Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LORNA B. DIONIO,
Petitioner,

- versus -

ND SHIPPING AGENCY AND ALLIED SERVICES, INC., CARIBBEAN TOW AND BARGE (PANAMA) LTD.,
Respondents.

G.R. No. 231096

Present:

LEONARDO-DE CASTRO, *J.*,
Chairperson,
BERSAMIN,
LEONEN,
REYES, JR., A.B., and
GESMUNDO, *JJ.*

Promulgated:

August 15, 2018

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DECISION

GESMUNDO, *J.*:

This is an appeal by *certiorari* seeking to reverse and set aside the February 21, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 05007. The CA affirmed the September 29, 2009 Decision[2] and November 27, 2009 Resolution[3] of the National Labor Relations Commission *(NLRC)* in NLRC Case No. OFW-VAC-08-000046-09. The NLRC vacated and set aside the May 29, 2009 Decision[4] of the Labor Arbiter *(LA)* in SRAB Case No. 06-OFW(M)-08-11-0042, a case for death benefits and attorney's fees of a seafarer.

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[1] *Rollo*, pp. 34-49; penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring.
[2] Id. at 79-92; penned by Presiding Commissioner Violeta Ortiz-Bantug, with Commissioners Aurelio D. Menzon and Julie C. Rendoque, concurring.
[3] Id. at 106-108.
[4] Id. at 69-77; penned by Executive Labor Arbiter Danilo C. Acosta.

The Antecedents

On May 9, 2006, Gil T. Dionio, Jr. *(Gil),* the husband of Lorna B. Dionio *(petitioner),* was hired by ND Shipping Agency and Allied Services, Inc. *(ND Shipping),* for its foreign principal, Caribbean Tow and Barge (Panama), Ltd., collectively referred as respondents, to serve as a Second Engineer on board the vessel MT Caribbean Tug. He had a basic monthly salary of US$772.00 and the period of his employment contract was six (6) months.[5] Before assuming his employment, Gil had a clean bill of health evidenced by his Medical and Laboratory Examination Result.[6]

Upon the expiration of his employment contract, respondents and Gil mutually consented to extend the latter's contract until February 13, 2007.[7]

On January 30, 2007, while in the course of his extended employment, Gil suffered from a Urinary Tract Infection *(UTI)* and prostate enlargement. While the vessel was in Turk and Caicos Islands, he was examined by Dr. Victoria Smith *(Dr. Smith)*. In the Medical Report[8] dated January 31, 2007, Dr. Smith confirmed that Gil indeed suffered UTI and an enlarged prostate. She declared him unfit for work and recommended his repatriation. Dr. Smith also advised that Gil be assessed by another physician specializing on surgery and prostate examination. On February 13, 2007, Gil was medically repatriated.

On February 14, 2007, Gil arrived in the Philippines. He immediately went to ND Shipping's office where he was issued a Referral Slip[9] for medical examination at the Micah Medical Clinic and Diagnostic Laboratory. The referral slip, however, stated that the expenses shall be paid for by Gil.

On the same day, a representative of the ND Shipping sent an email[10] to K. Arnesen Shipping, the owner of the vessel, requesting for the medical check-up of Gil at the ship owner's expense. The request was denied and stated that Gil must arrange for his own medical check-up. Thus, Gil was never examined by the company-designated physician.

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[5] Id. at 149.
[6] Id. at 150.
[7] Id. at 151.
[8] Id. at 152-153.
[9] Id. at 154.
[10] Id. at 155.

Gil's health condition became worse. Sometime in February 2007, he went for a medical examination at Biñan Doctor's Hospital in Biñan, Laguna at his own expense.

On April 2, 2007, Gil signed a Release, Waiver and Quitclaim[11] in favor of respondents and he received the total amount of ₱31,200.00. It stated that he was discharging ND Shipping, its stockholders, directors and/or its employees from any and all actions in connection with his employment with respondents. According to petitioner, her husband was in a hapless condition when he signed the waiver.

As Gil's health was deteriorating, he went home to his hometown in Iloilo. On June 5, 2007, he was admitted at the Iloilo Doctor's Hospital. In the Medical Certificate[12] dated June 20, 2007, Dr. Glenn Maclang *(Dr. Maclang)* diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." He also remarked that Gil undergo bilateral orchiectomy.

Due to his worsening condition, on March 12, 2008, Gil was again hospitalized at the Seamen's Hospital - Iloilo. In the Medical Certificate[13] dated March 24, 2008, Dr. Suset Gargalicana *(Dr. Gargalicana)* diagnosed him with "Prostatic Cancer with Bone Metastasis." She recommended the treatment of blood transfusion. Nonetheless, Dr. Gargalicana could not determine the period of his healing.

On March 26, 2008, Gil was again admitted at the West Visayas State University Medical Center. In the Medical Certificate[14] dated April 12, 2008, Dr. Elma Marañon *(Dr. Marañon)* diagnosed Gil with "Prostatic Cancer Stage IV with Bone Metastasis and Cord Compression Anemia Secondary" which caused the paralysis of his lower extremities.

On May 4, 2008, after more than a year of battling cancer, Gil succumbed to his illness. In the Death Certificate[15] issued by Dr. Rhodelyn Almenana *(Dr. Almenana)*, it was stated that Gil died due to cardiopulmonary arrest secondary to multiple organ failure. The underlying cause of his death was due to prostatic malignancy with pulmonary metastasis while other significant conditions contributing to his death were pneumonia in the immunocompromised host and UTI.

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[11] Id. at 159-160.
[12] Id. at 156.
[13] Id. at 157.
[14] Id. at 158.
[15] Id. at 161-162.

Thus, petitioner, the legal wife of Gil, filed a complaint before the LA for payment of death benefits, sickness allowance, burial expenses, moral and exemplary damages, and attorney's fees.

For their part, respondents denied any liability. They contended that Gil's death is not compensable because he did not die during the term of his contract and his illness is not one of those listed as an occupational disease under Section 32 of the 2000 Philippine Overseas Employment Administration – Standard Employment Contract *(POEA-SEC)*. Respondents also argued that Gil failed to submit himself for a post-employment medical examination within three (3) days after repatriation even though he was issued a referral slip to the company-designated physician.

The LA Ruling

In its decision dated May 29, 2009, the LA ruled in favor of petitioner. It held that it was clear that Gil was declared unfit for work on January 31, 2007 and he was medically repatriated on February 13, 2007, hence, he was entitled to sickness allowance. The LA held that respondent was wrong when it turned down the request of Gil to be medically evaluated and treated. It emphasized that Gil was forced to submit himself to further medical examination at his own expense. The LA observed that the illness of Gil was work-related because he was medically repatriated due to his prostate ailment and his cause of death was prostatic malignancy with pulmonary metastasis. It ruled that it is not required that the seafarer's ailment be acquired during his employment for it is sufficient that his employment contributed, even in a small measure, to the development of the disease. The *fallo* of the LA ruling states:

> WHEREFORE, premises considered[,] respondent is hereby directed to pay complainant the following:
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> | | | |
> |---|---|---|
> | 1. | Sickness allowance ..... | US$3,088.00 |
> | 2. | Death Benefits ..... | US$50,000.00 |
> | [3.] | Additional Compensation for Two children of the deceased Below 21 years old ..... | US$14,000.00 |
> | 4. | Burial Expenses ..... | US$1,000.00 |
> | | | US$68,088.00 |
> | | Or its Philippine peso equivalent of | Php3,234,180.00 |
> | 5. | Attorney's fees ..... | 323,418.00 |
> | | Total ..... | Php3,557,598.00 |

> The rest of the claims are dismissed for lack of merit.
>
> SO ORDERED.[16]

Aggrieved, respondents appealed to the NLRC.

The NLRC Ruling

In its decision dated September 29, 2009, the NLRC granted the appeal and reversed and set aside the LA ruling. It held that Gil failed to submit himself to the medical examination of the company-designated physician within three (3) days from repatriation, hence, he violated the POEA-SEC. The NLRC stated that Gil was given a referral slip but he did not go to the company-designated physician. It also found that petitioner failed to present sufficient evidence to prove that Gil's illness was work-related. The dispositive portion of the NLRC ruling reads:

> WHEREFORE, premises considered, the decision of ELA Danilo C. Acosta is hereby vacated and set aside. A NEW Decision is entered dismissing this case for lack of merit.
>
> The monetary award in the assailed decision is hereby deleted for lack of legal and factual basis.
>
> SO ORDERED.[17]

Petitioner moved for reconsideration but it was denied by the NLRC in its resolution dated November 27, 2009.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

In its resolution dated October 26, 2010, the CA dismissed the petition for not having been filed within the 60-day reglementary period. In its resolution dated June 21, 2011, the CA declared that the October 26, 2010 resolution had attained finality.[18]

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[16] Id. at 77.
[17] Id. at 91.
[18] Id. at 190.

Petitioner filed a motion for reconsideration and recall of entry of judgment. In its February 29, 2012, the CA recalled its June 21, 2011 resolution. However, in its February 1, 2013 resolution, the CA eventually denied petitioner's motion for reconsideration because it was not persuaded to relax the procedural rules.[19]

Unconvinced, petitioner filed a petition for review on *certiorari* before the Court, docketed as G.R. No. 206063, entitled *Lorna B. Dionio v. NLRC.*

In its resolution dated October 8, 2014, the Court found compelling reasons to relax the procedural rules and required the CA to tackle the case on the merits. The dispositive portion of the Court's resolution states:

> WHEREFORE, the petition is GRANTED. The October 26, 2010 and February 1, 2013 Resolutions of the Court of Appeal (CA) in CA-G.R. CEB SP No. 05007 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Appeals for proper disposition of the merits of the case.[20]

Respondents filed a motion for reconsideration but it was denied by the Court in its resolution dated March 16, 2015.[21] Hence, the case was remanded to the CA.

The CA Ruling

In its decision dated February 21, 2017, the CA denied the petition on the merits. It held that petitioner failed to prove with substantial evidence that the illness of Gil was work-related. The CA ruled that petitioner cannot simply rely on the disputable presumption that the illness of a seafarer is work-related. Further, it opined that Gil failed to comply with the mandatory post-employment medical examination within three (3) days upon repatriation. The CA observed that petitioner did not sufficiently establish that ND Shipping refused to pay for Gil's medical examination. It disposed the case in this wise:

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[19] Id. at 191.
[20] Id.
[21] Id.

> IN LIGHT OF ALL THE FOREGOING, the petition for *certiorari* is DISMISSED. The Decision dated September 29, 2009 and the Resolution dated November 27, 2009 of the National Labor Relations Commission, Seventh Division, in NLRC Case No. OFW-VAC-08-000046-09, dismissing the complaint for payment of death benefits and other money claims filed by petitioner Lorna B. Dionio, are AFFIRMED.
>
> SO ORDERED.[22]

Hence, this petition raising the sole issue:

> **THE COURT A QUO GRAVELY ERRED IN DISMISSING THE *PETITION FOR CERTIORARI* FILED BY PETITIONER UNDER RULE 65 OF THE RULES OF COURT ON CA-G.R. CEB SP No. 05007 FOR FAILING TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENT PROVIDED UNDER THE POEA-SEC.**[23] (italics supplied)

Petitioner argues that Gil complied with the mandatory post-employment medical examination within three (3) days upon repatriation but the company-designated physician ignored him because ND Shipping did not heed his request to shoulder the medical expenses. Thus, Gil was forced to seek medical examination to different hospitals at his own expense. Petitioner also underscored that a seafarer is allowed to seek the opinion of his physician of choice.

Further, petitioner avers that Gil's illness was work-related. She highlighted that while on board respondents' vessel, her husband Gil was already diagnosed with UTI and prostate enlargement and he later died of prostate cancer. Petitioner emphasized that UTI and prostate enlargement are symptoms of prostate cancer and he should have been immediately treated by respondents upon repatriation. She also contends that by the nature of Gil's work on board the vessel, he was naturally exposed to stress and strains that are calculated to have affected his health and, even on a small degree, contributed to the development of his disease.

In their Comment,[24] respondents countered that petitioner raises issues that would require an examination of the records and that the Court cannot entertain questions of fact. They also alleged that Gil's illness was not work related because petitioner failed to prove that his work on board the vessel

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[22] Id. at 48.
[23] Id. at 11.
[24] Id. at 186-225.

was the cause of his illness or that his work aggravated his condition. Respondents further averred that Gil failed to comply with the mandatory post-employment examination with the company-designated physician. They are also doubtful that Gil's health was deteriorating because he was still able to travel from Biñan, Laguna to Iloilo City for his medical examinations. Respondents insisted that the findings of the CA must be given due respect.

In her Reply,[25] petitioner reiterated that Gil complied with the mandatory post-examination requirement because he immediately reported to ND Shipping upon his arrival in the Philippines. However, ND Shipping refused to shoulder his medical expenses as evidenced by the referral slip to the company-designated physician.

The Court's Ruling

The Court finds the petition meritorious.

Generally, a question of fact cannot be entertained by the Court; exceptions

Petitioner chiefly raises the issue of whether Gil complied with the mandatory post-employment examination and work-relatedness of his illness. The questions posited are evidently factual because it requires an examination of the evidence on record. Well-settled is the rule that the Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.[26]

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly

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[25] Id. at 329-337.

[26] *Gepulle-Garbo, et al. v. Spouses Garabato,*750 Phil. 846, 855 (2015).

considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[27]

Here, two of the exceptions exists – the findings of absence of facts are contradicted by the presence of evidence on record and the findings of the CA and the NLRC are contrary to those of the LA. They had different appreciations of the evidence in determining the propriety of petitioner's claim for death benefits. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented.

Post-employment medical examination of seafarers

Sec. 20(B) (3) of the 2000 Amended POEA-SEC *(Sec. 20(B) (3)*, lays down the procedure in order for a seafarer to claim disability benefits, to wit:

> COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> xxxx
>
> 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. (emphases supplied)

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[27] *Carbonell v. Carbonell-Mendes,* G.R. No. 205681, July 1, 2015, 762 SCRA 529, 537.

The rationale for this requirement is that reporting the illness or injury by the seafarer within three (3) working days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[28]

Moreover, the provision mandated a period of three (3)-working day period within which the seafarer should report so as to ensure that the medical diagnosis can be promptly arrived at. It must be underscored that the company-designated physician has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer; otherwise, the disability claim shall be granted.[29]

Nevertheless, in *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*[30] *(De Andres),* the Court stated that there are exceptions to the mandatory post-employment examination, to wit:

> First, Section 20 (B) (3) expressly provides that a seafarer is not required to submit himself to post-employment medical examination by a company-designated physician within three (3) working days from repatriation when he is physically incapacitated to do so. In such event, a written notice to the agency within the same period is deemed as compliance.
>
> xxxx
>
> *Second,* another exception is when the seafarer failed to timely submit himself to post-employment medical examination due to the employer's fault. xxx [This exception was established by jurisprudence in response to **an employer's unscrupulous practice of] deliberately or inadvertently refusing to refer the seafarer to the company-designated physician to deny his disability claim.**[31] (emphasis supplied)

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[28] *Scanmar Maritime Services, Inc. v. De Leon*, G.R. No. 199977, January 25, 2017, citing *Wallem Maritime Services, Inc. v. Tanawan,* 693 Phil. 416 (2012).
[29] See *Elburg Shipmanagement Phils., Inc. et al. v. Quiogue, Jr.*,765 Phil. 341, 360 (2015).
[30] G.R. No. 217345, July 12, 2017.
[31] Id.

In *Interorient Maritime Enterprises, Inc. v. Remo,*[32] the seafarer therein reported to the employer for post-employment medical examination. The employer, however, did not refer him to a company-designated physician because he allegedly signed a quitclaim. The Court ruled that the absence of post-employment medical examination should not be taken against the seafarer because the employer declined to provide the same pursuant to an invalid quitclaim, which lacks sufficient consideration.

Similarly, in *Apines v. Elburg Shipmanagement Philippines, Inc., et al.,*[33] the repatriated seafarer reported to the employer, however, he was not referred to the company-designated physician. The Court emphasized that the employer, and not the seafarer, has the burden to prove that the seafarer was referred to a company-designated doctor. It was also ruled therein that without the assessment of the said doctor, there was nothing for a seafarer's own physician to contest, rendering the requirement of referral to a third doctor as superfluous.

Finally, in *De Andres,* the seafarer immediately reported to the employer after repatriation. However, before he could even commence the post-employment medical examination, the employer pre-empted him and stated that it would not entertain any of his claims and that he should find a lawyer instead. Thus, the seafarer was not anymore given an opportunity to submit himself to a post-employment medical examination by a company-designated physician.

In the same case, the Court ruled that the *onus* of establishing that the seafarer was referred to a company-designated physician is on the employer. The burden to prove with evidence whether the seafarer was referred to a company-designated doctor rests on the employer as the latter has custody of the documents, and not the seafarer. Accordingly, a seafarer has done his duty under Sec. 20(B) (3) once he reported to the employer within three (3) working days from repatriation. Consequently, upon the timely reporting, the employer has the duty to refer the seafarer to a company-designated physician for a post-employment medical examination knowing fully well that he has a claim for disability benefits.[34]

To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation.

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[32] 636 Phil. 240 (2010).
[33] G.R. No. 202114, November 9, 2016, 808 SCRA 239.
[34] Supra note 30.

Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[35] Moreover, it is the burden of the employer to prove that the seafarer was referred to a company-designated doctor.

Respondents failed to properly refer Gil to the company-designated physician

In this case, petitioner argues that Gil sufficiently complied with the mandatory post-employment medical examination under the POEA-SEC. When Gil was medically repatriated to the Philippines, he immediately went to the office of ND Shipping on February 14, 2007, for his post-employment medical examination. However, ND Shipping did not heed his request for an extended medical check-up at the ship owner's expense and the company-designated physician did not conduct the said medical examination. Thus, he was forced to seek medical assistance at his own expense elsewhere.

The argument has merit.

Records show that when Gil was repatriated on February 13, 2007, respondents were fully aware that he was medically repatriated and that he was requesting for an extended check-up at the ship owner's expense. The medical repatriation was due to the earlier medical report, which stated that Gil should see another doctor. The email of the representative of the respondents reads:

DATE	:	WED 14 FEBRUARY 2007
TO	:	K. ARNESEN SHIPPING A/S [ship owner]
ATTN	:	KJELL
CC	:	NDS – DAVAO
FROM	:	NDS – MANILA
SUBJECT	:	CARIBBEAN TUG – REPAT 2/E GIL T. DIONIO FOR MEDICAL CHECK-UP

KJELL,

REPAT 2/E DIONIO REPORTED AT NDS-MANILA THIS MORNING DIRECT FROM [THE] AIRPORT.

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[35] Id.

HE IS REQUESTING FOR [AN] EXTENDED MEDICAL CHECK-UP BECAUSE OF HIS ILLNESS AT THE [SHIP OWNER'S EXPENSE].

ACCORDING TO HIS MEDICAL REPORT[,] HE SHOULD SEE ANOTHER DOCTOR.

WE AWAIT FOR YOUR COMMENT AND APPROVAL.

THANK YOU & BEST REGARDS,

CAPT. SOLOMON[36] (emphasis supplied)

Further, the Referral Slip to the Micah Medical Clinic & Diagnostic Laboratory[37] dated February 14, 2007 proves that Gil indeed immediately reported to the office of ND Shipping upon his repatriation in the Philippines. The Court is of the view that petitioner established with substantial evidence that Gil complied with the reportorial requirement. Accordingly, pursuant to *De Andres,* **Gil has performed his duty under Sec. 20(B) (3) to immediately report to the employer within three (3) working days from repatriation.** Consequently, at that moment, it was the duty of respondents to refer Gil to a company-designated physician for a post-employment medical examination.

However, respondents did not perform their duty because they refused to refer Gil to the company-designated physician at their expense. The email-reply of the ship owner to ND Shipping states:

Date: Wed, 14 Feb 2007 13:21:14 +0100

From: "Kjell Arnesen" <kjell@kas-shipping.com>

Subject: SV: CARIBBEAN TUG – REPAT 2/E GIL T. DIONIO FOR MEDICAL CHECK-UP

To: "Naido Duldulao" <ndship@yahoo.com.ph>

He must arrange for his own medical now.
If his check up proves that he has a sickness which can be related to the vessel, then obviously he will be covered under vessels P and I cover.
Kjell[38] (emphasis supplied)

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[36] Id. at 155.
[37] Id. at 154.
[38] Supra note 36.

Evidently, when the ship owner replied to ND Shipping that Gil must arrange for his own medical check-up, it did not anymore heed the request of Gil to have a post-employment medical examination at the expense of the ship owner. On the other hand, the referral slip states:

> Instruction To Worker:
>
> 1. **You are scheduled for Medical Examination on _____, 20____ at MICAH MEDICAL CLINIC & DIAGNOSTIC LABORATORY**
>
> xxxx
>
> 3. The Examination to be performed and the rates to be paid are indicated at the back of this page. PLEASE ASK FOR AN OFFICIAL RECEIPT FOR ANY PAYMENT GIVEN.
>
> Type of payment: (please check) [x] **Applicant paid** [ ] Billed Agency
>
> xxxx[39] (emphases supplied)

Clearly, the referral slip given to Gil provides that he will pay for the expenses of his post-employment medical examination at the company-designated physician. Glaringly, respondents did not even state when Gil should visit the company-designated physician, raising doubts on their sincerity to medically assess and treat him. Respondents left Gil to fend for himself. As he could not secure the medical assistance from respondents, Gil had no choice but to seek medical treatment elsewhere at his own expense.

Respondents argue that Gil should first shoulder his medical expenses with the company-designated physician. If proven that his illness was work-related, only at that moment will respondents shoulder his medical treatment.

This argument is wrong and unjust.

Sec. 20(B) (2) of the POEA-SEC states:

> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the**

[39] Supra note 37.

> **employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.** (emphasis and underscoring supplied)

It is clear from the cited provision that it is the employer that shall shoulder the cost of the seafarer's medical treatment after his repatriation until such time that he is declared fit to work or the degree of his disability has been established by the company-designated physician. The POEA-SEC is the law between the seafarer and his or her employer, thus, its provisions must be respected. A seafarer who had just been medically repatriated is already burdened with the obligation to immediately report to his employer in spite of his illness or injury. His failure to report forfeits his right to claim disability benefits. Thus, the POEA-SEC deemed it proper not to impose any financial burden to the seafarer until such time that he is fit to work or until his degree of disability is established by the company-designated physician.

The importance of respecting the provision regarding post-employment medical examination cannot be overemphasized. The reporting of the seafarer to the employer from his repatriation initiates the procedure for the determination of the disability or fitness of the seafarer. Upon his reporting, he shall then be referred by the employer to the company-designated physician for medical diagnosis and treatment, at the employer's cost.[40] The company-designated physician has 120 or 240 days, depending on the circumstances to complete the medical assessment and to determine whether the seafarer is fit to work or to establish the degree of disability.[41] The seafarer may avail the separate medical assessment of his physician of choice. If there is a difference between the medical assessment of the company-designated physician and the seafarer's physician of choice, the seafarer's medical condition shall be referred to a third doctor, whose medical assessment shall be deemed final.[42]

Evidently, the first step in the procedure provided by the POEA-SEC is essential. Any improper act of the parties that causes the non-compliance with the said procedure should not be tolerated by the Court. In this case, since respondents unreasonably denied the request of Gil to be referred to the company-designated physician at the former's expense, in spite of his timely reporting, they should be held liable.

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[40] Supra note 30.
[41] Supra note 29 at 355.
[42] See *Marlow Navigation Philippines, Inc.et al. v. Osias,* 773 Phil. 428, 446 (2015).

Gil was forced to seek medical assistance elsewhere

As respondents refused to answer the medical treatment of Gil upon his repatriation, contrary to the provisions of the POEA-SEC, Gil was never examined by the company-designated physician. *A fortiori,* respondents could not present any medical report prepared by the company-designated physician on the medical condition of Gil. They could not state whether Gil was fit to return to work or the specific grading of his disability.

It is the doctor's findings that should prevail as he or she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. The doctor's declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.[43] Absent the company-designated physician's medical assessment, respondents could only present unsupported allegations and suppositions regarding Gil's medical condition.

On the other hand, as respondents completely ignored the medical needs of Gil upon his repatriation, he had no choice but to seek medical attention from other physicians at his own expense. In February 2007, Gil's health became worse and he went for a medical examination at Biñan Doctor's Hospital in Biñan, Laguna.

As Gil's health was deteriorating, he went home to his province in Iloilo and on June 5, 2007, was admitted at the Iloilo Doctor's Hospital. In the medical certificate dated June 20, 2007, Dr. Maclang diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." On March 12, 2008, Gil was again hospitalized at the Seamen's Hospital - Iloilo. In the medical certificate dated March 24, 2008, Dr. Gargalicana diagnosed him with "Prostatic Cancer with Bone Metastases." Notably, Dr. Gargalicana could not determine the period of healing for Gil's condition.

On March 26, 2008, Gil was again confined at the West Visayas State University Medical Center. In the medical certificate dated April 12, 2008, Dr. Marañon diagnosed Gil with "Prostatic Cancer Stage IV with Bone Metastasis and Cord Compression Anemia Secondary" which caused the paralysis of his lower extremities. On May 4, 2008, Gil died and the death certificate, issued by attending physician Dr. Almenana, stated that the

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[43] *INC Shipmanagement, Inc. et al. v. Rosales,* 744 Phil. 774, 786 (2014).

underlying cause of his death was prostatic malignancy with pulmonary metastasis.

Gil consulted four physicians, namely: Dr. Maclang, Dr. Gargalicana, Dr. Marañon and Dr. Almenana. All of them issued medical findings contained in a certificate. They consistently found that Gil had prostatic cancer. At one point, Dr. Gargalicana noted in her medical certificate that she could not determine the period of healing of Gil's disease.

Between the non-existent medical assessment of a company-designated physician of respondents and the medical assessment of Gil's physicians of choice, the latter evidently stands.[44] Respondents were obliged to refer Gil to a company-designated physician and shoulder the medical expenses, but they reneged on their responsibility and simply ignore the plight of their seafarer.

Petitioner properly invokes the disputable presumption that an illness of a seafarer is work-related

The POEA-SEC defines work-related injury as injury resulting in disability or death arising out of and in the course of employment and as any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this contract with the conditions set therein satisfied. Sec. 32-A thereof provides:

> Section 32-A. OCCUPATIONAL DISEASES
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer.

However, the list of illness/diseases in Sec. 32-A does not exclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties. So much so that Sec. 20(B) (4) of the

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[44] Supra note 30.

same explicitly provides that the liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: **those illnesses not listed in Sec. 32 of this Contract are disputably presumed as work-related**. In other words, a disputable presumption is created in favor of compensability. Illnesses not listed in Sec. 32 are disputably presumed as work-related. This means that even if the illness is not listed under Sec. 32-A of the POEA-SEC as an occupational disease or illness, it will still be presumed as work-related, and it becomes incumbent on the employer to overcome the presumption.[45]

Nevertheless, this disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.[46]

It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death.[47]

In *Licayan v. Seacrest Maritime Management, Inc.,*[48] the Court ruled that the seafarer was able to establish with substantial evidence that his illness of panic disorder was work-related. Thus, there was a disputable presumption that his disease was work-related. On the other hand, it was found therein that the employer failed to overcome the said disputable presumption because it failed to substantiate its argument that panic disorder was not work-related because the company-designated physician did not consider the varied factors to which the seafarer was exposed to while on board the vessel.

In this case, Gil suffered from prostate cancer. Petitioner argues that the said disease was contracted while on board the vessel or, at the very least, was a pre-existing condition. The stress and strains that Gil was exposed to on board the vessel contributed, even to a small degree, to the

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[45] *Licayan v. Seacrest Maritime Management, Inc., et al.*, 773 Phil. 648, 658 (2015).
[46] *Jebsen Maritime, Inc., et al. v. Ravena*, 743 Phil. 371, 388 (2014).
[47] *Canuel v. Magsaysay Maritime Corp., et al.*, 745 Phil. 252, 272 (2014), citing *Wallen Maritime Service, Inc., v. NLRC*, 376 Phil. 378 (1999).
[48] Supra note 45.

development or deterioration of his disease. Moreover, Gil was already suffering from UTI and prostate enlargement, which are symptoms of prostate cancer, while on board the vessel. Petitioner presented the medical findings of the doctor that attended to him during the period of his employment. She also presented the different medical certificates of Gil's physicians until his demise. Thus, she concludes that Gil's disease was work-related and respondent failed to overcome the disputable presumption under the POEA-SEC.

The Court finds the argument impressed with merit.

Prostate cancer or carcinoma of prostate is the development of cancer in the prostate gland in the male reproductive system.[49] Prostate cancer is an age related male problem, with high incidence and mortality in the USA, Europe and low prevalence in Asia. Early diagnosis and treatment has better prognosis.[50] The primary risk factors are obesity, age and family history. Prostate cancer is very uncommon in men younger than 45, but becomes more common with advancing age. Men with high blood pressure are more likely to develop prostate cancer. There is a small increased risk of prostate cancer associated with lack of exercise.[51]

Prostate cancer symptoms can include erectile dysfunction, blood in the semen, pain in the lower back, hips, and/or upper thighs, **urinary problems, or enlargement of the prostate**. Enlargement of the prostate can lead to obstruction with reduced flow, hesitancy, post-micturition dribbling, or even retention, bleeding, and/or infection.[52]

In the case at bench, during Gil's employment contract and while the vessel was in Turk and Caicos Islands, he was examined by Dr. Smith. In the medical report dated January 31, 2007, Dr. Smith confirmed that Gil indeed suffered UTI and an enlarged prostate. She declared him unfit for work and recommended his repatriation. Dr. Smith also advised that Gil must be assessed by another physician specializing on surgery and prostate examination. Thus, on the basis of such medical finding, Gil was medically repatriated on February 13, 2007.

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[49] Murtaza Mustafa, AF.Salih, EM.Illzam, AM.Sharifa, M.Suleiman and SS.Hussain, *Prostate Cancer: Pathophysiology, Diagnosis, and Prognosis*, IOSR JOURNAL OF DENTAL AND MEDICAL SCIENCES, Volume 15, Issue 6 Ver. II, page 4 (June, 2016).

[50] Id. at 8.

[51] Id. at 5.

[52] Dr. James Nicholas, *Clinical features and diagnosis of prostate cancer,* PRIMER ON PROSTATE CANCER, 1st Edition, page 7 (2014).

As correctly pointed out by petitioner, Gil was already suffering from UTI and enlargement of the prostate while on board the vessel. These are symptoms of prostate cancer. Thus, Dr. Smith advised that Gil be treated by another physician and recommended his repatriation. Further, at the time of his employment, Gil was already 54 years old.[53] He was already within the age group that is susceptible to prostate cancer. To add to his dilemma, Gil was exposed to the stress and strains on board the vessel that every seafarer faces. Respondents should have been mindful of the health condition of Gil, especially when Dr. Smith already found him to be suffering from UTI and an enlarged prostate during his employment.

As discussed-above, early diagnosis and treatment of prostate cancer has better prognosis or probability of recovery. However, instead of immediately addressing the illness of Gil upon his repatriation, respondents simply ignored his request for extensive medical examination at the expense of the ship owner, contrary to the provisions of the POEA-SEC. Gil was left on his own.

Due to the indifference of respondents to the medical condition of Gil, it was only on June 5, 2007, when Gil went to his hometown in Iloilo and was admitted at the Iloilo Doctor's Hospital, that he was able to receive extensive medical treatment at his own expense. In the medical certificate dated June 20, 2007, Dr. Maclang diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." From the time of his repatriation, it took almost four (4) months before the illness of Gil was confirmed; regrettably, it was already at the later stage of cancer and it was already spreading.

The medical certificates of his chosen physicians, Dr. Maclang, Dr. Gargalicana, Dr. Marañon and Dr. Almenana, consistently found that Gil suffered from prostate cancer. Notably, Dr. Gargalicana attested to the severity of his illness as she could not determine its period of healing. Consequently, the illness of Gil was already permanent and total, and resulted to his death.

Based on these pieces of evidence, the Court finds that petitioner proved with substantial evidence that the illness of Gil was work-related. Thus, she can invoke the disputable presumption that her husband's decease was worked-related. It is now the burden of respondent to overcome such disputable presumption by presenting their own evidence.

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[53] Supra note 6.

However, respondents miserably failed to overcome the said disputable presumption of the work-related illness. They did not present a scintilla of proof to establish the lack of casual connection of the Gil's disease with his employment as a seafarer. No medical finding of a company-designated physician was presented because respondents did not observe Gil's plea for an extensive medical check-up at the ship owner's expense. The said medical findings of the company-designated physician could have been the proper avenue to determine the seafarer's illness, whether it was, indeed, work-related or its specific grading of disability.

This case is similar to the case of *Leonis Navigation Co., Inc. v. Villamater*,[54] where the seafarer was diagnosed with colon cancer during the period of his employment. Although colon cancer was not listed as an occupational disease, the Court found that there was a disputable presumption of compensability. It noted that the seafarer's age of 58, where the incidence of colon cancer is more likely, and the lack of food choice in the vessel contributed to the development of his disease. On the other hand, the employer therein failed to overcome the disputable presumption of compensability because it was not able to present any medical explanation.

The Release, Waiver and Quitclaim signed by Gil deserves scant consideration

In their last ditch attempt to escape liability, on April 2, 2007, respondents entered into a release, waiver and quitclaim with Gil. It stated that he was discharging ND Shipping, its stockholder, director and/or its employees from any and all actions in connection with his employment with respondents.

The Court finds that the said waiver must be set aside.

To be valid, a deed of release, waiver and/or quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is

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[54] 628 Phil. 81 (2010).

ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.[55]

In this case, the release, waiver and quitclaim did not state the specific consideration that Gil received from respondents. Nevertheless, petitioner stated that respondents gave Gil a total amount of ₱31,200.00, which was confirmed by the court and tribunals *a quo.* Manifestly, this consideration is greatly disproportionate to the illness that Gil suffered. He already had prostate cancer and respondents still refused to grant him medical treatment as provided under the POEA-SEC. The gravity of his illness deteriorated his health, which eventually lead to his death on May 4, 2008. In spite of the severity of his illness, respondent only gave Gil ₱31,200.00 and he had to shoulder the expense of his own medical treatment. The compensation is not even equivalent to the basic salary he receives as a seafarer.

Further, it was not proven that the contents of the waiver were explained to him by respondents or their representatives. As argued by petitioner, Gil was in a worsening and hapless condition when he signed the said waiver. He was not even given any medical assistance by respondents. Thus, he had no other option but to sign the document in favor of respondents in order to receive a meager compensation for his medical needs.

Verily, the release, waiver and quitclaim dated April 2, 2007, must be struck down because it did not have a valid consideration, the contents were not explained to Gil, and his deteriorating health forced him to sign the same.

It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the former's favor. The policy is to extend the applicability to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.[56]

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[55] *City Government of Makati v. Odeña,* 716 Phil. 284, 319 (2013), citing *Interorient Maritime Enterprises, Inc. v. Remo,* 636 Phil. 240 (2010).

[56] *Metropolitan Bank and Trust Co. v. National Labor Relations Commission, et al.* 607 Phil. 359, 375 (2009).

Final Note

The Court acknowledges the arduous and protracted legal battle that petitioner endured to uphold the right of her deceased husband. These proceedings could have been avoided had respondents provided Gil with the proper medical treatment upon his repatriation, pursuant to the provisions of the POEA-SEC.

Sec. 20(B) specifically outlines the procedure in determining the proper compensation of a seafarer's disability. The rigorous process therein aims to provide a fair and definitive assessment on the seafarers' medical condition and to ensure that they will receive a just compensation for their injuries. At the same time, it protects the interest of the employer by ensuring that only genuine disability or injuries shall be entitled to compensation.[57] The Court shall rectify any unlawful deviations from the procedure laid down by the POEA-SEC and ensure that social justice is observed.

WHEREFORE, the petition is **GRANTED.** The February 21, 2017 Decision of the Court of Appeals in CA-G.R. SP No. 05007 is hereby **REVERSED** and **SET ASIDE**. The May 29, 2009 Decision of the Labor Arbiter in SRAB Case No. 06-OFW(M)-08-11-0042 is hereby **REINSTATED**.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

[57] Supra note 30.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

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

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Chairperson, Third Division

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
SEP 28 2018