



Republic of the Philippines
Supreme Court
 Manila

Handwritten signature: *Verjil Lyta*

DEC 27 2016

THIRD DIVISION

ELMER A. APINES,

Petitioner,

G.R. No. 202114

Present:

VELASCO, JR., J.,*

PERALTA,**

Acting Chairperson,

PEREZ,

REYES, and

JARDELEZA, JJ.

- versus -

**ELBURG SHIPMANAGEMENT
 PHILIPPINES, INC., and/or
 DANILO F. VENIDA,**

Respondents.

Promulgated:

November 9, 2016

Handwritten signature: *Verjil Lyta*

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DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court filed by Elmer A. Apines (Apines) to assail the Decision² rendered on January 26, 2012 and Resolution³ issued on May 30, 2012 by the Court of Appeals (CA) in CA-G.R. SP No. 114221. The dispositive portion of the assailed decision reads:

* On official leave.

** Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

¹ *Rollo*, pp. 15-39.

² Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Normandie B. Pizarro and Florito S. Macalino concurring; *CA rollo*, pp. 332-343.

³ *Id.* at 366-367.

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WHEREFORE, the instant petition is hereby **GRANTED** and the NLRC Decision dated December 14, 2009 and Resolution dated April 14, 2010 are **SET ASIDE**. The Complaint for total and permanent disability benefits, reimbursement of medical, hospital and transportation expenses, moral and exemplary damages, sickwage allowance, attorney's fees and legal interest is hereby **DISMISSED**. In view of the payment made to [Apines] by petitioners Elburg Shipmanagement Philippines, Inc. and Danilo F. Venida in satisfaction of NLRC Decision dated December 14, 2009 and Resolution dated April 14, 2010, [Apines] is hereby directed to return to petitioners Elburg Shipmanagement Philippines, Inc. and Danilo F. Venida the amount of Three Million Twenty[-]Nine Thousand Eighty[-]Eight Pesos [and] 92/100 (₱3,029,088.92).

SO ORDERED.⁴

The assailed Resolution⁵ dated May 30, 2012 denied Apines' motion for reconsideration.⁶

Antecedent Facts

Elburg Shipmanagement Philippines, Inc. (ESPI) is a local manning agency, with Danilo F. Venida as representative (collectively, the respondents). Emirates Trading Agency LLC (ETAL) is among ESPI's foreign principals.⁷

On September 11, 2007, Apines boarded ETAL's ship, M/V Bandar TBN Trans Gulf, for an eight-month engagement as bosun.⁸

Apines claimed that sometime in the third week of September, a British surveyor was on board the ship to inspect the cargo hold. Captain Glicerio Castañares (Capt. Castañares) and Chief Mate Edgardo Llevares instructed Apines to put an apparatus on the top tank of the cargo hold to check for possible leaks. Apines promptly complied with the order. On his way up from the cargo hold, he accidentally stepped on scattered iron ore pellets causing his left knee to strongly hit the steel railings of the ladder, and for him to slip and fall.⁹

⁴ Id. at 11.

⁵ Id. at 366-367.

⁶ Id. at 347-356.

⁷ Id. at 7.

⁸ See Contract of Employment, id. at 65; see also Exit Interview report, id. at 93-94; A bosun or boatswain is defined as "a naval warrant officer in charge of the hull and all related equipment. <<http://www.merriam-webster.com/dictionary/boatswain>> visited October 26, 2016.

⁹ *Rollo*, p. 19; *CA rollo*, pp. 93, 333.

According to Apines, despite a sprain and swollen ankle, he was able to stand up and walk. When the pain eventually became intolerable, Apines informed Capt. Castañares about his condition. Apines was given analgesics. However, his request to be brought to the nearest port for medical attention remained unheeded since the ship was still on voyage. Further, whenever the ship reached a port, Apines was assigned as a crane driver.¹⁰

On November 10, 2007, Apines consulted with an orthopedic surgeon named Dr. Abraham George (Dr. George) when the ship reached the Port of Bahrain. Dr. George's Medical Report¹¹ reads:

Symptoms: PAIN ON THE LEFT KNEE (SWELLING)

When did the sym[p]toms start: 1 MONTH+

Diagnosis: LATERAL COLLATERAL LIGAMENT SPRN
? MEDIAL MENISCAL INJU

Is declared:	FIT	<input checked="" type="radio"/>	No
	UNFIT	Yes	No

- 1) The patient must attend the Doctor again on: WITH MRI REPORT
- 2) The seaman must go to Hospital for MRI SCAN -LEFT KNEE
- 3) Special Remarks: MEDICATIONS AND HINGED KNEE BRACE GIVEN

x x x x

Present History

[P]ain Left Knee since 45 days after a fall on ship at work. Now has pain on climbing at work

Management Plan

Ref to Ortho consult

Bland diet/

Advised MRI scan of the left knee

Diagnosis

5355 GASTRITIS. MAIN*

844 **SPRAIN OF KNEE^ LEG*,MAIN,***

Left ?? OA

8440 **SPRAIN LATERAL COLL LIG,MAIN,***

LEFT KNEE

7171 **DERANG ANT MED MENISCUS,zClinical,***

LEFT KNEE

¹⁰ Rollo, p. 19; CA rollo, p. 333.

¹¹ CA rollo, pp. 120-121.

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Orders

x x x x

Elmetacin solution 50 ml.¹² Qty = 1, Verified
Celebrex 200 Mg. Cap,¹³ Qty = 20, Verified

x x x x¹⁴ (Emphasis ours)

In February of 2008, Apines once again complained of pain in his left knee and requested for a medical check-up when the ship reached Jubail, Saudi Arabia.¹⁵ Dr. Vicar Hussain's (Dr. Hussain) Medical Report¹⁶ dated February 5, 2008 indicates the following:

Sym[p]toms: PAIN ON THE LEFT KNEE (M.R.I. SCAN – LEFT KNEE RECOMMEND).

When did the sym[p]toms start: Pain & swells 14 [left] knee – 4 mth

Diagnosis: O.A. 14 [left] knee x x x

Is declared:	FIT	<u>Yes</u>	No	but Pt needs rest for couple of days
	UNFIT	Yes	No	

- 1) The patient must attend the Doctor again on: after 7 days
- 2) The seaman must go to Hospital for [MRI SCAN – LEFT KNEE]
- 3) Special Remarks: Medical & Pt needs MRI 14 [left] knee. Pt needs medication for long time

x x x x¹⁷ (Emphasis ours)

¹² **INDICATIONS**

For the local relief of pain, inflammation and swelling associated with

- degenerative disorders of the joints (osteoarthritis of the knee and smaller joints)
- periarticular rheumatic disorders (tenosynovitis, tendonitis, synovitis, painful shoulder stiffness)
- sports and **accidental injuries** (sprains, strains and contusions)

<http://home.intekom.com/pharm/litha/elmeta_s.html> (visited October 26, 2016). (Emphasis ours)

¹³ Celebrex (celecoxib) is a **nonsteroidal anti-inflammatory drug** (NSAID). Celecoxib works by reducing hormones that cause inflammation and pain in the body.

Celebrex is used to treat pain or inflammation caused by many conditions such as **arthritis**, **ankylosing spondylitis**, and **menstrual pain**. Celebrex is used to treat juvenile rheumatoid arthritis in children who are at least 2 years old.

Celebrex is also used in the treatment of hereditary polyps in the colon. <<https://www.drugs.com/celebrex.html>> (visited October 26, 2016). (Emphasis ours)

¹⁴ CA *rollo*, pp. 120-121.

¹⁵ See the respondents' Memorandum, id. at 294.

¹⁶ Id. at 122.

¹⁷ Id.

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Apines claimed that since the pain in his left knee even worsened, he requested for immediate repatriation.¹⁸

In Capt. Castañares' e-mail message¹⁹ sent to ESPI and Capt. Nicolo Terrei on February 5, 2008, it was stated that for a week already, Apines had been unable to work due to severe pain on his left knee. Per request, Apines had a medical check up in Jubail, Saudi Arabia. The doctor diagnosed Apines to be suffering from arthritis. Apines insisted that it was not merely arthritis, but the doctor was not able to determine any other ailment. Consequently, the doctor assessed Apines to be fit for sea duty. However, due to the worsening pain and inability to work, Apines requested to be promptly sent home to be able to consult with a doctor on his own account. Thus, Capt. Castañares sought Apines' repatriation to be arranged even if there was still no reliever to take the latter's place.

ESPI, however, denied that Apines had an accidental injury while on board the ship. In the Affidavit²⁰ dated May 4, 2008 and e-mail message²¹ sent to ESPI on November 4, 2008, Capt. Castañares stated that in the duration of Apines' stay in the ship from September 15, 2007 to February 6, 2008, there was no report that the latter had figured in an accident or had sustained an injury.²²

Apines disembarked from the ship on February 7, 2008. The next day, Apines reported to ESPI's office.²³ Teresa Mendoza (Mendoza) conducted an exit interview, and her report is partly quoted below:

Accdg. to crew:

- [D]uring an inspection on[]board, [he] had an accident when he slid and his knee had a strong contact against [the] steel railing of the ladder. He had a sprain and his ankle went swollen for four days (Sept.) His knee started to be painful on November. However, he can perform job on[]board but he [cannot] fully work and he is already moving slowly. [He] [f]inds [it] difficult to climb on cranes due to pain in the ankle.
- attached report (No report was given by the master regarding the incident, no evidence from Master's logbook)
x x x x
- was given pain reliever by the doctor (for arthritis and paracetamol)
- and was recommended to see doctor again after seven days but he [was] repatriated after x x x a day.

¹⁸ See Apines' Memorandum, id. at 261.

¹⁹ Id. at 91.

²⁰ Id. at 90.

²¹ Id. at 92.

²² Id. at 90.

²³ Id. at 48, 93.

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- was reported FIT TO WORK by the doctor.²⁴

The Crew De-briefing Checklist²⁵ signed by Apines also indicated that his disembarkation was “for medical grounds (on his own request).”

ESPI claimed that it referred Apines to a company-designated doctor, but the latter consulted his own physicians instead.²⁶

On the other hand, Apines alleged that when he reported to ESPI’s office right after his repatriation, Mendoza and Angela Padre (Padre) informed him that since he was declared fit to work, no assistance can be offered to him. Moreover, his unpaid salaries shall be offset against the cost of his airfare ticket in returning to Manila. Apines, thus, explained that he sought repatriation to undergo Magnetic Resonance Imaging (MRI) and obtain medical treatment pursuant to the recommendations of the doctors in Bahrain and Saudi Arabia. ESPI, however, stood its ground in denying to provide Apines with assistance.²⁷

Apines felt aggrieved by ESPI’s lack of support, but his primary concern then was to obtain prompt medical attention. Upon his inquiry, ESPI referred him to Metropolitan Hospital, which at that time had no MRI machine. Apines thereafter proceeded to Chinese General Hospital (CGH), where he underwent MRI scanning under the supervision of Dr. Celestina L. Cejoco (Dr. Cejoco).²⁸ Dr. Cejoco’s Consultation Report,²⁹ dated February 14, 2008, included the following impressions: (1) “*no acute bony trabecular injury or fracture*”; (2) “*oblique inferior surface tear involving the posterior horn of the medial meniscus*”; (3) “*small to moderate amount of joint effusion*”; and (4) “*findings are consistent with osteoarthritis.*”

On February 20, 2008, Apines also consulted Dr. Patrick O. Leh (Dr. Leh), an orthopedic surgeon in CGH. The Medical Certificate³⁰ issued by Dr. Leh indicated that Apines had “*degenerative osteoarthritis*” and “*medial meniscal tear*” in his left knee. Dr. Leh assessed that Apines “*may return to work after 30 [to] 45 days,*” but “*needs continued medical treatment for*

²⁴ Id. at 93.

²⁵ Id. at 94.

²⁶ Id. at 294.

²⁷ Id. at 166.

²⁸ Id.

²⁹ Id. at 95.

³⁰ Id. at 96.

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osteoarthritis.” Apines was likewise advised to undergo meniscectomy³¹ and to consult with a company-accredited orthopedic surgeon.³²

On June 6, 2008, Apines filed before the National Labor Relations Commission (NLRC) a Complaint³³ for total and permanent disability benefits, reimbursement of medical, hospital and transportation expenses, moral and exemplary damages, sickness allowance, attorney’s fees and legal interest.

On June 17, 2008, Apines was admitted at the Philippine General Hospital (PGH) and underwent arthroscopic meniscectomy on July 1, 2008. He was confined for 17 days and was finally discharged on July 4, 2008.³⁴

The Clinical Abstract³⁵ and Discharge Summary³⁶ signed by Dr. Patrick M. Dizon (Dr. Dizon) stated that Apines had Medial Meniscal Tear. Apines complained of pain in his left knee and difficulty in ambulation. Apines had informed the doctors that about nine or ten months before, he had slipped and twisted his left knee while walking or going down the stairs. Thereafter, he had persistent pain in his left knee, with associated locking symptoms. He only took Alaxan which gave him mere partial relief. The symptoms, however, progressed. Apines then underwent x-ray and MRI scans, and consulted with doctors at the CGH, before having been referred to the PGH for further management. After Apines’ arthroscopic meniscectomy, he was still advised to continue with his rehabilitation, and was prescribed to take Cephalexin for seven days.

In their Position Paper³⁷ filed before the NLRC, the respondents contended that Apines was not entitled to total and permanent disability benefits based on the following grounds: (1) Apines did not suffer any

³¹ **Meniscectomy is the surgical removal of all or part of a torn meniscus.** A meniscus tear is a common knee joint injury. <<http://www.webmd.com/a-to-z-guides/meniscectomy-for-a-meniscus-tear>> (visited October 26, 2016).

Like a lot of knee injuries, a meniscus tear can be painful and debilitating. x x x In fact, a meniscal tear is one of the most frequently occurring cartilage injuries of the knee.

x x x [A meniscus] is a piece of cartilage in your knee that cushions and stabilizes the joint. It protects the bones from wear and tear. x x x [A]ll it takes is a good twist of the knee to tear the meniscus. In some cases, a piece of the shredded cartilage breaks loose and catches in the knee joint, causing it to lock up.

Meniscus tears are common in contact sports like football as well as noncontact sports requiring jumping and cutting such as volleyball and soccer. **They can happen when a person changes direction suddenly while running, and often occur at the same time as other knee injuries, like an anterior cruciate ligament (ACL) injury.** x x x. <<http://www.webmd.com/fitness-exercise/meniscustear#1>> (visited October 26, 2016).

³² CA rollo, p. 168.

³³ Id. at 61-62.

³⁴ See Operation and Anesthesia Record, id. at 127; Medical Certificate dated July 7, 2008, id. at 128.

³⁵ Id. at 125.

³⁶ Id. at 129-131.

³⁷ Id. at 68-87.

accident or injury while on board the ship as proven by Capt. Castañares' affidavit and the e-mail exchanges between the latter and Mendoza; (2) the medical reports issued abroad showed that Apines was fit to work; (3) Apines disembarked from the ship on his own accord as indicated in the Exit Interview Report and Crew De-briefing Checklist; (4) Apines failed to submit himself for post-employment medical examination and treatment by company-designated doctors; and (5) Apines' own physician, Dr. Leh, assessed that the former may return to work after 30 to 45 days.

Several conferences were held, but the parties failed to arrive at any settlement.³⁸

Rulings of the Labor Arbiter and NLRC

In the Decision³⁹ dated April 21, 2009, the Labor Arbiter (LA) dismissed Apines' complaint citing the following as reasons:

It is not enough for [Apines] to allege and prove that his injury was work-related.

He must likewise allege and prove compliance with the mandatory reporting requirement.

[Apines] never alleged, in his position paper, that he observed the mandatory reporting requirement. He simply states that, upon his repatriation, he reported to [ESPI] and was informed by [Padre] and [Mendoza] that he cannot be offered of [sic] an assistance as he was declared fit to work.

There is nothing in the position paper and further papers of [Apines] indicating compliance with the post-employment medical examination [under the 2nd and 3rd paragraphs of Section 20(B)(3)⁴⁰ of the 2000 Philippine Overseas Employment Agency's Amended Standard

³⁸ Id. at 168.
³⁹ Rendered by Labor Arbiter Gaudencio P. Demaisip, Jr.; id. at 165-170.

⁴⁰ SECTION 20. COMPENSATION AND BENEFITS
 x x x x
 B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
 x x x x

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

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels].⁴¹

Apines appealed the foregoing before the NLRC.⁴²

On December 14, 2009, the NLRC promulgated a Decision,⁴³ the *fallo* of which is quoted below:

WHEREFORE, premises considered, judgment is hereby rendered finding the appeal impressed with merit. [The respondents] are hereby directed to pay [Apines] US\$62,800.00 [as] total and permanent disability compensation and sickness allowance or its peso equivalent at the prevailing exchange rate at the time of payment plus ten percent (10%) of such aggregate amount representing attorney's fees (US\$6,280.00). Accordingly, the decision of the [LA] dated April [21], 2009 is hereby VACATED and SET ASIDE.

SO ORDERED.⁴⁴

In holding Apines to be entitled to total and permanent disability benefits and sickness allowance, the NLRC ratiocinated that:

[Apines] was operated upon on July 1, 2008 at the PGH x x x. Since his repatriation on February 2008 until such date, he has not been able to return to work and x x x more than 120 days [had elapsed]. x x x

We do not subscribe to [the respondents'] assertions that [Apines] has to prove that he suffered an accident while on board and that the repatriation was of his own accord[,] which bars his entitlement. x x x:

x x x x

It does not state in [Section 20(B)(3) of the 2000 Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels] that repatriation be upon the employer's instructions, [but] it merely mentions that it be for medical reasons. There is also no requirement of proof of occurrence of an accident to be made by the employee for disability to attach. What is required is that he suffered injury or illness and in this case[,] there is [a] concrete showing that [Apines] was complaining of pain in his knee[,] and that he made it known to his employers for which he was brought to 2 doctors for assessment on November 2007 and February 2008.

⁴¹ CA *rollo*, p. 169.

⁴² Id. at 171-194.

⁴³ Pinned by Presiding Commissioner Benedicto R. Palacol, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro concurring; id. at 47-54.

⁴⁴ Id. at 53-54.

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It is noteworthy that these doctors recommended that he undergo MRI x x x[,] but it appears that these recommendations were unheeded. It is apparent from the records that the [respondents] chose to ignore the complaints of the seafarer [about] the pain he was suffering [from] and the doctors' recommendations[,] and decided not to order his medical repatriation presumably in order to avoid paying disability compensation to him.

While it may be true that there was no compliance with the procedural requirements under [Section 20(B)(3) of the 2000 Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels], this is not of [Apines'] own doing. x x x He was informed that he will not be accorded any medical assistance as he [was] declared fit to work. Thus, he was constrained to consult with other doctors [who assessed Apines] to be suffering from a meniscal tear on his knee and required menis[c]ectomy x x x. [Apines'] assertions [sic] that he was denied medical assistance [has] credence because it is illogical that he will seek treatment from other doctors immediately after his disembarkation when he [can] avail of the services of the company[-]designated physician. He arrived on February 8, 2008 and he consulted with 2 doctors for medical treatment on February 14 and 20, 2008. The proximity of such dates further proves that he was indeed denied of medical assistance despite his suffering and even when the [respondents] knew that he sought repatriation to seek medical treatment x x x.

Having suffered the injury/illness during the term of his contract, [Apines] is also entitled to his sickness allowance and to be reimbursed [for] the expenses incurred for his treatment. In this case, [Apines] failed to present receipts or other proof[s] of his medical expenses[, hence,] we cannot grant the same. Thus[,] he is entitled only to his sickness allowance of US\$700.00/per month for four (4) months or US\$2,800.00 in addition to his permanent and total disability compensation of US\$60,000.00.⁴⁵

In the Resolution⁴⁶ dated April 14, 2010, the NLRC denied the motion for reconsideration⁴⁷ of the respondents.

The Proceedings before the CA

The respondents filed a Petition for *Certiorari*⁴⁸ before the CA. During its pendency, Apines sought the execution of the NLRC Decision and Resolution, dated December 14, 2009 and April 14, 2010, respectively. On August 10, 2010, the respondents, with the intent of preventing further execution proceedings, paid Apines the sum of Three Million Twenty-Nine Thousand Eighty-Eight Pesos and 92/100 (₱3,029,088.92) as full and

⁴⁵ Id. at 51-53.

⁴⁶ Id. at 56-58.

⁴⁷ Id. at 205-214.

⁴⁸ Id. at 3-45.

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complete satisfaction of the NLRC's judgment award. The payment was subject to the condition that in case of reversal or modification of the NLRC decision and resolution by the CA, Apines shall return to the respondents whatever amount may be due and owing.⁴⁹

Subsequently, the CA, through the herein assailed decision and resolution, reversed the NLRC ruling. The CA explained that:

[Apines] was unable to establish his allegation that he suffered an injury on board [ETAL's] vessel by reason of an accident. x x x [I]t was clear that other persons were present at the time the alleged incident transpired and who should have witnessed the same. x x x [H]e neither reported the alleged incident to the officers on board the vessel for documentation purposes nor did he present any other evidence to substantiate his allegation. Not even the evaluation of the doctors who examined [Apines] corroborated his claim that his condition was an injury caused by an accidental fall. [Apines] himself declared that Dr. Hussain gave him medicine for pain allegedly caused by arthritis. His own doctor seemed to agree with Dr. Hussain's findings when he categorically pronounced [Apines'] diagnosis to be "Degenerative osteoarthritis." Moreover, contrary to Apines' claim, his doctor did not recommend his "immediate operation." In fact, Dr. Leh suggested that [Apines] consult with [a] company-accredited orthopedic surgeon for opinion. In other words, a perusal of the medical certificates submitted by [Apines] will tend to support a finding that Apines was suffering from arthritis rather than a conclusion that his medical condition was brought about by an accident as to qualify as work-related injury compensable under the POEA-SEC.

x x x x

[Apines] affirms that [the respondents] "referred him to Metropolitan Hospital. He proceeded there immediately but upon inquiry, they do not conduct MRI test, instead he was referred to [CGH]." It appears that [Apines] conveniently subjected himself to medical assistance of his own choice solely because Metropolitan Hospital was unable to conduct the MRI. Noticeably, there is nothing on record to show that he intended to submit himself to a medical evaluation by the company-designated physician. [Apines] clearly has not complied with the post-employment reporting requirements under the POEA-SEC.

x x x **[Apines] failed to present any justification [for] his inability to submit himself to a post-employment medical examination by a company-designated physician.** Glaringly, despite claiming that his doctor recommended his immediate operation when he went for consultation on February 20, 2008, it was only on June 17, 2008 that [Apines] was admitted for confinement at the PGH and the operation done on July 1, 2008. x x x

⁴⁹ Please see Satisfaction of Judgment, id. at 324-326; Affidavit of Claimant, id. at 327-328; Receipt of Payment, id. at 329.

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x x x x

x x x [I]n between his consultation with his doctor on February 20, 2008 and his confinement for medical attention on June 17, 2008, **[Apines] found time to file the instant case before the [LA]** on June 5, 2008. x x x [Apines] appeared well enough to consult his own doctors, file a case x x x and undergo medical attention more than three (3) months from his repatriation but was unjustifiably unable to submit himself for examination by a company-designated physician.

x x x x

x x x [Apines] **has not presented any disability grading even from his own doctors who examined and operated on him.** It seems to this Court then that [Apines] basically aims to capitalize on his employer's failure to assess his disability grade when, as a matter of fact, he has never submitted himself to the examination of the company-designated physician before or after his operation. Plainly, there is no disability grading by any doctor in this case. x x x.⁵⁰ (Citations omitted and emphasis ours)

Issues

Aggrieved, Apines now presents before the Court the issues of whether or not the CA erred in:

- (1) holding that failure to comply with the 72-hour reporting requirement is fatal and shall automatically result in the forfeiture of disability benefits;⁵¹
- (2) denying to grant Apines total and permanent disability benefits despite his clear inability to resume performance of active sea duties within 120 days from repatriation;⁵² and
- (3) negating Apines' entitlement to moral and exemplary damages, as well as attorney's fees.⁵³

In support thereof, Apines reiterates his claims offered in prior proceedings. He emphasizes that the respondents cannot feign ignorance about his ailment, which started while he was on board the ship. He insists that there should be no automatic forfeiture of disability benefits even *sans* compliance with the 72-hour reportorial requirement in cases when the seafarer has been rendered incapable of pursuing his customary shipboard employment. Anent the respondents' persistent stance that the

⁵⁰ Id. at 337-341.

⁵¹ Id. at 23.

⁵² Id. at 25, 30.

⁵³ Id. at 36.

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company-designated doctor must examine the seafarer's medical condition, Apines avers that such assessment must be done within a 120-day period from repatriation, otherwise, the injury or illness shall be deemed to be total and permanent. He also laments the respondents' utter refusal to render any medical assistance and pay their contractual obligations. Accordingly, the respondents should be liable for moral and exemplary damages, plus attorney's fees. Apines manifests, too, that he currently remains jobless and unfit to render sea duties.

In the respondents' Comment,⁵⁴ they contend that the 72-hour reportorial requirement is mandatory, and Apines' failure to comply therewith bars the filing of his claims for disability benefits.

Ruling of the Court

"As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45."⁵⁵ The Court is, thus, generally bound by the CA's factual findings. There are, however, exceptions to the foregoing, among which is when the CA's findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.⁵⁶ The instant petition falls under the aforementioned exception in view of the divergent factual findings of the LA and the CA, on one hand, and the NLRC, on the other.

After a thorough re-examination of the parties' evidence, the Court finds merit in the instant petition warranting the reinstatement of the NLRC's decision.

The issues, being inter-related, will be discussed jointly.

Review of the Facts

To properly dispose of the issues raised herein, the Court should resolve the conflicting factual assertions of the parties anent the following: (1) occurrence of the accident, which Apines claimed had caused his injury; (2) cause of and circumstances surrounding Apines' repatriation; (3) conclusiveness of the medical findings of the two doctors whom Apines had consulted in Bahrain and Saudi Arabia; (4) referral of

⁵⁴ Id. at 74-85.

⁵⁵ *Antiquina v. Magsaysay Maritime Corporation and/or Masterbulk, PTE., Ltd.*; 664 Phil. 88, 99 (2011).

⁵⁶ *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 454 (2009); see also *Interorient Maritime Enterprises, Inc., et al. v. Remo*, 636 Phil. 240, 249 (2010).

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Apines to company-designated doctors; (5) failure of Apines to comply with the 72-hour reportorial requirement; (6) necessity, reason and timeliness of the medical treatment rendered by Apines' own doctors; and (7) lack of disability rating made by both the company-designated doctors and those consulted by Apines on his own accord.

Occurrence of the accidental injury on board the ship

The respondents insist that Apines had not sustained any injury while on board ETAL's ship. As proof thereof, Capt. Castañares' affidavit and e-mail message negating the occurrence of an accident involving Apines were submitted. The respondents also point out that Apines had not offered any corroborating statements anent the incident from his colleagues who were then on board the ship. Hence, the respondents conclude that since no documentary evidence from ESPI and its staff support Apines' factual claim of having sustained an injury while on board the ship, then, no accident actually happened.⁵⁷

The evidence point to the contrary.

While no record of the injury was reflected in the ship's logbook and other documents, the following constitute as substantial evidence to support the conclusion that Apines, in fact, figured in an accident while he was on board.

First. In the Medical Report⁵⁸ dated November 10, 2007, Dr. George declared Apines to be fit to work. It is, however, clear from the same report that Apines complained of pain and swelling in his left knee, which started after a fall while he was at work about 45 days before such consultation. Dr. George also made a *conditional diagnosis of Medial Meniscal Injury*, prescribed two pain relief medications, and gave Apines a hinged knee brace. Dr. George further advised the conduct of MRI scanning and consultation with an orthopedic doctor.

In February of 2008, Apines requested for a medical check-up.⁵⁹ Dr. Hussain indicated in his report that Apines had pain and swelling for four months prior to the consultation. Dr. Hussain once again recommended MRI scanning, rest for a couple of days, and medications for a long time. Nonetheless, he assessed that Apines was fit to work.⁶⁰

⁵⁷ CA rollo, p. 334.

⁵⁸ Id. at 120-121.

⁵⁹ Id. at 334.

⁶⁰ Id. at 122.

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In Bahrain and Saudi Arabia, Apines was consistent in informing the doctors about when and how he sustained his injury. On the other hand, despite rendering fit-to-work assessments, Dr. George and Dr. Hussain's similar recommendations for MRI scanning were *implied admissions that Apines had a medical condition, albeit still undefined*. Without MRI, Dr. George and Dr. Hussain cannot make conclusive assessments of what really ailed Apines. Note that despite the doctors' recommendations in November of 2007 and February of 2008, no MRI scan was conducted and paid for abroad by the respondents.

Second. The day after Apines' repatriation, he reported to ESPI's office. In the Exit Interview⁶¹ conducted by Mendoza, Apines once again claimed that while on board the ship, his knee hit the steel railings of the ladder. His ankle swelled in September of 2007 and by November of 2007, the pain had worsened, making it difficult for him to move and climb cranes.

Further, the Crew De-briefing Checklist⁶² signed by Apines likewise indicated that his disembarkation was "*for medical grounds (on his own request)*." Whether the repatriation was upon Apines' own initiative or not, the unalterable fact remains that he had a medical condition, which required treatment.

Third. In the Discharge Summary⁶³ dated July 5, 2008, Dr. Dizon stated that according to Apines, he slipped and twisted his left knee about nine months before meniscectomy. Dr. Dizon confirmed the prior diagnosis of Dr. George, Dr. Cejoco and Dr. Leh that Apines had Medial Meniscal Tear in the latter's left knee.

In précis, Apines' consistent claims about what occurred while he was on board the ship, and the medical records showing that he had Medial Meniscal Tear substantially lend credence to the factual assertion that indeed, he sustained an accidental injury prior to his repatriation. Capt. Castañares' mere statements pale in comparison to the foregoing.

Fit-to-work assessments, reporting after repatriation, consultations with doctors, surgery, and compliance with the requirements of the 2nd and 3rd paragraphs of Section 20(B)(3) of the 2000

⁶¹ Id. at 93.

⁶² Id. at 94.

⁶³ Id. at 129-131.

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Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (2000 POEA-SEC)

The Court shall now proceed to discuss the bearing of Dr. George and Dr. Hussain's uniform assessment that Apines was fit to work.

As mentioned above, Dr. George and Dr. Hussain both recommended MRI scanning of Apines' left knee. Note that Dr. George made a conditional diagnosis that Apines had osteoarthritis, albeit entertained the possibility of Medial Meniscal Tear. Hence, Capt. Castañares' declaration that the doctors did not find any other ailment in Apines apart from osteoarthritis deserves short shrift. The *fit-to-work assessment* made by Dr. George and Dr. Hussain remained *inconclusive* pending the conduct of the MRI scan. Unfortunately, the same fit-to-work assessment was used by the respondents against Apines in denying the latter's plea for medical assistance after his repatriation. Later, the MRI scanning was performed only after repatriation about five months from the time Apines had sustained the accidental injury. Apines himself even paid for the scan.

Within three days from repatriation, Apines reported to ESPI's office. Mendoza conducted an Exit Interview and made Apines sign the Crew De-briefing Checklist. The parties now disagree as to what transpired after.

Apines claims that Mendoza and Padre informed him that since he was declared fit to work by the doctors abroad, ESPI cannot offer him any assistance. Further, his unpaid salaries shall be offset against the cost of his airfare ticket in going back to Manila. Apines insisted that he sought repatriation due to the recommendations of the doctors abroad for him to undergo MRI scanning and obtain medical treatment. ESPI, however, stood its ground in denying to provide Apines with assistance.⁶⁴

The respondents, on their part, allege that they referred Apines to a company-designated doctor. However, Apines consulted his own physicians instead.⁶⁵ Ann Suzette B. Ong Pe (Ong Pe), Senior Patient Processor at the Marine Medical Services, executed an affidavit attesting to the foregoing.⁶⁶

⁶⁴ Id. at 261.

⁶⁵ Id. at 294.

⁶⁶ Id. at 136.

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In the herein assailed decision, the CA declared that Apines “conveniently subjected himself to medical assistance of his own choice solely because Metropolitan Hospital was unable to conduct the MRI.”⁶⁷ The CA also stated that “there is nothing on record to show that [Apines] intended to submit himself to a medical evaluation by the company-designated physician.”⁶⁸

The Court disagrees.

It bears stressing that nowhere in the pleadings did the respondents specifically name the company-designated doctor to whom Apines was referred to. Moreover, apart from Ong Pe’s affidavit, the respondents did not present any other document to establish that Apines was actually and specifically instructed to report for a post-employment medical examination. Apines vaguely admitted having been referred to Metropolitan Hospital, but it was upon his insistence for medical assistance. What remains unrefuted is that back then, the said hospital did not have MRI machines. Consequently, Apines proceeded to the CGH, underwent MRI scanning and consulted Dr. Cejoco and Dr. Leh. Apines paid for the medical services with his own money.

Indeed, the records do not show that Apines consulted a company-designated doctor either for a post-employment medical assessment or treatment. However, there is likewise *no substantial evidence conclusively proving that Apines was in fact referred to a company-designated physician*. Besides, after suffering for about five months with an untreated injury on board ETAL’s ship, securing the services of CGH for the MRI scanning was not a matter of convenience, but of necessity. Apines merely wanted to obtain prompt medical attention, but was repeatedly given the runaround by the respondents even after repatriation. As aptly observed by the NLRC, “*it is illogical that [Apines] will seek treatment from other doctors immediately after his disembarkation when he [can] avail of the services of the company[-]designated physician*” and “*the proximity of [the dates of repatriation and consultations with Dr. Cejoco and Dr. Leh] further proves that he was indeed denied of medical assistance.*”⁶⁹

As indicated in the Exit Interview and Crew De-briefing Checklist, Apines promptly reported to ESPI’s office within 72-hours from repatriation. He was informed that the cost of his fare going home shall be offset against his unpaid salaries, and that no medical assistance can be offered to him as he was declared fit to work by the doctors abroad. Admittedly, Apines failed

⁶⁷ Id. at 339.

⁶⁸ Id.

⁶⁹ Id. at 53.

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to offer documentary proofs of the respondents' denial to assist him in his medical needs. However, *Apines cannot be faulted for the said lack since the custody of the documents, if there were any at all, pertains more to the respondents.* It would be illogical to impose upon Apines the burden to prove with documentary evidence the negative fact that he was not referred to a company-designated doctor.

In *Interorient Maritime Enterprises, Inc., et al. v. Remo*,⁷⁰ the Court emphatically ruled that “*the absence of a post-employment medical examination cannot be used to defeat respondent’s claim since the failure to subject the seafarer to this requirement was not due to the seafarer’s fault but to the inadvertence or deliberate refusal of petitioners.*”⁷¹

Considering the above, the Court finds that Apines' failure to comply with the 72-hour reportorial requirement for the conduct of a post-employment medical examination under the 2nd paragraph of Section 20(B)(3) of the 2000 POEA-SEC cannot result in the automatic forfeiture of his disability benefits.

Island Overseas Transport Corporation/Pine Crest Shipping Corporation/Capt. Emmanuel L. Regio v. Armando M. Beja,⁷² on the other hand, is instructive anent when a seafarer may be exempt from compliance with the procedure laid down in the 3rd paragraph of Section 20(B)(3) on the requirement of consultation with a third doctor, *viz.*:

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.**⁷³ (Emphasis ours)

In the case at bar, ESPI's records relative to the occurrence of the injury and the events leading to and following Apines' repatriation are *conspicuously scarce*. Apines claims that he was outrightly denied medical assistance on the pretext that the doctors abroad had found him fit to work. There was unfortunately no document to establish that denial. Similarly, no convincing paper trail exists to prove that there was in fact a referral to a company-designated doctor either for assessment or treatment. *Sans* referral to a company-designated doctor, no post-employment medical examination can be performed on Apines by ESPI. No written fit to work or

⁷⁰ 636 Phil. 240 (2010).

⁷¹ Id. at 250-251.

⁷² G.R. No. 203115, December 7, 2015.

⁷³ Id.

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disability grading certificate was also issued. Without the assessment of the company-designated doctor, there was nothing for Apines' own physicians to contest rendering consultation with a third doctor agreed upon by the parties as superfluous.

Perforce, compliance with the requirements of the 3rd paragraph of Section 20(B)(3) on obtaining the assessment of a third doctor in case of divergent opinions of the company-designated doctor, on one hand, and the seafarer's own physician, on the other, cannot be imposed upon Apines.

Entitlement to total and permanent disability benefits arising from a conclusive presumption

Having sustained an accidental injury on board the vessel, Apines is entitled to disability benefits. To what extent, the Court shall discuss below.

At the outset, it bears noting that Apines filed his Complaint before the NLRC on June 6, 2008, 121 days from his repatriation. Before that date, no disability rating of any kind had been issued by the respondents.

In *Beja*,⁷⁴ the Court clarified that:

[I]f the maritime compensation complaint was filed **prior to October 6, 2008, the rule on the 120-day period**, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*, that is, the doctrine then prevailing before the promulgation of *Vergara* on October 6, 2008, stands; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies.⁷⁵ (Citation omitted and emphasis ours)

In the instant case, Apines filed his Complaint on June 6, 2008. Hence, the 120-day period rule stands. Due to ESPI's failure to issue a disability rating within the 120-day period, the presumption of Apines' entitlement to total and permanent disability benefits arose.

The Court shall, nonetheless, tackle the necessity and timeliness of the medical services rendered by Apines' three doctors.

⁷⁴ Id.
⁷⁵ Id.

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After repatriation, Apines consulted Dr. Cejoco and Dr. Leh in February of 2008. Later, Apines underwent meniscectomy at the PGH under the care of Dr. Dizon.

The respondents point out that Dr. Leh indicated in the Medical Certificate, which he issued, that Apines can return to work after 30 to 45 days. According to the respondents, this should cast doubt upon Apines' claim for total and permanent disability benefits. Moreover, none of Apines' own doctors issued a disability rating.

In the herein assailed decision, the CA, relying on the medical certificates issued by the doctors, found that Apines was merely suffering from osteoarthritis, and not from the effects of an accidental injury. The CA likewise concluded that Apines "*aims to capitalize on his employer's failure to assess his disability grade when, as a matter of fact, he has never submitted himself to the examination of the company-designated physician before or after his operation.*"⁷⁶ The CA also noted that Apines consulted Dr. Leh on February 20, 2008, but it was only on July 1, 2008 when the meniscectomy was performed. In the intervening period, Apines did not consult with the company-designated doctor, but found the time to see his own physicians and file his Complaint before the NLRC.⁷⁷

In Dr. Cejoco's Consultation Report⁷⁸ dated February 14, 2008, it was stated that Apines had "*no acute bony trabecular injury or fracture,*" but diagnosed the latter to be suffering from "*Osteoarthritis,*" "*oblique inferior surface tear involving the posterior horn of the medial meniscus,*" and "*small to moderate amount of joint effusion.*" Dr. Leh confirmed Dr. Cejoco's impressions, and suggested meniscectomy, with further consultation with a company-accredited orthopedic surgeon.⁷⁹ Dr. Dizon's final diagnosis was Medial Meniscal Tear of the left knee, which required arthroscopic meniscectomy.⁸⁰

A meniscus, which is a cartilage disk found in the knee, functions as a shock absorber or cushion to minimize the stress on the articular cartilage. The articular cartilage coats the ends of the bones, so it is present at the bottom of the femur and on top of the shinbone or the tibia. There are two menisci. *If they are not present or torn, the articular cartilage sees an increase in stress and can trigger the onset of osteoarthritis.* That is by no

⁷⁶ CA rollo, p. 341.

⁷⁷ Id. at 339-340.

⁷⁸ Id. at 95.

⁷⁹ Id. at 96.

⁸⁰ Id. at 129-131.

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means the only cause of osteoarthritis. However, it is certainly a significant contributor.⁸¹

Likewise useful are the distinctions between acute, sub-acute and stress fractures. An **acute fracture** “will often include an emergency room visit the day the trauma occurred and are clearly evident on an x-ray.” On the other hand, “a **sub-acute fracture** usually means that the patient had pain for some time,” and “the fracture occurred weeks or months prior but now is in the healing stage.” There are also **stress fractures**, which occur mainly in the lower extremities due to impact activity or repetitive activities. Stress fractures and healing fractures become painful with weight bearing.⁸²

The Court, thus, concludes that no real incompatibility exists between the doctors’ findings of osteoarthritis and absence of acute trabecular injury, on one hand, with Apines’ having sustained an accidental Medial Meniscal Injury in his left knee while aboard the ship, on the other. Dr. Cejoco’s impression that an acute trabecular injury was absent did not rule out the possibility of a sub-acute or stress fracture. Further, a torn meniscus can trigger the onset of osteoarthritis.

In Apines’ case, his Medial Meniscus Tear was left undiagnosed and untreated for almost five months from the time he had sustained an accidental injury. It took another five months from his repatriation before he underwent arthroscopic meniscectomy. Apines cannot be faulted for the delay. The Court takes judicial notice of the long queues in governmental hospitals.⁸³ The Court also finds it logical that without any financial assistance for medical expenses lent by ESPI, it took Apines sometime to save up for what the surgical procedure required.

Further, the possibility that Apines’ Medial Meniscal Tear triggered the onset of osteoarthritis cannot be discounted. Under Section 32-A(16)(b) of the 2000 POEA-SEC, for osteoarthritis to be considered as an *occupational disease*, the same must have been contracted in any occupation *involving minor or major injuries to the joint*. Apines’ case falls within the qualification.

⁸¹ <<http://www.howardluksmd.com/sports-medicine/meniscus-tears-why-surgery-isnt-always-necessary/>> (visited October 26, 2016).

⁸² <<http://www.sacramentojuryattorneysblog.com/2015/03/acute-fractures-subacute-fracture-stress-fracture.html>> (visited October 26, 2016).

⁸³ Rule 129 – What Need Not Be Proved

Section 2. Judicial notice, when discretionary. – A court may take judicial notice of matters which are of **public knowledge**, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (Emphasis ours)

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Relative to Dr. Leh's assessment that Apines can return to work after 30 to 45 days, the Court finds the same as premature. Dr. Leh suggested meniscectomy and further consultation with an orthopedic surgeon. Without having gone through the surgery yet, Apines' fitness to return to work cannot be ascertained.

The Court likewise finds specious the CA's ruling that the lack of disability rating issued by Apines' doctors negates his disability claims.

Due to ESPI's failure or refusal to issue a medical rating within 120 days from repatriation, in legal contemplation, Apines' disability is conclusively presumed to be total and permanent. Besides, in the Court's mind, it is enough that Apines obtained medical certificates and copies of hospital records whenever he consulted with his doctors and underwent medical procedures. The Court cannot impose upon him the burden of knowing what the labor laws require relative to the matters which should be explicitly stated in the medical certificates. The lack of express disability ratings even shows that Apines did not premeditate the filing of his Complaint and that he only procured legal services after his medical treatment.

In disability compensation claims, *"what is important is that [the seafarer] was unable to perform his customary work for more than 120 days which constitutes permanent total disability,"* since *"an award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work."*⁸⁴

Apines underwent meniscectomy on July 1, 2008. Upon his discharge from the PGH on July 4, 2008, Dr. Dizon prescribed home medications and recommended his continued rehabilitation. Clearly, more than 120 days from repatriation, Apines' medical condition remained unresolved, and he cannot yet perform, without serious discomfort and inconvenience, the customary duties of a crane operator, to wit:

Arranging; attaching; carrying; checking (ground condition and that crane is level on the outriggers before attempting to lift and place a load; air, water and fuel gauges); cleaning; climbing; connecting; controlling; converting; depressing (pedals); driving (to work sites); ensuring (the setting and securing of the crane); following (directions of signal men); inserting; inspecting; lifting; loading and unloading; locating; lowering;

⁸⁴ *Island Overseas Transport Corporation/Pine Crest Shipping Corporation/Capt. Emmanuel L. Regio v. Armando M. Beja*, supra note 72, citing *Crystal Shipping, Inc. v. Natividad*, 510 Phil. 332, 341 (2005).

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lubricating (cables, pulleys, etc.); maintaining; moving (loads); observing; operating; placing (the correct equipment under the outrigger pads of the crane); planning; positioning; pulling and pushing; raising; repairing; replacing; rotating; securing x x x; stacking; starting; supplying; transferring; verifying (correctness of load)⁸⁵

Generally, in every complaint, “*opposing parties would stand poles apart and proffer allegations as different as chalk and cheese*,” hence, it is “*incumbent upon the Court to determine whether the party on whom the burden to prove lies was able to hurdle the same*.”⁸⁶

Apines hurdled the burden. The medical records, consistency of his claims, and the circumstances before and after his repatriation overshadow the respondents’ averments anent the non-occurrence of the accidental injury and alleged unjustified non-compliance with the 72-hour and third-doctor requirements.

In sum, the Court finds favor in Apines’ claims for total and permanent disability benefits, sickness allowance and attorney’s fees. The NLRC’s judgment award to Apines in the total amount of US\$69,080.00,⁸⁷ which the respondents had conditionally satisfied, is in order. The Court further agrees with the NLRC, which found no ample basis to grant Apines’ claims for moral and exemplary damages.

WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution dated January 26, 2012 and May 30, 2012, respectively, of the Court of Appeals in CA-G.R. SP No. 114221, which dismissed Elmer A. Apines’ complaint for disability benefits and damages, are **SET ASIDE**. The Decision rendered by the National Labor Relations Commission on December 14, 2009 in NLRC LAC No. 06-000338-09, which awarded Elmer A. Apines the total amount of US\$69,080.00 as total and permanent disability benefits, sickness allowance and attorney’s fees, is **REINSTATED**. Legal interest is no longer imposed on the award of US\$69,080.00 in view of the satisfaction of the amount already made on August 10, 2010.

⁸⁵ <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_192399.pdf> (visited October 26, 2016).

⁸⁶ *Javier v. Fly Ace Corporation, et al.*, 682 Phil. 359, 372 (2012).

⁸⁷ CA rollo, p. 54.

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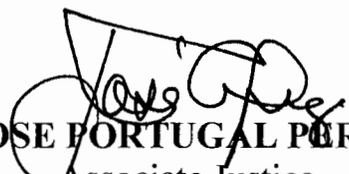
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

(On official leave)
PRESBITERO J. VELASCO, JR.
Associate Justice


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson


JOSE PORTUGAL PEREZ
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

A T T E S T A T I O N

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.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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


WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

DEC 27 2016

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