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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OSCAR D. GAMBOA, Petitioner, - versus - **MAUNLAD TRANS, INC. and/or RAINBOW MARITIME CO., LTD. and CAPT. SILVINO FAJARDO,** Respondents.	**G.R. No. 232905** Present: CARPIO, *J.*, Chairperson, PERLAS-BERNABE, CAGUIOA, A. REYES, JR. and J. REYES, JR., *JJ.* Promulgated: 20 AUG 2018

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 24, 2017 and the Resolution[3] dated July 5, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 141109 which annulled and set aside the Decision[4] dated March 18, 2015 and the Resolution[5] dated April 29, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (M) 02-000112-15, and instead, dismissed petitioner Oscar D. Gamboa's (petitioner) complaint for disability benefits, damages, and attorney's fees.

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1 *Rollo*, pp. 8-25.

2 Id. at 30-41. Penned by Associate Justice Henri Jean-Paul B. Inting with Associate Justices Marlene B. Gonzales-Sison and Ramon A. Cruz, concurring.

3 Id. at 43-44.

4 Id. at 464-487. Penned by Commissioner Numeriano D. Villena with Commissioner Angelo Ang Palaña and Presiding Commissioner Herminio V. Suelo, concurring.

5 Id. at 511-512. Penned by Commissioner Numeriano D. Villena with Commissioner Angelo Ang Palaña, concurring.

The Facts

On January 17, 2014, petitioner entered into a nine (9)-month contract of employment[6] as Bosun with respondent Maunlad Trans, Inc. (MTI), for its principal, Rainbow Maritime Co., Ltd. (RMCL), on board the vessel, MV Oriente Shine, a cargo vessel transporting logs from Westminster, Canada to several Asian countries.[7] Prior thereto, or in 2013, petitioner was likewise hired by MTI on board M/V Global Mermaid, also a cargo vessel.[8]

After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty,[9] petitioner disembarked and joined the vessel on January 24, 2014 that was then docked at Tokushima, Japan.[10] The following day, or on January 25, 2014, petitioner assisted in the unloading of raw logs from the vessel, as well as in the clean-up thereafter of the debris and log residue that were meter-deep. As petitioner could not withstand the strong odor of the logs and was gasping for breath, the latter asked for leave which was granted, and as such, was excused from the activity.[11] However, the incident already triggered an asthma attack on petitioner which initially started as a cough that was later accompanied by wheezing breath.[12]

On February 4, 2014, during the voyage back to Westminster, Canada, petitioner claimed that he slipped and lost his footing while going down the ship's galley, which caused a writhing pain on the upper left side of his back.[13] The ship master, Captain Julius B. Cloa (Captain Cloa), gave him Salonpas for his back, as well as medicine for his persistent cough.[14] On February 12, 2014, during the rigging operation, petitioner experienced back pain and difficulty in breathing that prompted Captain Cloa to disembark him for medical consultation at the Mariner's Clinic, Ltd., in Canada.[15] While the foreign port doctor, Dr. Stanley F. Karon, took note of petitioner's back pain, it was his diagnosed asthma that prompted the said doctor to declare him unfit for duty.[16]

Thus, on February 15, 2014, petitioner was medically repatriated[17] and brought to Marine Medical Services where he was seen by a company-designated physician, Dr. Mylene Cruz-Balbon, who confirmed his bronchial

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6 Id. at 67-68.
7 Id. at 11.
8 See id. at 259-260.
9 Id. at 78-79.
10 Id. at 260.
11 See id. at 11 and 260-261.
12 See id. at 11 and 261.
13 See id. at 11, 31, and 261.
14 See Report of Medical Treatment dated February 12, 2014; id. at 81 and 225.
15 See id. at 12 and 261.
16 Id. at 82-83.
17 Id. at 467.

asthma.[18] Subsequent check-ups further disclosed that petitioner was suffering from "Degenerative Changes, Thoracolumbar Spine" and was found to have a "metallic foreign body on the anterior cervical area noted on x-ray,"[19] which, as pointed out by the company-designated physician, was not related to the cause of petitioner's repatriation.[20] Petitioner was thereafter referred to orthopedic doctors, Dr. Pollyana Gumba Escano (Dr. Escano),[21] for rehabilitation and therapy, and Dr. William Chuasuan, Jr. (Dr. Chuasuan),[22] for expert evaluation and management.[23]

On May 14, 2014, the company-designated physician, Dr. Karen Frances Hao-Quan, issued a medical report[24] to respondent Captain Silvino Fajardo (Captain Fajardo) stating that petitioner still has occasional asthma attacks that have not been totally controlled despite three (3) months of maintenance medication. She also noted that petitioner still has tenderness and muscle spasm on his left paraspinal muscle. As such, the company-designated physician gave an interim assessment of "Grade 8 (orthopedic) - 2/3 loss of lifting power and Grade 12 - (pulmonary) slight residual or disorder."[25]

Likewise, the orthopedic specialist, Dr. Escano, consistently reported that petitioner has not been relieved of his back pain despite rehabilitation, and further recommended that the latter undergo MRI (Magnetic Resonance Imaging) of the spine,[26] which she pointed out could be done only after the removal of the foreign bodies embedded in petitioner's neck area.[27] She added that there was a need to control petitioner's blood pressure and asthma which prevented them from doing spiral stabilization exercises on him.[28]

Since MTI refused to shoulder the extraction procedure as it was not part of the cause for petitioner's repatriation, the latter had the procedure done at his expense.[29] However, MTI still denied petitioner's request for MRI, and instead, issued medical certificates indicating petitioner's illness as "Bronchial Asthma; Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain."[30]

Thus, on June 4, 2014, petitioner filed a complaint[31] for non-payment of his sickness allowance, medical expenses, and rehabilitation fees, against

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18 Id. at 226-227.
19 Id. at 228.
20 Id.
21 Id. at 87 and 89.
22 Id. at 88.
23 See id. at 467.
24 Id. at 236.
25 Id.
26 See id. at 91-A, 92, 94, and 95.
27 Id. at 92-93.
28 Id. at 95.
29 See id. at 269. See also Medical Certificate and Record of Operation; id. at 101-102.
30 Id. at 85-86. Medical Certificates dated June 16, 2014 separately issued by Doctors Karen Frances Hao-Quan and Mylene Cruz-Balbon of the Marine Medical Services.
31 Id. at 240.

MTI, before the NLRC, docketed as NLRC Case No. SUB-RAB I (OFW) 7-06-0106-14. The complaint was subsequently amended[32] on June 18, 2014 to include a claim for permanent total disability benefits pursuant to the IBF JSU/AMOSUP (IMMAJ) Collective Bargaining Agreement (CBA)[33] for failure of the company-designated physician to make a final assessment within the mandated 120-day period, and further impleaded RMCL and Captain Fajardo (respondents) as parties thereto.

On June 20, 2014, petitioner's pulmonologist, Dr. Edgardo O. Tanquieng, issued a note to the company-designated physician suggesting petitioner's disability to be "Grade 12 – slight residual or disorder."[34] On the other hand, petitioner's orthopedic specialist, Dr. Chuasuan, in his letter[35] dated July 10, 2014, explicated that petitioner's degenerative changes may have occurred overtime and could not have developed during his 22-day stay on board the vessel, hence, was a pre-existing condition.

Meanwhile, petitioner claimed that he still suffered from severe back pain and asthma attacks, which prompted him to consult on June 27, 2014, an independent physician, Dr. Sonny Edward Urbano of the Eastern Pangasinan District Hospital, who declared him unfit for work or maritime voyage given that he was found to be suffering from "Hypertension stage II, Hypertensive cardiovascular disease, Bronchial asthma, Community acquired pneumonia."[36]

In their defense, respondents denied liability contending, among others, that the complaint was prematurely filed given that the 120-day period had not yet expired at the time petitioner filed his complaint on June 4, 2014, and that the latter even returned for a follow-up check-up with his attending specialist on June 20, 2014.[37] They further contended that petitioner was not entitled to disability benefits under the CBA as his condition was not due to an accident,[38] and that his illnesses were not compensable, considering that his degenerative changes (back condition) was declared by the specialist to be a pre-existing condition, while his bronchial asthma was not work-related since he already manifested its symptoms at the time he joined the vessel on January 24, 2014.[39] They likewise averred that petitioner failed to follow the procedure in contesting the findings of the company-designated physician.[40] Lastly, they asserted that the claims for sickness allowance and reimbursement

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32 Id. at 45; including dorsal portion.
33 See International Bargaining Forum All Japan Seamen's Union/ Associated Marine Officers' and Seamen's Union of the Philippines - International Mariners Management Association of Japan; id. at 178-221.
34 Id. at 242.
35 Id. at 243.
36 See Medical Certificate; id. at 106.
37 See id. at 146-147.
38 See id .at 148-151.
39 See id. at 151-158.
40 See id. at 163-168.

for medical and transportation expenses had already been paid,[41] while the damages and attorney's fees sought were without factual and legal bases.[42]

The Labor Arbiter's Ruling

In a Decision[43] dated October 25, 2014, the Labor Arbiter (LA) ruled in favor of petitioner, and accordingly ordered respondents to jointly and severally pay him permanent total disability benefits pursuant to the CBA in the amount of US$127,932.00, ₱100,000.00 moral damages, ₱50,000.00 exemplary damages, and ten percent (10%) of the total judgment award as attorney's fees.[44]

In so ruling, the LA held that the complaint was not prematurely filed given that it was initially for non-payment of sickness allowance and reimbursement of medical expenses, and that even if it subsequently sought payment of disability benefits, there was already an interim assessment made by the company-designated physician on May 14, 2014 equivalent to Grade 8 (orthopedic) – 2/3 loss of lifting power, and Grade 12 (pulmonary) – slight residual or disorder, notwithstanding that petitioner was still continuously suffering from back pain.[45] Moreover, the LA has observed that petitioner cannot be faulted in not observing the procedure for contesting the assessment since the company-designated physicians themselves were in disagreement as to the management of his condition.[46] Finally, the LA did not give credence to respondents' claim that petitioner was not involved in any accident on board MV Oriente Shine, noting that the Ship Master's "Report of Medical Treatment"[47] dated February 12, 2014 showed that he had prescribed "Salonpas" and "paracetamol" for petitioner's back pain.[48] Considering that petitioner has not recovered from his spinal injury that rendered him incapable to resume work, and his bronchial asthma, being a listed illness under Item Number 20 of Section 32-A of the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the LA declared his entitlement to permanent total disability benefits under the CBA.[49] The LA also awarded moral and exemplary damages as petitioner was subjected to unfair treatments from respondents, as well as attorney's fees for having been compelled to litigate to protect his rights and interests.[50]

Aggrieved, respondents appealed[51] the LA Decision to the NLRC.

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41 See id. at 168-169. See also id. at 244-247 and 252-257.
42 See id. at 169-171.
43 Id. at 330-341. Penned by Labor Arbiter Isagani Laurence G. Nicolas.
44 Id. at 341.
45 See id. at 333-334.
46 See id. at 338-339.
47 Id. at 81 and 225.
48 See id. at 337-338.
49 See id. at 340-341.
50 See id. at 341.
51 See Notice of Appeal with Memorandum of Appeal dated January 6, 2015; id. at 342-369.

The NLRC Ruling

In a Decision[52] dated March 18, 2015, the NLRC affirmed with modification the LA Decision by deleting the award of moral and exemplary damages.[53] It ruled that petitioner's illnesses, *i.e.*, bronchial asthma and degenerative changes or osteoarthritis, were work-related diseases arising out of and in the course of petitioner's employment. They are listed as occupational diseases under the 2010 POEA-SEC.[54] It held that since the company-designated physicians failed to controvert the foreign doctor's declaration that petitioner was unfit for duty at the time the latter was repatriated, and considering further that petitioner remained incapacitated to resume his duties despite a partial permanent disability assessment on May 14, 2014, the finding of unfitness to work remained, warranting petitioner's entitlement to permanent total disability benefits.[55] It likewise sustained the applicability of the CBA, holding that while Article 28.1[56] thereof speaks of disability as a result of an accident, paragraphs 28.2 to 28.4,[57] on the other hand, merely referred to the general term "disability" which may result from accident, injury, disease, and illness.[58]

On the contrary, the NLRC disagreed with the findings of the LA that the company-designated physician refused to provide medical care and attention after the May 14, 2014 check-up session, noting that the medical reports showed that petitioner was subsequently attended to by respondents' specialists on various occasions; hence, there was no bad faith on the latter's part to warrant the award of moral and exemplary damages.[59]

Respondents moved for partial reconsideration[60] which was denied in a Resolution[61] dated April 29, 2015, prompting them to elevate the matter to the CA on *certiorari*.[62]

The CA Ruling

In a Decision[63] dated January 24, 2017, the CA annulled and set aside the NLRC Decision, and instead, dismissed the complaint.[64] It ruled that petitioner had no cause of action at the time he filed his complaint given that the May 14, 2014 assessment was not final, and that he was still undergoing

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52 Id. at 464-487.
53 Id. at 487.
54 See id. at 476-479.
55 See id. at 483-484.
56 Id. at 195.
57 Id.
58 See id. at 485.
59 See id. at 486.
60 See motion for partial reconsideration dated April 6, 2015; id. at 489-509.
61 Id. at 511-512.
62 See Petition for *Certiorari* (with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) dated July 1, 2015; id. at 513-546.
63 Id. at 30-41.
64 Id. at 40.

treatment well within the allowable 240-day treatment period.[65] It likewise found no basis to support petitioner's claim that he is entitled to permanent total disability benefits, holding that the latter's independent physician examined him only once[66] and that the lapse of the 120-day period did not automatically entitle him thereto.[67]

Petitioner's motion for reconsideration[68] was denied in a Resolution[69] dated July 5, 2017; hence, the petition.

The Issue Before the Court

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

The Court's Ruling

The petition is meritorious.

I.

The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty bound to reexamine and calibrate the evidence on record.[70] Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[71] There are, however, recognized exceptions to this general rule, such as the instant case, where the judgment is based on a misapprehension of facts and the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.[72]

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to

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65 See id. at 37.
66 Id. at 39.
67 See id.
68 See motion for reconsideration dated February 23, 2017; id. at 578-591.
69 Id. at 43-44.
70 See *Leoncio v. MST Marine Services (Phils.), Inc.*, G.R. No. 230357, December 6, 2017.
71 *Maersk Filipinas Crewing, Inc. v. Ramos*, G.R. No. 184256, January 18, 2017, 814 SCRA 428, 442.
72 *Great Southern Maritime Services Corp. v. Surigao*, 616 Phil. 758, 764 (2009).

199[73] (formerly Articles 191 to 193) of the Labor Code[74] in relation to Section 2 (a), Rule X[75] of the Amended Rules on Employee Compensation. By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer.

Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case since petitioner was employed in 2014, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract, to wit:

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

x x x x

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

x x x x

(c) the following disabilities shall be deemed **total and permanent**:

(1) Temporary total disability lasting continuously for ***more than one hundred twenty days***, except as otherwise provided for in the Rules;

x x x x

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

x x x x (Emphases and underscoring supplied)

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

[75] Rule X
Temporary Total Disability

Section 2. Period of entitlement – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness ***still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability*** in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x (Emphasis supplied)

SEC. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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

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

x x x x

Under the 2010 POEA-SEC, a "work-related" illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[76]

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[76] See Item No. 16, Definition of Terms, 2010 POEA SEC.

In the case at bar, petitioner was diagnosed with "Bronchial Asthma; Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain." In a medical report dated May 14, 2014, the company-designated physician gave petitioner an "interim" assessment of Grades 8 and 12 for his orthopedic and pulmonary conditions, respectively.[77] While the orthopedic specialist, in his medical report dated July 10, 2014, opined that petitioner's Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain "may be [a] pre-existing" [78] condition, and therefore not work-related, the pulmonary specialist, on the other hand, merely reiterated the previous disability rating of Grade 12, *i.e.*, slight residual or disorder.[79] From the foregoing medical report, it can be reasonably inferred that petitioner's bronchial asthma was deemed a work-related illness unlike his degenerative changes of the spine (back condition), which was declared by the specialist to be not work-related in view of the specialist's observation that it was a pre-existing condition that "could not have developed during his [22-day] period on board."[80]

However, there are conditions that should be met before an illness, such as degenerative changes of the spine, can be considered as pre-existing under the 2010 POEA-SEC, namely: (*a*) the **advice of a medical doctor on treatment** was given for such continuing illness or condition; or (*b*) the seafarer had been **diagnosed and has knowledge** of such illness or condition but failed to disclose the same during PEME, and such cannot be diagnosed during the PEME,[81] none of which had been established in this case.

Moreover, degenerative changes of the spine, also known as osteoarthritis,[82] is a listed occupational disease under Sub-Item Number 21 of Section 32-A of the 2010 POEA-SEC if the occupation involves **any** of the following:

> a. Joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics;
> b. Minor or major injuries to the joint;
> c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities;
> d. Extreme temperature changes (humidity, heat and cold exposures) and;
> e. Faulty work posture or use of vibratory tools[.]

Here, petitioner, as Bosun of respondents' cargo vessel that transported logs, undeniably performed tasks that clearly involved unduly heavy physical labor and joint strain. Hence, the NLRC cannot be faulted in finding

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77 See *rollo*, p. 236.
78 Id. at 243.
79 Id. at 242.
80 Id. at 243.
81 See Item No. 11 (a) and (b), Definition of Terms, 2010 POEA-SEC.
82 <https://www.physioadvisor.com.au/injuries/upper-back-chest/spinal-degeneration> (visited August 10, 2018).

petitioner's back problem to be work-related.

In the same vein, petitioner's bronchial asthma, which is also a listed occupational disease, undeniably progressed while in the performance of his duties and in the course of his last employment contract. Respondents' assertion that the said illness also existed prior to petitioner's embarkation, and therefore a pre-existing ailment, was not substantiated given that no such declaration was made by the company-designated physician or the attending specialist. Besides, such fact alone does not detract from the compensability of an illness. 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 incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease.[83] Perforce, absent controverting proof that petitioner's illnesses were not work-related, no grave abuse of discretion was committed by the NLRC in declaring petitioner's bronchial asthma and degenerative changes of the thoracolumbar spine to be compensable ailments.

II.

Pursuant to Section 20 (A) of the 2010 POEA-SEC, when a seafarer suffers a work-related injury or illness in the course of employment, the company-designated physician is obligated to arrive at a **definite assessment** of the former's fitness or degree of disability within a period of 120 days from repatriation.[84] During the said period, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no ***definitive declaration*** is made because the seafarer requires ***further medical attention***, then the temporary total disability period **may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[85] But before the company-designated physician may avail of the allowable 240-day extended treatment period, he must perform some significant act to justify the extension of the original 120-day period.[86] Otherwise, **the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance.**[87]

In this regard, the Court, in *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*,[88] summarized the rules regarding the company-designated

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83 *De Jesus v. National Labor Relations Commission*, 557 Phil. 260, 266 (2007).

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

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

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

87 *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362 (2015).

88 Id.

physician's **duty to issue a final medical assessment** on the seafarer's disability grading, as follows:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading **within a period of 120 days** from the time the seafarer reported to him;
> 2. If the company-designated **fails** to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes **permanent and total**;
> 3. If the company-designated physician fails to give his assessment within the 120 days with a **sufficient justification** (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be **extended to 240 days**. **The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period**; and
> 4. If the company-designated physician still **fails** to give his assessment **within the extended period of 240 days**, then the seafarer's disability becomes **permanent and total**, regardless of any justification.[89] (Emphases supplied)

Case law states that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent.[90] Thus, a temporary total disability becomes total and permanent by operation of law.[91]

In the case at bar, there is no dispute that the company-designated physician issued an "interim" assessment on May 14, 2014, or just 88 days from petitioner's repatriation on February 15, 2014, declaring his disability to be "Grade 8 (orthopedic) - 2/3 loss of lifting power and Grade 12 - (pulmonary) slight residual or disorder."[92] The gradings were based on the findings that petitioner's asthma was "*still not totally controlled*," while his back problem "*still presents with tenderness and muscle spasm on the left paraspinal muscle.*"[93] Being an interim disability grade, the declaration was merely an initial determination of petitioner's condition for the time being and therefore cannot be considered as a definite prognosis. Notwithstanding the temporariness of his findings, the company-designated physician, however, failed to indicate the need for further treatment/rehabilitation or medication, and provide an estimated period of treatment to justify the extension of the 120-day treatment period. In fact, while petitioner had subsequent follow-up sessions, the company-designated physician still failed to arrive at a definitive assessment within the 120-day period or indicate the need for further medical treatment. Evidently, without the required final medical assessment declaring petitioner fit to resume work or the degree of his disability, the characterization of the latter's condition after the lapse of the 120-day period

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89 Id. at 362-363.

90 See *Talaroc v. Arpaphil Shipping Corporation*, supra note 86.

91 See *Tamin v. Magsaysay Maritime Corporation*, G.R. No. 220608, August 31, 2016, 802 SCRA 111, 128.

92 *Rollo*, p. 236.

93 Id.; italics supplied.

as total and permanent ensued in accordance with law, since the ability to return to one's accustomed work before the applicable periods elapse cannot be shown.[94] Thus, because of these circumstances, petitioner should be entitled to permanent total disability benefits by operation of law.

Notwithstanding petitioner's apparent entitlement to permanent total disability benefits as discussed above, the CA nonetheless declared petitioner's complaint to have been prematurely filed on June 4, 2014 due to the fact that there was no final disability assessment issued at that time. However, it should be made clear that what was filed on June 4, 2014 was for non-payment of sickness allowance, medical expenses, and rehabilitation fees. Petitioner only sought permanent total disability benefits when he filed his amended complaint therefor on June 18, 2014. At that time, the 120-day period within which the company-designated physician should have issued a final assessment of petitioner's condition already lapsed. Further, as mentioned, there was no reason for respondents to extend this period to 240 days since no sufficient justification exists to extend the treatment period for another 120 days. As such, contrary to the findings of the CA, petitioner had rightfully commenced his complaint for disability compensation on June 18, 2014, or after the expiration of the 120-day period from the time of his repatriation on February 15, 2014 (*i.e.*, 123 days). As aptly ruled in *C.F. Sharp Crew Management, Inc. v. Taok*,[95] "**a seafarer may pursue an action for total and permanent disability benefits** if x x x the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and **there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days** x x x,"[96] as in this case.

Neither is petitioner's complaint for disability compensation rendered premature by his failure to refer the matter to a third-doctor pursuant to Section 20 (A) (3) of the 2010 POEA-SEC. It bears stressing that a seafarer's compliance with the conflict-resolution procedure under the said provision presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. As aptly pointed out in *Kestrel Shipping Co., Inc. v. Munar*,[97] absent a final assessment from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.[98] Hence, although petitioner did consult an independent physician regarding his ailment, the lack of a conclusive and definite assessment from respondents left him nothing to properly contest and as such, negates the need for him to comply with the third-doctor referral provision under the 2010 POEA-SEC.

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94 *Belchem Philippines, Inc. v. Zafra, Jr.*, 759 Phil. 514, 526-527 (2015).
95 691 Phil. 521 (2012).
96 Id. at 538; emphasis and underscoring supplied.
97 See 702 Phil. 717 (2013).
98 Id. at 738.

III.

With petitioner declared to be totally and permanently disabled by operation of law in view of the company-designated physician's failure to issue a final assessment within the given period, the corollary matter to be determined is the amount of benefits due him under the 2010 POEA-SEC or the CBA,[99] of which petitioner is a member.

Article 28 of the CBA on disability provides:

> Article 28: Disability
>
> 28.1 A seafarer who suffers **permanent disability as a result of an accident** whilst in the employment of the Company **regardless of fault**, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.
>
> 28.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> 28.3 **The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than ten percent (10%) disability, to be pro rata.**
>
> 28.4 A seafarer whose disability, in accordance with 28.2 above is assessed at fifty percent (50%) or more under the attached APPENDIX 3 shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to one hundred percent (100%) compensation. Furthermore, any seafarer assessed at less than fifty percent (50%) disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to one hundred percent (100%) compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 28.2 above.
>
> 28.5 Any payment effected under 28.1 to 28.4 above, shall be without prejudice to any claim for compensation made in law, but may be deducted from any settlement in respect of such claims.
>
> x x x x (Emphases supplied)[100]

Under Article 28.1, a seafarer suffering from permanent disability as a result of an accident regardless of fault shall be entitled to disability benefits. An accident is an unintended and unforeseen injurious occurrence; something

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[99] *Rollo*, pp. 178-221. Effective from January 1, 2012 to December 31, 2014.
[100] Id. at 195-196.

that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen.[101]

In this case, records fail to disclose that petitioner's illnesses were the result of an accident. Nevertheless, petitioner's disability is still compensable under Article 28.3 thereof which expressly provides that "the Company shall provide ***disability compensation to the seafarer in accordance with APPENDIX 3*** x x x."[102]

In *NFD International Manning Agents, Inc. v. Illescas*,[103] the Court declared that the seafarer's sustained back injury was not the result of an accident but nonetheless ordered the payment of his disability in accordance with the provisions of the CBA.

Here, since the company-designated physician failed to arrive at a final and definitive assessment of petitioner's disability within the prescribed period, the law deems the same to be total and permanent, which is classified as Grade 1[104] under the POEA-SEC. As such, its equivalent rate under APPENDIX 3 of the CBA is the 100% rating, and the amount of compensation for petitioner's position as Bosun, which is for "Junior Officers and Ratings Above AB"[105] for the year 2014, is in US$127,932.00.[106]

Finally, with respect to the award of attorney's fees in favor of petitioner, the Court finds the same to be in order pursuant to Article 2208[107] of the New Civil Code as petitioner was clearly compelled to litigate to satisfy his claims for disability benefits. However, the claims for moral and exemplary damages are not warranted for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims.[108]

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101 *C.F. Sharp Crew Management, Inc. v. Perez*, 752 Phil. 46, 57 (2015), citing *Sunga v. Virjen Shipping Corporation*, 734 Phil. 281, 291 (2014).

102 *Rollo*, p. 195; emphasis supplied.

103 See 646 Phil. 244 (2010).

104 Impediment Grade 1 under the POEA-SEC is equivalent to 120.00% Impediment.

105 The rank of Bosun or Boatswain is higher than an Able Seaman, see APPENDIX 2-1-3 of the CBA, *rollo*, p. 213.

106 See id. at 215.

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

> (2) **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;**
>
> x x x x
>
> (8) **In actions for indemnity under workmen's compensation and employer's liability laws**
>
> x x x x (Emphases supplied)

108 See *Esguerra v. United Philippine Lines, Inc.*, 713 Phil. 487, 501 (2013).

WHEREFORE, the petition is **GRANTED**. The Decision dated January 24, 2017 and the Resolution dated July 5, 2017 of the Court of Appeals in CA-G.R. SP No. 141109 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 18, 2015 and the Resolution dated April 29, 2015 of the National Labor Relations Commission in NLRC LAC No. OFW (M) 02-000112-15 are **REINSTATED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

JOSE C. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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, Republic Act No. 296,
The Judiciary Act of 1948, As Amended)