Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

MAUNLAD TRANS, INC.; UNITED PHILIPPINE LINES, INC., SEACHEST ASSOCIATES; CARNIVAL CORPORATION; and/or RONALD MANALIGOD, *Petitioners,*	**G.R. No. 225705** Present: BERSAMIN, *C.J.*, DEL CASTILLO, JARDELEZA,* GESMUNDO, *and* CARANDANG, *JJ.*
- versus -	
ROMEO RODELAS, JR., *Respondent.*	Promulgated: APR 01 2019

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DECISION

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the April 29, 2015 Decision[2] of the Court of Appeals (CA) dismissing the Petition for *Certiorari* in CA-G.R. SP No. 130412, and its July 8, 2016 Resolution[3] denying reconsideration of the assailed Decision.

Factual Antecedents

As found by the CA, the simple facts are, as follows:

> [Respondent] was hired by petitioner Seachest, through its manning agent, Maunlad,[4] as Galley Steward on-board MV Carnival x x x. After several months, x x x respondent started experiencing seasickness and extreme low back pains. Despite medications administered by the ship's clinic, the pain persisted and extended down to x x x respondent's left thigh. x x x

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* On official leave.

1 *Rollo*, pp. 3-33.

2 Id. at 34-47; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.

3 Id. at 49-50.

4 Herein petitioners Seachest Associates and Maunlad Trans, Inc.

Subsequently, x x x respondent was repatriated and arrived in the Philippines on 23 January 2010. He reported to petitioner Maunlad, was referred to the Metropolitan Hospital where he underwent physical therapy sessions, among others, and was diagnosed with 'lumbar spondylosis with disc extrusion, L3-L4.' [Respondent] was advised to undergo surgery, spine laminectomy, but did not approve of the same and instead underwent physical therapy sessions. According to x x x respondent, as per petitioners' medical doctors, surgery was not a guarantee on the return of his normal condition, thus, he refused.

On 6 May 2010, x x x respondent returned for a follow-up, and the report on his condition stated:

> 'x x x
>
> Follow-up case of 28 year old male with Herniated Nucleus Pulposus, L3-L4, Left.
> EMG-NCV Study - chronic left L5 - S1 radiculopathy
> Not keen on surgery.
> Continue rehabilitation.
> His suggested disability grading is Grade 8 - 2/3 loss of motion or lifting power of the trunk.
> To come back after 3 weeks.
>
> x x x'

As x x x respondent's condition did not improve for purposes of resuming his regular duties as a seafarer, he filed a Complaint on 14 May 2010 for total and permanent disability, reimbursement of medical and transportation expenses, damages, attorney's fees and legal interest against petitioners.

Petitioners, in their Position Paper, insisted that x x x respondent is only entitled to a Grade 8 disability assessment as found by the company physician, with the equivalent monetary benefits of x x x (US$16,795.00), which they offered but was refused.

The Labor Arbiter rendered a Decision on 22 June 2012 ruling that: 1) the assessment of the company-designated physician giving a Grade 8 disability rating was premature, made only to comply with the 120-day period as mandated in the POEA Contract; and 2) the work-related disability incurred by x x x respondent prevented him from seeking employment and thus, he was entitled to the payment of permanent disability benefits. The dispositive portion of the said Decision states:

> 'x x x
>
> WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioners] Maunlad Trans[,] Inc./Seachest Associates/Carnival Corporation to pay [respondent] Romeo Rodelas, Jr., jointly and severally the amount of SIXTY SIX THOUSAND US DOLLARS (US$66,000.00) x x x representing his total permanent disability and attorney's fees.

x x x x

All other claims are DISMISSED for lack of merit.

SO ORDERED.

x x x x'

Petitioners appealed the said Decision to the NLRC. However, the NLRC affirmed the findings of the Labor Arbiter in its first assailed Resolution dated 21 February 2013:

x x x x

Petitioners filed a Motion for Reconsideration but the same was likewise denied by the NLRC in its second assailed Resolution dated 27 March 2013 x x x[5]

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari* before the CA, which rendered the herein assailed Decision containing the following pronouncement:

> While it is true that the mandated x x x (120) and x x x (240) days have not yet elapsed when x x x respondent filed his Complaint, We agree with both the Labor Arbiter and the NLRC that inasmuch as x x x respondent was advised to 'come back' three (3) weeks from 06 May 2010, this left his alleged continued medical rehabilitation open-ended. Likewise, We cannot agree with petitioners' argument that the Grade 8 disability rating is deemed final just because x x x respondent was not keen to undergo surgery. After all, the medical report itself belies this claim as it is stated therein that the Grade 8 assessment is merely a 'suggested' grading. Regardless of whether or not x x x respondent returned to be re-assessed by the company-designated physician three (3) weeks from 06 May 2010, the x x x (120)-day period would have lapsed without x x x respondent being issued either a final and definitive disability assessment or a fit-to-work certification. As held in Kestrel vs. Munar, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the periods provided. And that failure to do so and should the seafarer's medical condition remains unresolved, the employee shall be deemed totally or permanently disabled.
>
> Even if We construe the suggested disability assessment on x x x respondent as final and definite, it has remained undisputed that x x x respondent, up to this day, is still unable to perform, and has not resumed, his regular sea duties. x x x **Thus, if an employee is still unable to resume his regular sea duties after the lapse of x x x (120) days or x x x (240) days, as the case may be, the injury is deemed to be total and permanent.**

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[5] *Rollo*, pp. 35-38.

x x x x

[R]espondent, while at the prime age of 29, was not rehired by the petitioners precisely because the loss of 2/3 of the lifting power of x x x respondent's trunk incapacitated him to resume his occupation as a seaman. Even a surgery, as suggested by petitioners' medical doctors, was not a guarantee for him to be able to return to his work. As observed by the NLRC, x x x respondent, as a galley steward, is responsible for preparing, cooking and serving meals to passengers as well as setting tables and buffet lines requiring him to constantly stand, walk, bend and lift objects. And poor trunk disability would seriously affect the performance of his duties. x x x

x x x x

It may also be noted that x x x respondent did not consult a doctor of his choice to assail the disability grading issued by the company-designated physician pursuant to Section 20(B), paragraph 3 of the POEA-SEC x x x

x x x x

This requirement, however, is unnecessary if the seafarer remained unable to perform his customary work beyond the two hundred forty (240)-day period, as in the present case before Us. The same is in accordance with the pronouncement of the Supreme Court in Sealanes Marine Services, Inc. vs. Dela Torre, a recent case promulgated in February 2015.

Finally, as to petitioners' arguments that only a Grade 1 disability under Section 32, Philippine Overseas Employment Administration Standard Employment Contract merits a total and permanent disability benefits and that there is no unfitness-to-work clause therein, the same must likewise fail. While there is no question that only a Grade 8 rating was suggested by the company-designated physician, and not a Grade 1 rating which would merit the payment of the full sixty thousand US dollars x x x total and permanent disability benefits, the POEA SEC provides merely for the basic or minimal acceptable terms of a seafarer's employment contract. Thus:

'x x x

x x x **in the assessment of whether his injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities in Section 32 of the POEA SEC, but also under the relevant provisions of the Labor Code and the AREC implementing Title II, Book IV of the Labor Code.** According to Kestrel, while the seafarer is partially injured or disabled, he must not be precluded from earning doing [sic] the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, **if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as may be the case, then he shall be deemed totally and permanently disabled.**

x x x'

x x x x

We take note, too, that petitioners already paid the judgment award rendered by the labor tribunals in the total amount of sixty-six thousand US dollars (US$66,000.00) on 17 September 2013, based on the Conditional Satisfaction of Judgment with Urgent Motion to Cancel Bond All Without Prejudice to the Pending Petition for Certiorari in the Court of Appeals and that x x x respondent duly received the same.

All told, both the NLRC and the Labor Arbiter ruled on the issues based on the relevant laws and jurisprudence, and supported by substantial evidence. A perusal of the challenged Decision and Resolution of the NLRC fail to illustrate that they were rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

x x x x

WHEREFORE, premises considered, the Petition for Certiorari is hereby DISMISSED. Accordingly, the assailed Decision dated 21 February 2013 and Resolution dated 27 March 2013 stand.

SO ORDERED.[6]

The CA essentially held that the company-designated physician failed to arrive at a definite assessment of respondent's fitness or disability within the 120/240-day periods provided under the law; that the company-designated physician's last report on respondent's condition which "suggested" a disability grading of "Grade 8 - 2/3 loss of motion or lifting power of the trunk" is not a final or definite assessment of his fitness or disability because respondent was still required to return after three weeks for further examination; that regardless of the fact that respondent was required to return for further examination, the statutory 120/240-day periods would have elapsed without respondent being issued either a final and definitive disability assessment or a fit-to-work certification; that respondent's condition would not have improved even with the prescribed surgery, which he refused to undergo, because as admitted by the company-designated physician it did not guarantee improvement of respondent's condition; that to this day, respondent is still unable to resume his regular sea duties, his inability to find work continues, and he was not re-employed by petitioners; and that with the lapse of the statutory 120/240-day periods without respondent having gone back to work, he is deemed totally and permanently disabled.

Petitioners moved to reconsider but the CA stood its ground. Hence, the present Petition.

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[6] Id. at 41-46.

Issues

Petitioners submit that –

I. The Honorable Court of Appeals erred in holding [p]etitioners liable for US$60,000.00 representing total and permanent disability benefits.

II. The Honorable Court of Appeals committed serious and reversible error of law and fact in holding that [p]etitioners are liable for attorney's fees considering that the [p]etitioners never acted with bad faith in dealing with [r]espondent.[7]

Petitioners' Arguments

Petitioners maintain in their Petition and Reply[8] that the CA committed serious and palpable error and grave abuse of discretion in arriving at a finding of total and permanent disability in favor of respondent, since compensability does not depend on loss of earning capacity or the number of days that respondent is unable to work; that the CA erred in disregarding the Grade 8 assessment of the company-designated physician, which should prevail as against its finding of total and permanent disability; that the CA erred in concluding that a definite medical assessment as to respondent's condition was not issued within the statutory 120/240-day periods; that the CA erred in declaring that petitioners are guilty of bad faith in dealing with respondent; and that respondent is not entitled to attorney's fees.

Respondent's Arguments

In his Comment,[9] respondent counters that his injury was total and permanent as his condition has not healed to this day, and he has to continue his medication and therapy; that the company-designated physician failed to issue a definite assessment of his condition and has not issued a fit-to-work certificate to this day; that the company-designated physician's assessment was self-serving and biased; and that overall, the CA did not err in arriving at its pronouncements.

Our Ruling

The Court grants the Petition.

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7 Id. at 11.
8 Id. at 82-94.
9 Id. at 71-78.

Upon respondent's repatriation on January 23, 2010, he underwent treatment under the auspices of the company-designated physician. He was diagnosed with "lumbar spondylosis with disc extrusion, L3-L4" and advised to undergo surgery - spine laminectomy - but respondent refused to undergo the procedure; instead, he underwent physical therapy sessions. On May 6, 2010, or well within the 120-day period prescribed by the labor law, the company-designated physician assessed respondent's condition as a "Grade 8 - 2/3 loss of motion or lifting power of the trunk" and advised him to return for rehabilitation after three weeks. However, on May 14, 2010, respondent filed the instant labor case for total and permanent disability benefits, reimbursement of medical and transportation expenses, damages, attorney's fees and legal interest against petitioners. He did not return to the company-designated physician to continue with the latter's prescribed treatment.

By failing to continue with the treatment prescribed by the company-designated physician and instead filing the labor case before the expiration of the 120-day period, respondent violated the law and his contract with petitioners; he was guilty of abandoning his treatment. He filed the labor case on May 14, 2010 - or just 110 days from his repatriation on January 23, 2010 - before the 120/240-day periods allowed under the Labor Code could elapse, and before the company-designated physician could render a definite assessment of his medical condition. For this reason, the filing of the labor case was premature.

The situation in the instant case is no different from that in *C.F. Sharp Crew Management, Inc. v. Orbeta*,[10] which was decided by this *ponencia*. In said case, the complainant seaman also suffered a back injury, and while undergoing treatment for 126 days, he filed a labor case against his employer and thus abandoned his ongoing treatment. The Court thus held:

> For a little over 120 days, or from February 10, 2010 to June 16, 2010, 126 days to be exact, respondent underwent treatment by the company-designated physician. On June 16, 2010, he was partially diagnosed with 'lumbosacral muscular spasm with mild spondylosis L3-L4;' x x x and respondent was told to return for a scheduled bone scan. However, instead of returning for further diagnosis and treatment, respondent opted to secure the opinion of an independent physician of his own choosing who, although arriving at a finding of permanent total disability, nonetheless required respondent to subject himself to further Bone Scan and Electromyography and Nerve Conduction Velocity tests 'to determine the exact problem on his lumbar spine.'
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> Instead of heeding the recommendations of his own doctor, respondent went on to file the subject labor complaint. In point of law, respondent's filing of the case was premature.

[10] G.R. No. 211111, September 25, 2017, 840 SCRA 483, 500-503.

The company-designated physician and Dr. Escutin are one in recommending that respondent undergo at least a bone scan to determine his current condition while undergoing treatment, thus indicating that respondent's condition needed further attention. In this regard, petitioners are correct in arguing that respondent abandoned treatment, as under the law and the POEA contract of the parties, the company physician is given up to 240 days to treat him. On the other hand, the fact that Dr. Escutin required the conduct of further tests on respondent is an admission that his diagnosis of permanent total disability is incomplete and inconclusive, and thus unreliable. It can only corroborate the company-designated physician's finding that further tests and treatment are required.

In *New Filipino Maritime Agencies, Inc. v. Despabeladeras*, this Court held that **a seafarer is guilty of medical abandonment for his failure to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability**. x x x

x x x x

Identical rulings were arrived at in *Magsaysay Maritime Corporation v. National Labor Relations Commission* and, more recently, in *Wallem Maritime Services, Inc. v. Quillao* where this *ponente* made the following pronouncement:

> We agree with petitioners' contention that at the time of filing of the Complaint, respondent has no cause of action because the company-designated physician has not yet issued an assessment on respondent's medical condition; moreover, the 240-day maximum period for treatment has not yet lapsed. x x x
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> The records clearly show that respondent was still undergoing treatment when he filed the complaint. On November 12, 2009, the physiatrist even advised respondent to seek the opinion of an orthopedic specialist. Respondent, however, did not heed the advice[;] instead, he proceeded to file a Complaint on November 23, 2009 for disability benefits. And, it was only a day after its filing x x x that respondent requested from the company-designated doctor the latter's assessment on his medical condition.
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> Stated differently, **respondent filed the Complaint within the 240-day period while he was still under the care of the company-designated doctor**. x x x
>
> **Clearly, the Complaint was premature. Respondent has no cause of action yet at the time of its filing as the company-designated doctor has no opportunity to definitely assess his condition because he was still undergoing treatment; and the 240-day period had not lapsed**. x x x (Emphasis supplied; citations omitted)

To repeat, the Labor Code provides a procedure for conflict resolution covering disputes of the nature involved in the present case; a failure to observe said procedure is fatal.

> Under Section 20(D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." Respondent was duty-bound to comply with his medical treatment, PT sessions, including the recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment after November 12, 2009 until January 9, 2010, without any valid explanation proves that he neglected his corresponding duty to continue his medical treatment. x x x
>
> x x x x
>
> Indeed, respondent did not comply with the terms of the POEA-SEC. The failure of the company-designated doctor to issue an assessment was not of his doing but resulted from respondent's refusal to cooperate and undergo further treatment. Such failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits.[11] (Emphasis in the original; citations omitted)

The fact that respondent was not re-hired by petitioners has no bearing, considering that the former violated his contract and the law. Simply put, respondent may not be rewarded - for violating the law and his contract - with a grant of permanent and total disability benefits. This would set a wrong precedent for others to follow. While the Court looks at the cause of labor with a compassionate eye, it must not necessarily turn blind and completely ignore the rights of the employer; the law and justice should always prevail.

As for the argument that even surgery is not a guarantee that respondent's condition will return to normal, this does not entitle him to the indemnity he seeks; the fact remains that he violated his contract and the law. His infraction erased any benefit he may have derived from such argument; besides, while this is a medical opinion shared by the company-designated physician, the Court is free to rely on it or discard it altogether.

Without the seafarer undergoing the prescribed 120/240-day periods for treatment, his employer is deprived of the opportunity to assist him in finding a cure for his condition and thus minimize any legal and pecuniary liability it may be held answerable for. At the same time, there is no way of assessing the seafarer's medical condition with finality; without this assessment, no

[11] *Wallem Maritime Services, Inc. v. Quillao*, 778 Phil. 808, 822-823 (2016).

corresponding indemnity is forthcoming - understandably. That is why the seafarer must subject himself to treatment as prescribed by the law and the standard POEA contract; this requirement is patently for his benefit in all respects.

Thus, consistent with the ruling in the *C.F. Sharp Crew Management, Inc. v. Orbeta* case cited above, it must be held that respondent is entitled only to compensation equivalent to or commensurate with his injury. In the absence of an opinion from a physician of his own choice, or a third one as the case may be, respondent must abide by the findings of the company-designated physician, which in this case remains unrefuted precisely since respondent plainly abandoned his treatment. The Grade 8 assessment of the company-designated physician therefore stands, and for this, respondent is entitled only to the equivalent monetary benefit of US$16,795.00 pursuant to the schedule of disability benefits under the POEA Standard Employment Contract.

On the issue of attorney's fees, the Court finds that, since there was no ground for the institution of the instant labor case to begin with, respondent has no right to demand the payment of such fees. As was held in *Pacific Ocean Manning, Inc. v. Penales*,[12]

> Under Article 2208 of the Civil Code, attorney's fees can be recovered 'when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.' Considering the above pronouncements, this Court sees no reason why damages or attorney's fees should be awarded to Penales. It is obvious that he did not give the petitioners' company-designated physician ample time to assess and evaluate his condition, or to treat him properly for that matter. The petitioners had a valid reason for refusing to pay his claims, especially when they were complying with the terms of the POEA SEC with regard to his allowances and treatment.

Having decided the case in the foregoing manner, the decisions of the labor tribunals and the CA deserve to be set aside.

WHEREFORE, the Petition is **GRANTED**. The April 29, 2015 Decision and July 8, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 130412 are **REVERSED and SET ASIDE**. Judgment is hereby rendered **DECLARING** respondent Romeo Rodelas, Jr. entitled to disability benefits in the amount of US$16,795.00 only, equivalent to Grade 8 disability under the POEA Contract. The original award of attorney's fees in respondent's favor is **DELETED**.

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[12] 694 Phil. 239, 252 (2012).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

(On official leave)
FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
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.

LUCAS P. BERSAMIN
Chief Justice