



Republic of the Philippines
Supreme Court
Manila

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MICATILONG C. BATTUNG III
Deputy Division Clerk of Court
Third Division

AUG 03 2017

THIRD DIVISION

CONSTANCIO CADERAO
BALATERO,

G.R. No. 224532

Petitioner,

- versus -

SENATOR CREWING
(MANILA) INC., AQUANAUT
SHIPMANAGEMENT LTD.,
ROSE AARON and CARLOS
BONOAN, MV MSC FLAMINIA,
Respondents.

X ----- X

SENATOR CREWING
(MANILA) INC., AQUANAUT
SHIPMANAGEMENT LTD.,
ROSE AARON and CARLOS
BONOAN,

G.R. No. 224565

Present:

Petitioners,

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, JJ.

- versus -

Promulgated:

CONSTANCIO C. BALATERO,
Respondents.

June 21, 2017

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DECISION

REYES, J.:

Before the Court are two consolidated petitions for review on *certiorari*. The first¹ is filed by Constancio Cadera Balatero (Balatero) against Senator Crewing (Manila), Inc. (SCMI), Aquanaut Shipmanagement Ltd. (Aquanaut), Rose Aaron (Aaron), Carlos Bonoan (Bonoan) and MV MSC Flaminia (for brevity, they are to be referred to collectively as “the respondents” despite the fact that they are the petitioners in G.R. No. 224565). The second,² on the other hand, is filed by the respondents against Balatero. Both petitions assail the Court of Appeals’ (CA) Decision³ and Resolution,⁴ dated February 4, 2016 and May 2, 2016, respectively, in CA-G.R. SP No. 142095, which reversed the rulings of the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC) awarding to Balatero the amount of US\$60,000.00 as permanent total disability benefits, plus 10% attorney’s fees.

Antecedents

SCMI is a local manning agency, with Aaron and Bonoan, as President and Crewing Superintendent, respectively. Aquanaut is among SCMI’s foreign principals.⁵

Balatero was initially engaged by the respondents as an able-bodied seaman on April 12, 1997. He had worked his way up to become 2nd Officer and had boarded 18 of the respondents’ ships.⁶

On July 31, 2013, after having been found as “*fit to work*” upon compliance with the required Pre-Employment Medical Examination (PEME), Balatero boarded MV MSC Flaminia⁷ for a six-month contract⁸ as 3rd Officer, with a basic monthly salary of US\$1,120.00, plus overtime pay and subsistence allowance. He accepted a lower post merely out of loyalty to SCMI and Aquanaut.⁹

¹ *Rollo* (G.R. No. 224532), pp. 3-32.

² *Rollo* (G.R. No. 224565), pp. 30-51.

³ Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan concurring; *id.* at 15-26.

⁴ *Id.* at 27-28.

⁵ *Rollo* (G.R. No. 224532), p. 4.

⁶ *Id.*

⁷ In July of 2012, MV MSC Flaminia had caught fire. Hence, when Balatero boarded the ship about a year after the fire, the cargo hold still emitted burned cargo chemical, and chicken and beef odors. Flies and insects were all over. Later, the ship was dry-docked to dispose of remaining ash, burned cargoes, and contaminated water ballast, *id.* at 6.

⁸ *Id.* at 34.

⁹ *Id.* at 5, 66-67.

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On December 22, 2013, Balatero experienced chest pains, with palpitations and shortness of breath. He was taken to Odense University Hospital (Odense) in Denmark, diagnosed to have an elevated blood pressure, prescribed anti-hypertensive medicines, and discharged thereafter.¹⁰

On January 2, 2014, Balatero suffered from similar symptoms and was again brought to Odense, where he was advised to continue with the earlier prescribed anti-hypertensive medicines, and be repatriated for further medical evaluation.¹¹

Balatero disembarked from the ship and arrived in Manila on January 5, 2014. The day after, he reported to SCMI's office for post-medical examination and was referred to Metropolitan Medical Center under the care of company-designated physician, Dr. Richard Olalia (Dr. Olalia). In the Medical Report dated January 8, 2014, Dr. Olalia found Balatero to be suffering from "*Uncontrolled Hypertension; Unstable Angina; To Consider Coronary Artery Disease [CAD]; Dyslipidemia,*" the etiologies of which were multi-factorial but not work-related.¹²

Balatero was later referred to Cardinal Santos Medical Center under the care of Dr. Roy Garrido (Dr. Garrido), an interventional cardiologist. Balatero underwent Coronary Angiogram and Aortogram, which revealed that he had "*Severe [CAD] of the [Left Anterior Descending], D2 and [Right Posterior Descending Artery]; and Moderate [CAD] LCx.*"¹³

On February 17, 2014, Balatero underwent Percutaneous Transluminal Coronary Angioplasty¹⁴ (2 stents of the Mid Left Anterior Descending and Ostio Proximal Right Posterior Descending Artery).¹⁵ In Balatero's subsequent medical check ups, Dr. Garrido prescribed maintenance medicines, which as of May 29, 2014 totalled five.¹⁶ The medical expenses were shouldered by the respondents, and Balatero was also paid his sickness allowance.¹⁷ He was subsequently declared fit to work, but with medical maintenance for the rest of his life.¹⁸

¹⁰ Id. at 6, 55.

¹¹ Medical Examination Report, id. at 54.

¹² Id. at 75, 86.

¹³ Cardiovascular Catheterization & Interventional Laboratory Report, id. at 56.

¹⁴ Id. at 57.

¹⁵ Medical Certificate dated June 3, 2014, id. at 63-64.

¹⁶ Id. at 58-59, 61-62.

¹⁷ Id. at 75.

¹⁸ Id. at 75-76.

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Unconvinced about his fitness to resume sea duties, Balatero consulted Dr. Li-Ann Lara-Orencia (Dr. Lara-Orencia), an occupational doctor. As indicated in the Medical Certificate¹⁹ dated June 3, 2014, Dr. Lara-Orencia found Balatero to be suffering from “*Hypertensive Cardiovascular Disease*,” which was “*precipitated by the stressful nature of his work*.” Further, under Item No. 11(c) of the Philippine Overseas Employment Agency’s (POEA) Standard Employment Contract (SEC) for Seafarers, CAD is a compensable illness. Under Item No. 13, Uncontrolled Hypertension, arising from exposure to extreme physical and psychological stress at work, is an occupational illness. Dr. Lara-Orencia then concluded that Balatero cannot return to his employment as 3rd Officer due to the latter’s on and off chest pains, “*easy fatigability*” and continuous intake of five maintenance medicines, to wit, “*ASA 80 mg.*,”²⁰ *Clopidogrel 75 mg.*,²¹ *Candesartan+Amlodipine*,²² *Carvedilol*²³ and *Rosuvastatin 20 mg.*”²⁴

Balatero demanded permanent total disability benefits, which the respondents denied on the ground that after treatment and rehabilitation, the company-designated doctor had assessed Balatero with a disability of Grade 7 (*Moderate Residuals of Disorders*) under the POEA SEC.²⁵

Balatero filed before the NLRC a complaint for permanent total disability compensation, sickness allowance, damages and attorney’s fees. He claimed that his sea duties as 2nd and 3rd Officer were strenuous,

¹⁹ Id. at 63-64.

²⁰ **For treatment of mild to moderate pain; fever; various inflammatory conditions; reduction of risk of death or MI in patients with previous infarction or unstable angina pectoris, or recurrent transient ischemia attacks or stroke in men who have had transient brain ischemia caused by platelet emboli.** <<https://www.drugs.com/ppa/aspirin-acetylsalicylic-acid-asa.html>> visited last June 13, 2017. (Emphasis ours)

²¹ Clopidogrel Tablets belong to a group of medicines called antiplatelet medicinal products. Platelets are very small structures in the blood, which clump together during blood clotting. By preventing this clumping, antiplatelet medicinal products reduce the chances of blood clots forming (a process called thrombosis).

Clopidogrel Tablets are taken to **prevent blood clots** (thrombi) forming in hardened blood vessels (arteries), a process known as atherothrombosis, which can lead to atherothrombotic events (such as stroke, heart attack or death). <<https://www.drugs.com/uk/clopidogrel-75mg-tablets-393.html>> visited last June 13, 2017. (Emphasis ours)

²² Fixed-dose combinations of an angiotensin receptor blocker, candesartan cilexetil, and a calcium channel blocker, amlodipine besilate (candesartan/amlodipine 8/2.5 or 8/5 mg), were approved in Japan for once-daily oral administration in **hypertensive patients**. Recent data showed that a **fixed-dose combination of candesartan and amlodipine lowered Blood Pressure safely and rapidly, providing a potential opportunity to improve the rate of Blood Pressure control.** <<https://www.ncbi.nlm.nih.gov/pubmed/22651833>> visited last June 13, 2017. (Emphasis ours)

²³ Carvedilol is a beta-blocker. Beta-blockers affect the heart and circulation (blood flow through arteries and veins).

Carvedilol is used to **treat heart failure and hypertension** (high blood pressure). It is also used after a heart attack that has caused your heart not to pump as well. <<https://www.drugs.com/carvedilol.html>> visited last June 13, 2017. (Emphasis ours)

²⁴ **Rosuvastatin** is used along with a proper diet to **help lower “bad” cholesterol and fats (such as LDL, triglycerides) and raise “good” cholesterol (HDL) in the blood.** It belongs to a group of drugs known as “**statins**.” It works by reducing the amount of **cholesterol** made by the **liver**. Lowering “bad” cholesterol and **triglycerides** and raising “good” cholesterol decreases the risk of **heart disease** and helps to prevent strokes and **heart attacks**. <<http://www.webmd.com/drugs/2/drug-76701/rosuvastatin-oral/details>> visited last June 13, 2017. (Emphasis ours)

²⁵ *Rollo* (G.R. No. 224532), p. 87.

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and had exposed him to unhealthy working conditions, extreme temperatures and contaminants, which either directly caused his illnesses or contributed thereto. The respondents, however, denied the work-relatedness and compensability of Balatero's illnesses. They pointed out Dr. Olalia's Medical Report, dated January 8, 2014, indicating that Dyslipidemia is caused by defects in lipid metabolism and/or high fat diet, hence, not work-related. Further, CAD arises from the gradual deposits of fats, fibrin and clots in the coronary artery spanning years. Diabetes Mellitus, age, sex, hypertension, smoking and elevated cholesterol levels, out of which CAD may develop, are not work-related as well.²⁶

Ruling of the LA

On December 29, 2014, the LA rendered a Decision²⁷ in NLRC NCR OFW Case No. (M) 07-09272-14, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding [Balatero] to have been entitled to total and permanent disability benefits under the POEA Contract. As prayed for, respondents are hereby ordered to pay [Balatero] the amount of **US\$60,000.00** representing his total and permanent disability benefits under the POEA Contract and attorney's fees of 10% of the said amount.

All other claims are dismissed for lack of merit.

SO ORDERED.²⁸

Citing *Wallem Maritime Services, Inc., et al. v. NLRC, et al.*,²⁹ the LA declared that the assessments of both the company-designated physicians and those consulted by the seafarers on their own accord are not conclusive, thus, need evaluation on their inherent merits. Moreover, assuming *arguendo* that Balatero was already afflicted with cardiovascular disease prior to his employment with the respondents, his exposure to stressful working conditions and a diet of unhealthy, fatty and salty foods while on board the ship had likely triggered, contributed to the development of, or aggravated his condition. The LA also noted the respondents' inconsistent stances in initially declaring that Balatero's illnesses were not work-related, and eventually determining that he had a Disability Grade of 7 under the POEA SEC. The LA, however, denied Balatero's claim for moral and exemplary damages, as there was inadequate evidence of bad faith on the part of the respondents.³⁰

²⁶ Id. at 68-69.

²⁷ Rendered by LA J. Potenciano F. Napenas, Jr.; id. at 66-73.

²⁸ Id. at 72-73.

²⁹ 588 Phil. 27 (2008).

³⁰ *Rollo* (G.R. No. 224532), pp. 70-72.

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Ruling of the NLRC

The *fallo* of the NLRC Resolution,³¹ dated June 8, 2015 in NLRC LAC No. 05-000403-15(4), reads:

WHEREFORE, premises considered, respondents' appeal is **DISMISSED** for lack of merit.

The Decision of the [LA] is **AFFIRMED**.

SO ORDERED.³²

The NLRC again considered Balatero's length of service rendered aboard 18 of the respondents' ships, and the stressful and unhealthy conditions thereat, which contributed to or aggravated the development of Balatero's Hypertensive Cardiovascular Disease. Further, despite the continuous intake of prescription medicines, there was no assurance given by the company-designated physicians that Balatero would be able to fully recover from his condition and perform his work like he did before. The NLRC also agreed with the LA that since Balatero was forced to litigate to protect his rights, he is entitled to 10% of the award as attorney's fees.³³

On July 13, 2015, the NLRC issued a Resolution³⁴ denying the respondents' motion for reconsideration (MR).

Ruling of the CA

On September 29, 2015, pending the resolution of their petition for *certiorari* filed before the CA, the respondents conditionally paid Balatero the amount of US\$66,000.00, with the provision that in case of a reversal of the NLRC's judgment by the CA or this Court, the sum shall be returned.³⁵

On February 4, 2016, the CA rendered the herein assailed Decision,³⁶ the *fallo* of which reads as follows:

WHEREFORE, the petition is **PARTLY GRANTED**. The assailed Resolutions dated June 8, 2015 and July 13, 2015 of the [NLRC], Second Division, in NLRC LAC N[o]. 05-000403-15(4)/ NLRC NCR OFW (M) 07-09272-14 are hereby **SET ASIDE**. Consequently, a new judgment is hereby entered directing [SCMI] and [Aquanaut] to jointly

³¹ Id. at 74-80.

³² Id. at 79.

³³ Id. at 78-79.

³⁴ Id. at 82-83.

³⁵ *Rollo* (G.R. No. 224565), pp. 132-134.

³⁶ Id. at 15-26.

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and severally pay [Balatero] the sum of US\$20,900.00, or its equivalent amount in Philippine currency at the time of payment.

SO ORDERED.³⁷

In denying Balatero's claims for permanent total disability compensation and attorney's fees, and ordering SCMI and Aquanaut to solidarily pay him the amount of US\$20,900.00 corresponding to Grade 7 Disability Rating benefits, the CA explained that:

[I]t is jurisprudentially settled that cardiovascular disease, [CAD], and other heart ailments are work-related. In *Magsaysay Mitsui Osk Marine, Inc., et al. vs. Juanito G. Bengson*, the High Court enunciated that the cardiovascular illnesses of therein complainant, who has been serving for the petitioners as Third Mate for twelve (12) years, were work-related. The High Court further said that considering that the employment contracts of the complainant were continuously renewed, it can be said that he had spent much of his productive years with petitioners, his years of service certainly took a toll on his body, and he could not have contracted his illness elsewhere except while working for petitioners. Given that, and coupled with the evidence on record showing how [Balatero's] working conditions caused or aggravated his illnesses, We uphold the finding of the lower tribunals that [Balatero's] illnesses were work-related and/or work-aggravated.

But even if We agree with the conclusion of the lower tribunals that [Balatero's] illnesses were work-related, We hold that his claim for permanent disability benefits must fail.

At this juncture, We point out that one of the assigned errors raised by the [respondents] was that assuming for the sake of argument that [Balatero's] illnesses were work-related, only the amount of US\$20,900.00 corresponding to Disability Grading of 7 – *Moderate residuals of disorder* – was due the latter and nothing more. On the other hand, [Balatero] claimed that he consulted a second doctor because the company-designated physician declared him fit to work after his angioplasty and after being required to take maintenance medications. x x x [T]he pivotal question now that We think should be confronted is which findings should prevail: the findings of the company-designated physician or the assessment by [Balatero's] personal physician that he was unfit for sea duties, hence, permanently disabled? A related question immediately follows – how are the conflicting assessments to be resolved?

As previously stated, 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 doctor, 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 parties. Consequently, this referral to a third doctor has been held by the High Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. x x x[.]

³⁷

Id. at 25.

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x x x x

Moreover, We observe that the assessment made by [Balatero's] physician-of-choice was only issued after a one-time medical treatment. Also, a reading of the certification of [Balatero's] doctor would suggest that the same was bare of essential facts as to how the medical conclusions were arrived at. Aside from the fact that [Balatero] was examined once, no series of tests and treatments were likewise conducted to support the diagnosis of the latter's condition. Thus, We are of the view that such assessment cannot be given credence for being questionable and suspicious.

x x x Accordingly, [Balatero] is entitled to receive disability benefits corresponding to the Grade 7 disability rating in view also of the fact that [the respondents] had manifested their willingness to pay [Balatero] the disability compensation in the amount of US\$20,900.00 corresponding to such grade. The amount shall be paid jointly and severally by [SCMI] and [Aquanaut] but with the exception of [Aaron] and [Bonoan,] who are hereby ordered excluded as parties solidarily liable to pay the amount due [to Balatero.] Be it remembered that [SCMI] has a personality separate and distinct from that of its officers, thus, [Aaron] and [Bonoan] cannot be held solidarily liable for the amount due.

x x x Under Article 2208 of the Civil Code, attorney's fees can be recovered when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Furthermore, an award of attorney's fees is the exception rather than the rule, hence, it is necessary for the lower tribunal to make findings of fact and law which bring the case within the exception and justify the grant of the award. Here, We find that none of the exceptions applies.³⁸ (Citations omitted)

In the herein assailed resolution, the CA denied the respective MRs separately filed by Balatero and the respondents.

Issues

In G.R. No. 224532, Balatero presents for consideration the issues of whether or not the CA erred in holding that:

- (1) he only suffers from Grade 7 Disability, hence, only entitled to benefits corresponding thereto;
- (2) no attorney's fees and moral and exemplary damages should be awarded to him;

³⁸ Id. at 22-25.

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- (3) Aaron and Bonoan cannot be held solidarily liable with SCMI and Aquanaut in the payment of the monetary awards; and
- (4) there is no merit in his MR, which did not raise new issues.³⁹

On the other hand, in G.R. No. 224565, the respondents challenge Balatero's entitlement to partial disability compensation claiming that the latter's illnesses are not work-related.⁴⁰

Balatero points out that Article 192 of the Labor Code explicitly provides that temporary total disability shall be deemed permanent and total if it lasts continuously for more than 120 days. He also invokes *Crystal Shipping, Inc. v. Natividad*,⁴¹ where the Court granted permanent total disability benefits to a seafarer for his inability to perform his customary work for more than 120 days. Balatero further cites *Carcedo v. Maine Marine Philippines, Inc.*,⁴² where the Court awarded total and permanent disability compensation to a seafarer assessed to have an 8% impediment rating on the 63rd day from his repatriation, but who was still incapacitated to perform his usual sea duties by reason of pending medical treatments and confinement beyond the 120-day period.⁴³

Balatero likewise emphasizes that under the Medical Standards in the Conduct of PEME for Seafarers,⁴⁴ his cardiovascular conditions, which

³⁹ *Rollo* (G.R. No. 224532), p. 9.

⁴⁰ *Rollo* (G.R. No. 224565), p. 38.

⁴¹ 510 Phil. 332 (2005).

⁴² G.R. No. 203804, April 15, 2015, 755 SCRA 543.

⁴³ *Rollo* (G.R. No. 224532), pp. 12-15.

⁴⁴ Department of Health Administrative Order No. 2007-0025, which in part reads:

The list of medical conditions cited below per System Classification are mere examples which may render a seafarer unfit. These can also be used to justify restrictions on time, position, trade area or type of vessels. x x x:

x x x x

G. CONDITIONS OF THE CARDIOVASCULAR SYSTEM

There shall be no acute or chronic cardiovascular condition **limiting physical activity** required for sea duties, **requiring more than two (2) maintenance oral medicines and close monitoring, or causing significant disability.**

x x x x

- [CAD]

- **Coronary Angioplasty (within six months)**, with history of AMI, left ventricular systolic dysfunction, **uncontrolled Diabetes Mellitus, Hypertension and Dyslipidemia**

x x x x

- Hypertension – Uncontrolled Hypertension, 140/90 and above

- **Hypertension requiring three (3) or more drugs**

- **Hypertension with associated clinical conditions** such as but not limited to:

x x x x

- **Heart Disease (LVH, Ischemic Heart Disease, prior MI, prior revascularization).**

(Emphasis ours)

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require him to take more than two maintenance medicines, render him unfit for service.⁴⁵

Balatero further insists that under Section 20(A)(3)⁴⁶ of the 2010 POEA SEC, in case of variance between the assessments of the company-designated doctor and the seafarer's physician of choice, referral to a third doctor is merely optional and directory, not mandatory. The Court reiterated the foregoing in *Maersk Filipinas Crewing, Inc./Maersk Services Ltd., et al. v. Mesina*.⁴⁷ In *Dalusong v. Eagle Clarc Shipping Philippines, Inc., et al.*,⁴⁸ the Court declared that in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting medical assessments of the company-designated doctor, on one hand, and the seafarer's chosen physician, on the other.⁴⁹

Balatero challenges as well the CA's declaration that Dr. Lara-Orencia's findings cannot be given credence as she had made her assessment on the basis of a single consultation. Balatero explains that his chosen doctor cannot be expected to replicate all the procedures, tests and examinations already conducted as to do otherwise would have been impractical. It was sufficient that Dr. Lara-Orencia interpreted the results of medical tests and procedures, and formulated her assessment therefrom.⁵⁰

As to his claims for moral and exemplary damages, and attorney's fees, Balatero argues that the respondents' unjust denial of his disability benefits was attended by bad faith, and had compelled him to engage legal services to protect his rights. As Balatero had suffered moral anguish, severe anxiety and wounded feelings by reason thereof, the respondents' acts and omissions deserve correction.⁵¹

Anent Aaron and Bonoan's liabilities as corporate officers of SCMI, Balatero alleges that under Section 10⁵² of Republic Act No. 8042, or the

⁴⁵ *Rollo* (G.R. No. 224532), pp. 16-18.

⁴⁶ If the 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. (Emphasis and underscoring ours)

⁴⁷ 710 Phil. 531 (2013).

⁴⁸ 742 Phil. 377 (2014).

⁴⁹ *Rollo* (G.R. No. 224532), pp. 19-20.

⁵⁰ *Id.* at 21.

⁵¹ *Id.* at 22-24.

⁵² SEC. 10. MONEY CLAIMS. – x x x.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.**

x x x x (Emphasis ours)

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Migrant Workers and Overseas Filipinos Act of 1995, they should be held solidarily responsible for the money claims. In bad faith, they assented to the unlawful acts, or were grossly negligent in preventing the commission thereof.⁵³

Lastly, Balatero points out that in *Coquilla v. Commission on Elections*,⁵⁴ the Court explained that reiterations in the MR of the issues passed upon by the court does not render a motion *pro forma*. To hold otherwise would mean that the movant should instead resort to new trial or other remedies.⁵⁵

The respondents, on their part, contend that the POEA SEC does not state that a disability grading issued by a company-designated doctor automatically entitles a seafarer to disability benefits. A disability grading assessment is a form of evaluation, but it does not determine the work-relation of an illness. The said assessment can be made even if the illness is not work-related.⁵⁶

The respondents also assert that Dr. Olalia categorically found Balatero's illnesses to be multi-factorial in origin, with genetic predisposition, unhealthy lifestyle, salty diet, smoking, Diabetes Mellitus, age and increased sympathetic activity as possible risk contributors. However, Balatero failed to adequately prove that the foregoing were attendant in, or arose out of, his shipboard employment.⁵⁷

Ruling of the Court

The Court partially grants Balatero's petition, and denies that of the respondents.

**Balatero's entitlement to
permanent total disability
compensation and attorney's fees**

As the LA, NLRC and the CA had uniformly and aptly found the work-relation of Balatero's sickness, the Court shall no longer belabour the issue.

⁵³ *Rollo* (G.R. No. 224532), pp. 24-27.

⁵⁴ 434 Phil. 861 (2002).

⁵⁵ *Rollo* (G.R. No. 224532), p. 28.

⁵⁶ *Rollo* (G.R. No. 224565), p. 39.

⁵⁷ *Id.* at 39, 43.

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The question to be resolved now is Balatero's entitlement *either* to permanent total disability compensation as recommended by his chosen physician, Dr. Lara-Orencia, or merely to that corresponding to Grade 7 Disability rating as assessed by the company-designated doctor.

The company-designated doctor assessed Balatero to be suffering from Grade 7 Disability under Section 32 of the POEA SEC, to wit, "*Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea.*" On the other hand, Dr. Lara-Orencia found Balatero's Hypertensive Cardiovascular Disease as an occupational disease under Section 32(A), Items 11(c)⁵⁸ and 13(b)⁵⁹ of the POEA SEC. Due to Balatero's recurrent chest pains, "*easy fatigability,*" and continuous intake of five maintenance medicines, he was no longer fit to resume sea duties as 3rd Officer.

It bears stressing that the parties did not refer the divergent medical assessments of their respective doctors to a third doctor, whose findings should have been final and binding pursuant to Section 20(A)(3) of the 2010 POEA SEC. For failure to refer the two conflicting medical findings to a third doctor mutually agreed upon by the parties, the CA ruled that Balatero breached a contractual obligation. Consequently, the assessment of the company-designated doctor was held as binding.

The Court examined the pleadings filed by the respondents and notes that *nowhere* did they categorically state the date when the company-designated doctor had issued Balatero's *final disability rating*. Further, the respondents did not attach or completely quote the medical report of the company-designated doctor. Hence, in the LA, NLRC and CA decisions, specific references to, and details about the aforesaid date and medical report are conspicuously absent as well.

From the herein assailed decision, however, it can be inferred that the company-designated doctor declared Balatero fit for sea duties upon the conclusion of the *Percutaneous Transluminal Coronary*

⁵⁸ 11. CARDIO-VASCULAR EVENTS – to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

x x x x

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship[.]

⁵⁹ 13. END ORGAN DAMAGE RESULTING FROM UNCONTROLLED HYPERTENSION

Impairment of function of the organs such as kidneys, heart, eyes and brain under the following conditions considered compensable:

x x x x

b. In a patient not known to have hypertension has the following on his last PEME: normal BP, normal CXR and ECG/treadmill[.]

Angioplasty on February of 2014 and successive consultations thereafter.⁶⁰ To this, Balatero disagreed, thus, he sought the opinion of Dr. Lara-Orencia, who issued a Medical Certificate,⁶¹ dated June 3, 2014, refuting the company-designated doctor's fit-to-work assessment of Balatero. On account of Dr. Lara-Orencia's findings, Balatero demanded for total and permanent disability compensation, which the respondents denied contending that only a Grade 7 Disability rating was proper.⁶²

Viewed in the foregoing context, it can be concluded that as of June 3, 2014, which was more than 120 days from Balatero's repatriation, no final disability rating was yet issued by the respondents, *sans* proof too that the latter sought for an extension to further determine the seafarer's fitness to work. Dr. Olalia's Medical Report, dated January 8, 2014, which negated the work-relatedness of Balatero's medical condition, was issued merely in the interim considering that tests and procedures were still to be performed. The said report cannot be considered as the final disability rating issued by the company-designated doctor.

In *Carcedo*,⁶³ the Court ruled that:

[A] partial and permanent disability could, by legal contemplation, become total and permanent. The Court in *Kestrel Shipping Co., Inc. v. Munar* held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, viz:

Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning [or] doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents

⁶⁰ *Rollo* (G.R. No. 224565), p. 17.

⁶¹ *Rollo* (G.R. No. 224532), pp. 63-64.

⁶² *Id.* at 87.

⁶³ *Supra* note 42.

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him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.

Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.

x x x

x x x x

Indeed, the schedule of disabilities in the CBA, if there is one, or the POEA-SEC, should be the primary basis for the determination of a seafarer's degree of disability. However, the POEA-SEC and the CBA cannot be read in isolation from the Labor Code and the AREC. x x x.⁶⁴ (Citations omitted, underscoring ours and emphasis in the original deleted)

In Balatero's case, the company-designated doctor had made a final Grade 7 Disability Rating beyond 120 days from repatriation. In legal contemplation, such partial disability was by then already deemed permanent. As a result thereof, the issue of non-referral to a third doctor is rendered inconsequential.

In *Dalusong*,⁶⁵ the Court instructed that in case no third doctor is appointed by the parties, the labor tribunal and the courts shall assess the inherent merits of the divergent findings of the company-designated doctor and the seafarer's chosen physician.⁶⁶

In the case at bar, Dr. Lara-Orencia had considered the tests and procedures done on Balatero, and the latter's health status then, noting his recurrent chest pains, easy fatigability and intake of a total of five maintenance medicines. Dr. Lara-Orencia related Balatero's conditions to the POEA SEC, which listed CAD and Uncontrolled Hypertension as occupational diseases, and the physical and psychological stress, to which a seafarer is exposed. Dr. Lara-Orencia then concluded that Balatero cannot return to his job as 3rd Officer.⁶⁷

In contrast, the respondents, in their pleadings filed with the Court, do not amply explain why the Grade 7 Disability Rating, which they issued, should instead prevail. Repeatedly, the respondents relied on the supposed conclusive character of the findings of the company-designated physicians,

⁶⁴ Id. at 558-560.

⁶⁵ Supra note 48.

⁶⁶ Id. at 386.

⁶⁷ *Rollo* (G.R. No. 224532), pp. 63-64.

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without explaining in substance how they were arrived at.⁶⁸ The CA, on the other hand, highlighted Balatero's non-compliance with the mandatory procedure of referral to a third doctor, and no longer considered the inherent merits of the conflicting medical assessments made by Dr. Olalia and Dr. Garrido, on one hand, and Dr. Lara-Orencia, on the other.⁶⁹

The Court notes too that as pointed out by Balatero, Department of Health (DOH) Administrative Order (A.O.) No. 2007-0025 recommends non-issuance of fit-to-work certifications to seafarers "*with acute or chronic cardiovascular condition limiting physical activity, requiring more than two (2) maintenance oral medicines and close monitoring, or causing significant disability,*" specifically those (1) suffering from CAD, (2) has undergone Coronary Angioplasty within six months, with history of Uncontrolled Diabetes Mellitus, Hypertension and Dyslipidemia, and (3) Hypertension requiring three or more drugs, among others. Balatero falls within the foregoing category.

It also bears stressing that jurisprudence⁷⁰ is replete with doctrines granting permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.

In *précis*, the Court is compelled to reinstate the LA and NLRC's ruling granting Balatero permanent total disability compensation, and set aside the CA's disquisition that only benefits pertaining to Grade 7 Disability Rating should be awarded on the basis of the following: (1) Dr. Lara-Orencia's ample explanation on how she had arrived at a permanent total disability assessment; (2) the recommendations of DOH A.O. No. 2007-0025 on the issuance of fit-to-work certificates; and (3) jurisprudence granting permanent total disability compensation to seafarers suffering from hypertensive cardiovascular diseases, who were either under the treatment of, or issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.

Anent Balatero's claims for moral and exemplary damages, the Court finds no grounds to disturb the uniform conclusion of the LA, NLRC and CA that the respondents' acts did not evince bad faith. Balatero was paid his sickness allowance and his medical expenses were likewise shouldered by the respondents.

⁶⁸ Id. at 112-113; *rollo* (G.R. No. 224565), pp. 46-48.

⁶⁹ *Rollo* (G.R. No. 224532), pp. 93-94.

⁷⁰ Please see *Valenzona v. Fair Shipping Corporation, et al.*, 675 Phil. 713 (2011); *Oriental Shipmanagement Co., Inc. v. Bastol*, 636 Phil. 358 (2010); *Iloreta v. Philippine Transmarine Carriers, Inc., et al.*, 622 Phil. 832 (2009).

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As for Balatero's claim for attorney's fees, the LA and NLRC had granted the same, but which the CA later reversed. Since Balatero had been compelled to litigate due to the respondents' denial of his valid claims, the Court accordingly reinstates the award.⁷¹

Other matters

On the ground of mootness, the Court perceives no necessity to address the rest of the issues raised by Balatero. Pending the proceedings before the CA, the respondents had conditionally paid Balatero the amount of US\$66,000.00, with the provision that in case of a reversal of the NLRC's judgment by the CA or SC, the sum shall be returned.⁷² There is no more amount due and owing to Balatero, which Aaron and Bonoan, as corporate officers of SCMI, may be held responsible for. As to what matters may be raised in a litigant party's MR, the Court, finding the LA and NLRC's conclusions adverse to those of the CA's, had already reconsidered all the parties' allegations despite their being mere reiterations of those proffered in the proceedings below.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Court **SETS ASIDE** the Decision and Resolution, dated February 4, 2016 and May 2, 2016, respectively, of the Court of Appeals, in CA-G.R. SP No. 142095, which ordered Senator Crewing (Manila), Inc. and Aquanaut Shipmanagement Ltd. to solidarily pay Constancio Caderao Balatero the sum of US\$20,900.00 as compensation corresponding to Grade 7 Disability Rating. Accordingly, the Court **REINSTATES** the Decision dated December 29, 2014, of the Labor Arbiter in NLRC NCR OFW Case No. (M) 07-09272-14, which was affirmed by the National Labor Relations Commission in its Resolution dated June 8, 2015 in NLRC LAC No. 05-000403-15(4), awarding Constancio Caderao Balatero permanent total disability compensation of US\$60,000.00, plus ten percent (10%) attorney's fees. In view of the payment of the amount of ₱3,019,368.00, then the equivalent of the total award of US\$66,000.00, tendered to Constancio Caderao Balatero on September 29, 2015, interest shall no longer be imposed, and this judgment is already deemed **SATISFIED**.

⁷¹ *Iloreta v. Philippine Transmarine Carriers, Inc., et al.*, id. at 843.

⁷² *Rollo* (G.R. No. 224565), pp. 132-134.

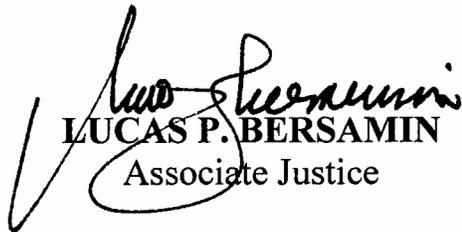
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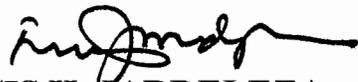
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


NOEL GIMENEZ TIJAM
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.


PRESBITERO J. VELASCO, JR.
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

CERTIFIED TRUE COPY

Mis DC Batt
MIRIAM S. SORIANO CLEVENING III
Deputy Division Clerk of Court
August 3, 2017

