pursuant to Department Order No. 4 of the Department of Labor and Employment and POEA Memorandum Circular No. 09, both series of 2000. Section 20(B) thereof provides:

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

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 this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

²³ *Rollo*, p. 173.

²⁴ Amended Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

“Pursuant to the aforequoted provision, two elements must concur for an injury or illness of a seafarer to be compensable. First, the injury or illness must be work-related; and second, x x x the work-related injury or illness must have existed during the term of the seafarer’s employment contract.”²⁵ The 2000 POEA-SEC defines work-related injury and work-related illness as –

“injuries resulting in disability or death arising out of and in the course of employment” and as “any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.’

Section 32-A. OCCUPATIONAL DISEASES

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

1. The seafarer’s work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer’s exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.”²⁶

Here, it was shown that Gazzingan suffered recurring and intense chest and back pains associated with acute type-B aortic dissection during the term of his employment contract that led to his immediate medical repatriation to the Philippines. Upon arrival on August 5, 2006 and after medical evaluation at the Manila Doctor’s Hospital, Gazzingan was diagnosed by Dr. Cammayo to have dissecting aneurysm. Records also bear that he sought consultation and treatment at St. Paul Hospital in Tuguegarao City from September 13 to 14, 2006, whereby he was also found to be suffering from aortic aneurysm by Dr. George Ramos.²⁷ He then finally succumbed to death on January 30, 2008 because of ruptured dissecting aortic aneurysm.

Aortic dissection, also called dissecting aneurysm,²⁸ is a potentially life-threatening condition in which there is bleeding into and along the wall of the aorta, the major artery leaving the heart.²⁹ The condition starts with a tear in the wall of the major artery carrying blood out of the heart and as the tear extends along the wall of the aorta, blood enters the aortic wall and “dissects” or separates the layers of the aorta from one another which leads to aortic rupture or decreased

²⁵ *Magsaysay Maritime Services v. Laurel*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, 238.

²⁶ Id. See also 2000 POEA-SEC, Definition of Terms, Item Nos. 11 and 12.

²⁷ See Medical Certificate dated September 25, 2006 issued by Dr. George Ramos of St. Paul Hospital, Records, p. 289.

²⁸ <http://www.medicinenet.com/script/main/art.asp?articlekey=24304> (visited May 12, 2015).

²⁹ http://www.rightdiagnosis.com/sym/dissecting_aortic_aneurysm.htm (visited May 12, 2015).

blood flow to the organs.³⁰ This can then result in heart attacks, strokes, paralysis, and renal failure among other medical conditions.³¹ The ailment's risk factors, which include but are not limited to aging, connective tissue and rare genetic disorders, atherosclerosis, inflammation, trauma, high blood pressure, heart surgery/procedures, and pregnancy,³² do not seem to be direct causes of the disease, such that having one makes the chances of getting the condition higher but does not always lead to aortic dissection.³³ Thus, the exact cause of aortic dissection is still unknown and remains under investigation.³⁴ Nonetheless, the progression of this ailment is oftentimes caused by the increased stress in the aortic wall attributed to strenuous physical activities.³⁵ Patients are strongly advised to refrain from strenuous physical exertion and are often required to undertake lifestyle modification, such as change of occupation to sedentary jobs, in order to reduce the risk of enlargement of an already weakened aorta that might eventually lead to rupture, a fatal condition.³⁶

Gazzinoan averred that his duties as a messman entailed work of an assistant chef steward which aggravated his health condition. Concomitantly, the Labor Arbiter opined that although the cause of the illness is unknown, there is probability that Gazzinoan's illness was brought about by the nature of his work as a messman, which included lifting heavy objects compounded by lack of sleep and the pressure of serving the entire crew with efficiency. While the NLRC found doubtful the connection between Gazzinoan's illness and his work, the CA affirmed the findings of the Labor Arbiter and ruled that Gazzinoan's activities while on board the vessel caused physical stress and exposed him to injuries.

Indeed, the causal connection between the illness contracted and the nature of work of a seaman is a factual question, which is not a proper subject of this Court's review.³⁷ Nonetheless, considering the conflicting findings of the tribunals below, this Court is constrained to dwell on factual matters involved in this case and reassess the evidence on record.³⁸

Gazzinoan's work as a messman is not confined mainly to serving food and beverages to all officers and crew; he was likewise tasked to assist the chief cook/chef steward, and thus performed most if not all the duties in the ship's steward department. In the performance of his duties, he is bound to suffer chest

³⁰ <http://www.nlm.nih.gov/medlineplus/ency/article/000181.htm> (visited May 12, 2015).

³¹ <http://www.thoracic.surgery.virginia.edu/adult-cardiac-surgery/conditions-treatment/aortic-dissection-aortic-aneurysms> (visited May 12, 2015).

³² <http://www.patient.co.uk/doctor/aortic-dissection> (visited May 12, 2015) and <http://www.nlm.nih.gov/medlineplus/ency/article/000181.htm> (visited May 12, 2015).

³³ http://www.righdiagnosis.com/a/aortic_dissection/riskfactors.htm (visited May 12, 2015).

³⁴ <http://uhealthsystem.com/health-library/cardiac/abdomin> (visited May 12, 2015).

³⁵ <http://www.iradonline.org/next.html> (visited May 12, 2015).

³⁶ <http://circ.ahajournals.org/content/118/14/e507.full> (visited May 12, 2015).

³⁷ *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 685.

³⁸ *Castillo v. Prudential Plans, Inc.*, G.R. No. 196142, March 26, 2014.

and back pains, which could have caused or aggravated his illness. As aptly observed by the CA, Gazzingan's strenuous duties caused him to suffer physical stress which exposed him to injuries. It is therefore reasonable to conclude that Gazzingan's employment has contributed to some degree to the development of his disease.

It must also be pointed out that Gazzingan was in good health and fit to work when he was engaged by petitioners to work on board the vessel *M/V Gloria*. His PEME showed essentially normal findings with no hypertension and without any heart problems. It was only while rendering duty that he experienced symptoms. This is supported by a medical report issued by Cartagena de Indias Hospital in Colombia stating that Gazzingan suffered intense chest and back pains, shortness of breath and a slightly elevated blood pressure while performing his duties. Therefore, even assuming that Gazzingan had a pre-existing condition, as alleged by petitioners, this does not totally negate the probability and the possibility that his aortic dissection was aggravated by his work conditions. The stress caused by his job actively contributed to the progression and aggravation of his illness. In compensation cases, "[i]t is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had."³⁹

More importantly, the 2000 POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.⁴⁰ As discussed above, a causal link was established between Gazzingan's employment and his ailment. In view thereof, the presumption now operates in favor of respondents and the burden is shifted to the petitioners to overcome the statutory presumption. However, in the case at bench, petitioners failed to discharge such burden as will be discussed below.

First, petitioners insist that Gazzingan's genetic predisposition has caused his ailment and that his smoking habits hastened its development. We are not persuaded. As stated earlier, the specific cause of aortic dissection is still unknown and the risk factors may only seem to be associated in some way with the disease. Thus, petitioners' theory cannot be completely correct. Besides, no

³⁹ *Magsaysay Maritime Services v. Laurel*, supra note 25 at 242.

⁴⁰ *Maersk Filipinas Crewing, Inc./Maersk Services Ltd. v. Mesina*, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 614.

medical certification was presented by petitioners to substantiate their bare allegation that Gazzingan's left ventricular hypertrophy and lipoma excision found in his PEME had a causal relation with the disease that caused his death. As aptly held by the CA, there was no evidence to prove the causal connection between Gazzingan's lipoma, which was already removed, and his dissecting aneurysm. With respect to left ventricular hypertrophy, the same does not automatically suggest the presence of a pre-existing congenital disease. It is not an illness but a mere condition that involves the thickening of the muscle wall of the heart's left pumping chamber that can be well-managed and usually only develops overtime.⁴¹ Also, smoking, by itself, can neither be a factor that bars compensation for the illness.⁴² While smoking may contribute to the development of the disease, it is not the only possible cause. Other factors such as working and living under stressful conditions also contribute to its development.

Next, petitioners strongly rely on Dr. Banaga's opinion that Gazzingan's condition is not work-related. They insist that Dr. Banaga's assessment is conclusive in the absence of a contrary opinion rendered by a separate physician. The Court, however, agrees with the CA that such opinion is inconclusive for purposes of determining the compensability of Gazzingan's illness.

Section 20(B)(3) of the POEA-SEC provides:

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

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 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.

"It is beyond cavil that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability."⁴³ It is the company-designated physician's findings which should form the basis of any disability claim of the seafarer. Such assessment is arrived at after the seafarer submits himself to the company-designated physician for a post employment medical

⁴¹ <http://my.clevelandclinic.org/services/heart/disorders/left-ventricular-hypertrophy-lvh> (visited May 12, 2015).

⁴² *Government Service Insurance System v. De Castro*, 610 Phil. 568, 584-585 (2009).

⁴³ *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839, 851 (2008).

examination within three days from his repatriation. It is significant to note, however, that courts are not bound by the assessment of the company-designated physician.⁴⁴ While the company-designated physician must declare the nature of a seafarer's disability, the former's declaration is not conclusive and final upon the latter or the court.⁴⁵ Its inherent merit will still be weighed and duly considered.

In *Racelis v. United Philippine Lines, Inc.*,⁴⁶ the medical opinion presented by the employer stating that the seafarer's ailment is congenital in origin was discarded by the Court because the opinion came from a physician who did not personally attend to the seafarer in the course of the latter's medical treatment and for being unsubstantiated by any medical findings. The ailment which caused the seafarer's death was held by the Court to be work-related for failure of the employer to overcome the statutory presumption of work-relatedness. Similarly, in *Jebsons Maritime, Inc. v. Babol*,⁴⁷ the Court did not give probative weight on the company doctor's opinion that the seafarer's condition is not work-related as the wordings used in the doctor's report did not make a categorical statement confirming the total absence of work relation but only a mere probability. Again, the Court upheld the presumption of work-relation. In *Magsaysay Mitsui Osk Marine, Inc. v. Bengson*,⁴⁸ the Court disregarded the company-designated physician's categorical declaration that the seafarer's illness is not work-related for being self-serving. As the facts of the case clearly showed the contributory factor of the seafarer's daily working conditions to the illness suffered, even in the absence of a contrary opinion of other doctors, the Court sustained the illness' work-connection. Also, in *Teekay Shipping Philippines, Inc. v. Jarin*,⁴⁹ the Court ruled that it was unnecessary for the seafarer therein to consult and provide a contrary opinion from his own doctors since the causal connection between the illness and the work for which he had been contracted was clearly detailed and convincingly established by him.

Here, while petitioners were quick to point out that Dr. Banaga is a company-designated physician, the latter, however, could not have possibly arrived at a reliable diagnosis of Gazzingan's condition. His assessment, based merely on Gazzingan's PEME, did not reflect the true state of health of the seafarer. As the Court has previously ruled, a PEME is not exploratory in nature and cannot be relied upon to arrive at a seafarer's true state of health.⁵⁰ The NLRC erred in stating that this opinion can be relied upon as an accurate assessment of Gazzingan's illness on the sole reason that no contrary opinion was rendered. The fact that there was no contrary opinion of another physician is of no

⁴⁴ *Maunlad Transport, Inc. vs. Manigo, Jr.*, 577 Phil. 319, 330 (2008).

⁴⁵ *Micronesia Resources v. Cantomayor*, 552 Phil. 130, 143 (2007); *Cadornigara vs. National Labor Relations Commission*, 563 Phil. 671, 681 (2007).

⁴⁶ G.R. No. 198408, November 12, 2014.

⁴⁷ G.R. No. 204076, December 4, 2013, 711 SCRA 601.

⁴⁸ G.R. No. 198528, October 13, 2014.

⁴⁹ G.R. No. 195598, June 25, 2014.

⁵⁰ *Quizora v. Denholm Crew Management (Philippines), Inc.*, G.R. No. 185412, November 16, 2011, 660 SCRA 309, 321-322.

moment. To repeat, Dr. Banaga's opinion is not an accurate appraisal of the extent of Gazzingan's disability. It was not based on the post-employment medical examination conducted on Gazzingan after his medical repatriation. In the absence of reasonable findings, diagnostic tests and procedures to support the assessment, the same cannot be simply taken at face value. Moreover, Dr. Banaga hastily concluded that aortic dissection is hereditary without necessarily considering other varied factors that can contribute to the development of the disease. Consequently, his medical opinion cannot be given credence or serve as basis to deny Gazzingan's disability claims.

In view of the above, the Court holds that the CA correctly found the NLRC to have gravely abused its discretion amounting to lack or in excess of jurisdiction in declaring that the illness suffered by Gazzingan is not work-related.

Anent the nature of disability caused by his work-related illness, the Court notes that Gazzingan was no longer provided work after being diagnosed with aortic dissection/dissecting aneurysm. He was constrained to seek further medical attention at his own expense and was continuously unable to work until his death. Thus, the Court is inclined to rule that Gazzingan suffered from a permanent total disability as he was unable to return to his regular job for more than one hundred twenty days.⁵¹ Accordingly, his permanent total disability benefits should be US\$60,000.00 or 120% of US\$50,000.00, pursuant to the Schedule of Disability Allowances under the POEA-SEC. The Labor Arbiter thus erred in fixing his disability benefits at US\$50,000.00. As regards sickness allowance, the award of US\$1,300.00 for his incapacity to work for 120 days was proper. The grant of attorney's fees is likewise affirmed for being justified in accordance with Article 2208(2)⁵² of the Civil Code since respondents were compelled to litigate to satisfy their claims for Gazzingan's disability benefits.⁵³

WHEREFORE, the Petition is **DENIED**. The May 26, 2011 Decision and November 25, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 103580 are **AFFIRMED with the MODIFICATION** that petitioners are ordered to jointly and solidarily pay respondents total and permanent disability benefits in the amount of US\$60,000.00 or its equivalent amount in Philippine currency at the time of payment.

⁵¹ *Inter-Orient Maritime, Incorporated v. Candava*, G.R. No. 201251, June 26, 2013, 700 SCRA 174, 186-187.

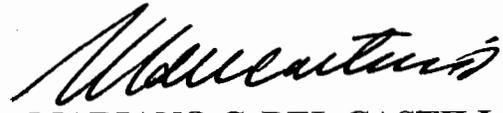
⁵² Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

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;

⁵³ *PHILASIA Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, August 15, 2012, 678 SCRA 503, 521.

SO ORDERED.

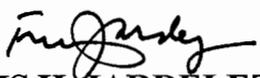

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

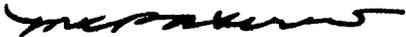
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

