Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BRIGHT MARITIME CORPORATION and/or NORBULK SHIPPING UK LIMITED,
Petitioners,

- versus -

JERRY J. RACELA,
Respondent.

G.R. No. 239390

Present:

BERSAMIN, *C.J., Chairperson,*
DEL CASTILLO,
JARDELEZA,
GESMUNDO, and
CARANDANG,* *JJ.*

Promulgated:
JUN 03 2019

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DECISION

GESMUNDO, *J.*:

Before us is an appeal from the February 15, 2018 Decision[1] and the May 9, 2018 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 148879 reversing and setting aside the September 28, 2016 Decision[3] and October 27, 2016 Resolution[4] of the National Labor Relations Commission

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* On Wellness Leave.
[1] *Rollo*, pp. 53-67; penned by Associate Justice Jhosep Y. Lopez with Associate Justices Japar B. Dimaampao and Manuel M. Barrios, concurring.
[2] Id. at 69-70.
[3] CA *rollo*, pp. 37-55; penned by Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring.
[4] Id. at 57-60.

(NLRC) Fifth Division. The CA reinstated the Labor Arbiter's *(LA)* Decision,[5] dated April 19, 2016, which awarded total and permanent disability benefits and attorney's fees to respondent.

Antecedents

On March 21, 2013, Jerry J. Racela *(respondent)* was hired by petitioner Bright Maritime Corporation, a local manning agency, to work as fitter on board the vessel owned by its foreign principal, Norbulk Shipping UK Limited *(petitioner)*. The employment contract contained the following terms and conditions:

Duration of Contract	:	8 months + 1 month upon mutual agreement of both parties
Basic Monthly Salary	:	US$600.00
Hours of Work	:	44 hours per week
Overtime	:	US$311.00 (OT 85 hours per month) US$4.39 excess of OT Rate
Vacation Leave Pay	:	US$194.00 per month
Point of Hire	:	Manila, Philippines
Supplementary Wage	:	US$595.00 per month[6]

Respondent was also covered by a Collective Bargaining Agreement *(CBA)* between Norbulk Manning Services Limited and Latvian National Seafarers Trade Union.[7]

Prior to hiring, respondent was subjected to medical examination and was declared "Fit for Sea Duty as Engine Rating."[8]

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[5] Id. at 266-291; penned by Labor Arbiter Thomas T. Que, Jr.
[6] *Rollo*, pp. 54 and 124.
[7] Id. at 125-139.
[8] Id. at 149.

Respondent left the Philippines on June 8, 2013, and boarded the vessel in Singapore. Sometime in February 2014, respondent complained of chest pains and difficulty in breathing. On March 23, 2014, he was admitted at the Alisha Hospital in Israel for pulmonary edema and was diagnosed with "severe aortic regurgitation and aneurysm of the sinuses of valsava-aortic root." He underwent open-heart surgery (aortic valve replacement) on March 25, 2014 and was discharged and advised to consult his personal cardiologist in the Philippines on April 13, 2014. He was, likewise, prohibited from any physical exertion for six (6) months. On April 19, 2014, he was repatriated for medical reasons.[9]

Upon arrival in the Philippines, respondent was immediately confined at the Chinese General Hospital after being referred to the company-designated physician at Alegre Medical Clinic for post-employment medical examination.[10] On April 22, 2014, he was discharged and was advised to continue his medical therapy.[11]

While on follow-up checkup with the company-designated physician, respondent complained of pain over the surgical site on his chest and reported hearing a clicking sound inside it. His condition was diagnosed as "aortic valve stenosis" and was referred to a cardiologist.[12]

When examined by a cardiologist on May 2, 2014, respondent was advised to retrieve his angiogram results and to undergo repeat 2D Echocardiography in three to four months. He was also directed to continue with his medications.[13] After subsequent re-evaluations by the company-designated physician,[14] the latter rendered a medical opinion on July 21, 2014, stating that since respondent's aortic valve stenosis was pre-existing or hereditary, no disability grading was given pursuant to the POEA-SEC Contract, and that maximum medical cure had already been reached in this case.[15] Respondent followed up with the cardiology specialist who recommended the conduct of coronary angiography, as the result of his 2D Echo showed dilated left ventricle with severe hypokinesia.[16] In the medical

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[9] Id. at 55.
[10] Id. at 154-155.
[11] Id. at 156.
[12] Id. at 157.
[13] Id. at 158.
[14] Id. at 159-163.
[15] Id. at 164.
[16] Id. at 165-166.

report dated July 23, 2014, the company-designated physician reiterated his assessment that no disability grade was given to respondent because his condition was deemed not work-related.[17]

Respondent continued with his treatment under the company-designated physician until August 27, 2014, when he was discharged from the hospital. He had undergone coronary angiography on August 26, 2014,[18] the cost of which was still shouldered by petitioners.

On September 25, 2014, respondent consulted a private physician, Dr. Efren R. Vicaldo *(Dr. Vicaldo),* who issued a medical certificate stating that respondent was suffering from valvular heart disease, severe aortic regurgitation, aneurysm of sinus valsalva, S/P aortic valve replacement, normal coronary arteries and dilated left ventricle with systolic dysfunction. He was then given an impediment grade of VI (50%) and was declared unfit for sea duty.[19]

On June 9, 2015, respondent filed a disability complaint against petitioners.[20] He claimed that he was not informed of any assessment by the company-designated physician as to his fitness for sea duty. He alleged that he had told petitioners of the findings of his own private physician but petitioners rejected or avoided his repeated requests for referral to a third doctor. Respondent sought full disability benefits (US$60,000.00), moral damages (Php1,000,000.00), exemplary damages (₱200,000.00) and attorney's fees (10% of total claims).[21]

Petitioners countered that respondent was informed of the assessment made by the company-designated physician on July 30, 2014, at a meeting with Gilbey Jane A. Endaya and Jennifer M. Magsino, claims officers of Pandiman Philippines, Inc. *(Pandiman)* that were assigned to coordinate with the representative of petitioner Norbulk. The causes and risk factors of his illness (aortic valve stenosis) having been explained to him, respondent seemed to have understood that his ailment was not work-related and that petitioners shall continue to pay for his medical expenses until the 130th day or up to August 27, 2014, after which his treatment would be discontinued.

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[17] CA *rollo*, p. 184.
[18] Id. at. 68-71.
[19] Id. at 72-73.
[20] *Rollo*, p. 123.
[21] CA *rollo*, pp. 81-91.

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Respondent did not protest the assessment but only requested petitioners to shoulder the cost of his coronary angiogram, which was granted.[22]

About five (5) months later, petitioners received a letter dated January 5, 2015,[23] from respondent's counsel stating that since respondent was not informed of the medical assessment by the company-designated physician, he obtained a second opinion from his chosen doctor, Dr. Vicaldo. Said doctor declared him "unfit to work as seaman in any capacity" with an impediment grade of 6 (50% disability). Respondent thus demanded payment of US$60,000.00 as permanent total disability benefit. After a conciliation-mediation conference before the NLRC-SENA Unit failed to settle the dispute, the proceeding was ordered closed and terminated. On April 13, 2015, petitioners again received a letter from respondent's counsel requesting referral to a third doctor for a final evaluation of respondent's disability.[24]

Petitioners replied[25] to the counsel of respondent, refuting the allegation of respondent that he was not informed of the medical assessment of the company-designated physician, and also manifested their willingness to refer respondent to a third doctor for a final determination of whether his condition was work-related. On June 1, 2015, respondent's counsel sent another letter denying petitioners' assertion that respondent was duly informed of the company-designated physician's medical assessment.[26] As per respondent's account, he was merely told that he still had to undergo an angiogram and his medical treatment would stop after 120 days.[27]

Petitioners further claimed that respondent's counsel even personally conferred with their own counsel on the possible terms and conditions for the appointment of a third doctor, during which the former promised to send an e-mail containing their proposal. However, instead of such e-mail, petitioners received a summons from the NLRC. Such actuations of respondent's counsel indicate his lack of genuine intention to comply with the Third-Physician Rule under the POEA-SEC.[28]

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[22] *Rollo*, pp. 168-169.
[23] CA *rollo*, pp. 195-196.
[24] Id. at 200-202.
[25] Id. at 205-206.
[26] Letter dated May 27, 2015, id. at 208-210.
[27] Id.
[28] Id. at 211-212.

Ruling of the Labor Arbiter

In his Decision,[29] dated April 19, 2016, Labor Arbiter Thomas T. Que, Jr. *(LA Que)* said that while respondent failed to seek the opinion of the third doctor, the stipulations in the employment contract and CBA are merely permissive and not mandatory, hence the use of the word "may." Moreover, with his disability still subsisting, respondent acted within his rights in instituting the complaint against petitioners.[30]

On the issue of whether respondent's heart ailment was work-related, LA Que opined that their liability for compensation was impliedly admitted by petitioners when they provided him with medical treatment and paid his sickness allowance. Such continued medical treatment and payment of sickness allowance was indicative of petitioners' assessment that respondent's illness did, in fact, arise in the course of and/or was aggravated by the conditions of his employment.[31]

LA Que further ruled that respondent's cardiovascular disease should be deemed accidental because not all fitters end up with such condition. This entitles respondent to the maximum amount provided in the CBA. The findings of the company-designated physician were not given credence for being ambiguous. Considering that there was no definite assessment of respondent's fitness to work and his medical conditions remained unresolved, LA Que concluded that he was already deemed totally and permanently disabled.[32]

The dispositive portion of the LA's decision reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered finding Complainant entitled to his claim for total and permanent disability benefits and attorney's fees in the respective amounts of US $95,949 and $9,594.90 and, correspondingly, holding Respondents jointly and severally liable to pay the same.
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> All other claims are dismissed for lack of merit.
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> **SO ORDERED.**[33]

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[29] Supra note 5.
[30] Id. at 279-285.
[31] Id. at 285-286.
[32] Id. at 287-290.
[33] Id. at 291.

Ruling of the NLRC

Petitioners appealed to the NLRC, which reversed the LA's ruling in its September 28, 2016 Decision. The NLRC disagreed with the LA's finding that respondent's illness was work-related considering that he failed to present substantial evidence that would show the causal connection between his work as a fitter and his heart disease. Citing medical references, the NLRC noted that aortic valve stenosis could be caused by genetics, aging, and childhood rheumatic disease and may be aggravated by lifestyle choices. These causes being natural, the illness could not have been accidental. As to Dr. Vicaldo's findings, the NLRC pointed out that said physician did not perform any test on respondent. His recommendation was merely based on the medical examinations conducted by the company-designated physician.[34]

The NLRC also disagreed with the LA's view that respondent's illness did not arise from an accident as provided in the CBA. Aortic Valve Stenosis is caused by natural causes and not accidental. Since respondent failed to prove that his heart disease was work-related, such illness is not compensable under the POEA-SEC and the CBA.[35]

The NLRC thus decreed:

> **WHEREFORE,** the appeal is hereby **GRANTED**. The Decision of the Labor Arbiter Thomas T. Que, Jr. is **REVERSED and SET ASIDE.** Accordingly, the complaint is **DISMISSED** for lack of merit.
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> **SO ORDERED**.[36]

Respondent filed a motion for reconsideration but the NLRC denied the same.[37] He then elevated the case to the CA in a petition for *certiorari* under Rule 65.

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[34] Id. at 48-53.
[35] Id. at 53-54.
[36] Id. at 54.
[37] Id. at 57-60.

Ruling of the CA

In its decision, the CA reversed the NLRC, finding respondent's illness to be work-related. The pertinent portions of the CA's discussion on respondent's entitlement to disability are herein reproduced:

> **The records of this case are bereft of any showing as to how petitioner's nature of work caused or contributed to the aggravation of his illness. Nevertheless, We find that *(sic)* his illness to be work-related** for two reasons. First, **petitioner did not exhibit any sign that he was sick when private respondents employed him**. Verily, petitioner's blood pressure during his PEME was at 130/80mmHg., which is considered to be higher than what experts consider optimal for most adults. Private respondents' company-designated physician opined in his certification that "stress test and 2DEcho will detect aortic stenosis in the PEME. The ECG may provide signs but not definitive." Nevertheless, petitioner's results for his chest x-ray and ECG all came out normal. As such, petitioner was declared fit for sea duty. Evidently, there were no signs that petitioner was suffering from Aortic Valve Stenosis at the time private respondents employed him. He only showed signs and symptoms of the said cardiac injury while he was performing his work on board with private respondents' vessel. Pursuant to Section 32-A of the POEA-SEC, We can therefore conclude that there is a causal relationship between petitioner's illness and the work he performed.
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> Second, **the Supreme Court took judicial notice in several cases that seafarers are exposed to harsh conditions of the sea, long hours of work and stress brought about by being away from their families**. Compounded to this, their bodies are further subjected to wear and tear as a consequence of their work or labor. Aside from these, it has been held in several cases that "cardiovascular disease, coronary artery disease, and other heart ailments are work-related and, thus, compensable."
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> Private respondents are further mistaken in their argument that petitioner is not entitled to receive his disability compensation. It is clear from the records of this case that private respondents' company-designated physician neither gave petitioner a disability rating nor a categorical pronouncement that he is fit to work or is permanently disabled, whether total or permanent. Nevertheless, petitioner's independent physician gave him an Impediment Grade of VI and proclaimed him to be 'unfit to resume work as seaman in any capacity.' In the landmark case of *Kestrel Shipping Co., Inc. v. Munar*, it was held that injuries with a disability grading from 2-14 under Section 32 of the POEA-SEC may be deemed to be permanent and total if it incapacitates a

seafarer from performing his usual duties for a period of more than 120 or 240 days x x x

x x x x

Here, the company-designated physician refused to give petitioner a disability rating on the premise that his illness is not work-related. Still, it was explicitly stated in the company-designated physician's certification that "maximum medical care has already been reached in this case as the patient already underwent Aortic Valve Replacement."

Conspicuously, private respondents' company-designated physician, himself, recommended petitioner to undergo Coronary Angiography because he had dilated left ventricle with severe hypokinesia. After undergoing coronary angiography, the following were found:

x x x x x x x x x

> The coronary angiography showed insignificant coronary artery vessels. It also showed an avanabus oitpin of the right coronary artery from the left coronary cell.

x x x x

Observably, **private respondents' company-designated physician offered no explanation as with regard to petitioner's condition after undergoing coronary angiography**. Moreover, the progress report that was issued by private respondents' company-designated physician appears to be misleading. The abovequoted progress report stated that petitioner had an "avanabus oitpin of the right coronary artery from the left coronary cell." It appears after delving into medical literature that there is no such thing as "avanabus oitpin of the right coronary artery from the left coronary cell." **To dispel any confusion, private respondents could have presented a copy of the results of the coronary angiography, itself, but did not**. Due to such failure of the private respondents, **there arises a presumption that such evidence, if presented, would be prejudicial to it.**

Assuming that private respondent's company-designated physician made a typographical error. The said progress report could be interpreted to mean that petitioner had an "anomalous origin of the right coronary artery from the left coronary sinus." Studies have shown that anomalies of this kind rarely happens. It was then found that this kind of anomaly may lead to sudden death or myocardial ischemia without exhibiting any symptoms. Nevertheless, this anomaly can be surgically treated. It was not clear, however, from the records of this case if petitioner was treated for

such anomaly. Neither was there any showing that petitioner was able to work again as a fitter without putting his life in peril.

Thus, We find that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in deleting the labor arbiter's award of total and permanent disability compensation of US$60,000.00 (US$50,000,00 x 120%), in accordance with Section 32 of the 2010 POEA-SEC.[38] (emphases supplied; citations omitted)

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated September 20, 2016 and Resolution dated October 27, 2016, both issued by the National Labor Relations Commission in NLRC LAC No. 05-000379-16 are hereby **REVERSED.** The Decision of the Labor Arbiter dated 19 April 2016 is hereby **AFFIRMED** and **REINSTATED**.

SO ORDERED.[39]

Petitioners' motion for reconsideration was likewise denied by the May 9, 2018 CA Resolution.

ISSUE

The main issue to be resolved in this case is whether or not respondent is entitled to disability compensation under the POEA-SEC and/or the CBA.

Petitioners' Arguments

Petitioners assail the CA's finding that respondent's aortic valve stenosis is work-related.

Considering that respondent failed to establish the causal relationship between his illness and the nature of his work duties, petitioners argue that the CA clearly erred in holding that he was entitled to permanent and total disability compensation. The mere fact that respondent was declared fit for

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[38] *Rollo*, pp. 62-65.
[39] Id. at 67.

sea duty prior to hiring does not prove that he acquired his disease by reason of his employment. It was thus possible that he was already suffering from a heart ailment but due to the limitations of the Pre-Employment Medical Examination *(PEME),* the examining doctor failed to detect the same. Petitioners stress that although ECG can provide signs of aortic valve stenosis, the same is not definitive according to the company-designated physician. The tests that can properly diagnose said disease is Stress Test and 2D Echo, none of which were conducted during the PEME. As to respondent's pre-hypertensive blood pressure reading, it could only mean that his heart was not in perfect shape; and yet the PEME result posted no hindrance to respondent's employment at sea or was insufficient indication for the examining doctor to require him to undergo further tests. There is certainly no basis for the CA to infer work-connection simply because respondent passed the PEME.[40]

Petitioners deplore the CA's factual findings based only on presumptions and absent the quantum of evidence required in labor cases – which is an erroneous application of the law on compensation proceedings. In citing previous cases decided by the Court where it was pronounced that cardiovascular disease, coronary artery disease, and other heart ailments are work-related and compensable, the CA failed to consider that the grant of benefits in those cases were based on satisfaction of the conditions set forth in Section 32-A(11) of the POEA-SEC.[41] It is imperative for respondent to show by substantial evidence the nature of his work and the strain appurtenant thereto that may have resulted in his condition. Notably, despite the CA's recognition that the records of this case were bereft of any showing of such work connection or work aggravation, it still held petitioners liable for the payment of disability benefits to respondent. Indeed, the speculations of the CA should not be allowed to prevail over the express declaration of the company-designated physician that respondent's illness is not work-related.[42]

On the non-referral to a third doctor, petitioners maintain that it was the counsel of respondent who breached the rule by the precipitate filing of the complaint while they were still conferring on how to comply with the mandatory procedure. Even assuming that said rule can be set aside in the interest of substantial justice, there is still no valid basis for the award of disability benefits because Dr. Vicaldo's pronouncement of work-

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[40] Id. at 20-24.
[41] Id. at 26.
[42] Id. at 26-32.

relation/aggravation is unsubstantiated. Said doctor issued a medical certificate to respondent after a one-time consultation without conducting diagnostic or confirmatory tests. Petitioners cite previous instances when the Court has warned the labor tribunals to take extreme caution in relying on the assessment of Dr. Vicaldo. The CA should have done what the NLRC did when it refused to give credence to the unfounded medical certificate of Dr. Vicaldo.[43]

In their Reply to respondent's Comment, petitioners contend that the principle of work-aggravation cannot be appreciated in respondent's favor because he failed to prove that his work as fitter and/or the working conditions on board the vessel aggravated his ailment. Petitioners cite respondent's record of hours of rest which was attached to their position paper submitted before the Labor Arbiter. Said document showed that the average time respondent worked was only 10 hours a day between 7:00 a.m. and 6:00 p.m., with one-hour break at 12 noon; and that he had sufficient 14 hours of rest each day from July to March 2014.[44]

Respondent's Arguments

In his Comment, respondent asserts that the CA correctly reinstated the LA's award which is in accord with the POEA-SEC, as interpreted by the Court in its recent decisions. Having been cleared as fit to work in his PEME, it is clear that respondent only suffered the illness while on board the vessel, for which he was medically repatriated. The company-designated physician did not categorically state that respondent's illness is work-aggravated; hence, the findings of Dr. Vicaldo that his condition is work-aggravated should prevail.[45]

Respondent argues that since petitioners did not respond to his request for referral to a third doctor, he is then deemed totally and permanently disabled in contemplation of law, as held in several cases. Further, as held in *Eyana v. Philippine Transmarine Carriers, Inc., et al.*,[46] if the injuries with a disability grading from 2 to 14 (partial and permanent) would incapacitate a person for more than 120 or 240 days, depending on the need for further medical treatment, then the patient is deemed totally and

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[43] Id. at 32-35.
[44] Id. at 538-540; CA *rollo*, pp. 213-221.
[45] *Rollo*, pp. 506-512.
[46] 752 Phil. 232 (2015), citing *Kestrel Shipping Co., Inc., et al. v. Munar*, 702 Phil. 717, 730-731 (2013).

permanently disabled.[47] Similarly, in this case, respondent is entitled to total and permanent disability benefits, having been given a grade 6 disability rating by Dr. Vicaldo.[48]

In his Rejoinder to Petitioners' Reply, respondent insists that the CA correctly held that his heart disease, though pre-existing or congenital, was work-aggravated. He also points out that the final report of the company-designated physician was issued to Ms. Endaya and not to respondent. As to the meeting conducted by representatives of the manning agency, respondent said that, not being doctors, their statements are hearsay, and such does not sufficiently comply with the employer's obligation to issue a definite assessment of his illness and fitness to work made by the company-designated physician.[49]

THE COURT'S RULING

The petition is meritorious.

Whether or not respondent's illness is compensable is essentially a factual issue.[50] Issues of facts may not be raised under Rule 45 of the Rules of Court because this Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial or documentary.[51] Among the recognized exceptions[52] to said rule, as in the present case, is where the factual findings of the Labor Arbiter and the Court of Appeals are inconsistent with that of the NLRC.

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[47] Id. at 243-244.
[48] *Rollo*, pp. 518-523.
[49] Id. at 552-556.
[50] *De Leon v. Maunlad Trans, Inc., et al.*, 805 Phil. 531, 539 (2017).
[51] *C.F. Sharp Crew Management, Inc., et al. v. Legal Heirs of the Late Godofredo Repiso,* 780 Phil. 645, 665 (2016), citing *Litonjua, Jr. v. Eternit Corporation,* 523 Phil. 588, 605 (2006).
[52] 1) When the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) **when the findings of fact are conflicting;** (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. *(Litonjua, Jr. v. Eternit Corporation,* supra*)*

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While the LA and the CA found respondent's cardiovascular disease as work-related and hence compensable, the NLRC declared that such ailment is neither work-related nor a result of an accident.

The entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract.[53] The pertinent statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. The relevant contracts pertain to the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment *(DOLE),* and the parties' CBA.[54]

Since respondent was hired in 2013, it is the 2010 POEA-SEC (Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships) under Philippine Overseas Employment Authority *(POEA)* Memorandum Circular No. 010-10 which is applicable in this case. Section 20(A) thereof governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board seagoing vessels during the term of his employment contract, to wit:

> SECTION 20. *Compensation and Benefits.* —
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> A. *Compensation and Benefits for Injury or Illness*
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> The liabilities of the employer when the seafarer suffers **work-related injury or illness** during the term of his contract are as follows:
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> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
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> 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 employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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[53] *Austria v. Crystal Shipping, Inc., et al.*, 781 Phil. 674, 681 (2016).
[54] Id. at 681-682.

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.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

5. In case a seafarer is disembarked from the ship for medical reasons, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation, or (2) fit to work but the employer is unable to find employment for the seafarer on board his former ship or another ship of the employer.

6. **In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract**. Computation of his benefits arising from

an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

7. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws such as from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

x x x x

F. When requested, the seafarer shall be furnished a copy of all pertinent medical reports or any records at no cost to the seafarer.

x x x x (emphases supplied)

Pursuant to the foregoing, two (2) elements must concur for an injury or illness to be compensable: *first,* that the injury or illness must be work-related; and *second,* that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[55]

To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[56]

The POEA-SEC defines a "work-related illness" as any sickness as a result of an occupational disease listed under Section 32-A with the satisfaction of conditions provided therein. Cardiovascular diseases, such as

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[55] *Bautista v. Elburg Shipmanagement Philippines, Inc., et al.,* 767 Phil. 488, 497 (2015), citing *Magsaysay Maritime Services, et al. v. Laurel,* 707 Phil. 210, 221 (2013); *Nisda v. Sea Serve Maritime Agency, et al.,* 611 Phil. 291, 316 (2009).

[56] *Loadstar International Shipping, Inc. v. Yamson, et al.,* G.R. No. 228470, April 23, 2018, citing *Doehle-Philman Manning Agency, Inc., et al. v. Haro,* 784 Phil. 840, 850 (2016); *Austria v. Crystal Shipping, Inc., et al.,* supra note 53, at 682 (2016).

respondent's aortic valve stenosis, is expressly included among those occupational diseases, which entitles the seafarer to compensation for the resulting disability if *any* of the specified conditions are met.

> SECTION 32-A. *Occupational Diseases.* —
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> For an occupational disease and the resulting disability or death to be compensable, **all of the following conditions must be satisfied**:
>
> x x x x
>
> 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.
>
> The following diseases are considered as occupational **when contracted under working conditions involving the risks described herein**:
>
> x x x x (emphases supplied)

During the term of his contract and while in the performance of his duties on board petitioners' vessel, respondent undeniably suffered from severe aortic regurgitation or valvular insufficiency (leaking of blood back into the left ventricle due to improperly functioning aortic valve leaflets)[57] for which he was hospitalized and underwent open-heart surgery (aortic valve replacement). Upon repatriation, his condition was diagnosed by the company-designated physician as aortic valve stenosis.

"In aortic valve stenosis, the aortic valve between the lower left heart chamber (left ventricle) and the main artery that delivers blood from the heart to the body (aorta) is narrowed (stenosis). When the aortic valve is narrowed, the left ventricle has to work harder to pump a sufficient amount of blood into the aorta and onward to the rest of [the] body. This can cause the left ventricle to thicken and enlarge. Eventually the extra work of the heart can weaken the left ventricle and [the] heart overall, and it can

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[57] <https://www.healthline/com/health/aortic-stenosis/causes> (visited May 5, 2019).

ultimately lead to heart failure and other problems."[58] In adults, three conditions are known to cause aortic stenosis: 1) Progressive wear and tear of a bicuspid valve present since birth (congenital); 2) Wear and tear of the aortic valve in the elderly; and 3) Scarring of the aortic valve due to rheumatic fever as a child or young adult.[59] In most elderly adults, aortic stenosis is caused by a buildup of calcium (a mineral found in the blood) on the valve leaflets. Over time, this causes the leaflets to become stiff, reducing their ability to fully open and close.[60] Respondent was just 49 years old when he manifested symptoms of the disease after eight months of working on board petitioners' vessel.

Treatment of aortic valve stenosis depends on the severity of the condition, which may require surgery to repair or replace the valve. Left untreated, aortic valve stenosis can lead to serious heart problems.[61] The doctor may recommend to limit the patient's strenuous activity to avoid overworking the heart.[62] Aortic valve stenosis, once it occurs, is irreversible. Medications may be prescribed to manage the symptoms or reduce the burden on the heart.[63] In this case, respondent immediately underwent open-heart surgery for valve replacement, continued medications, and regular checkup within 130 days after his repatriation, with coronary angiogram as the last procedure performed by the company-designated physicians.

Based on the foregoing, it may be concluded that respondent's heart disease has rendered him unfit for sea duty. The company designated-physician, however, refused to issue a disability grading for the reason that such illness is not work-related.

On July 21, 2014, the 93rd day from respondent's signing-off and medical repatriation, the company-designated physician, Dr. Natalio G. Alegre II, issued the following medical assessment:

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[58] <https://www.mayoclinic.org/diseases-conditions/aortic-stenosis/symptoms-causes/syc-20353139> (visited May 5, 2019).

[59] *Aortic Valve Stenosis Symptoms, Treatment, Types & Surgery* by Daniel Lee Kulick, MD, FACC, FSCAI (Medical Author) and William C. Shiel, Jr., MD, FACP, FACR (Medical Editor), Medically Reviewed on 11/13/2017, accessed at <https:www.medicinenet.com/aortic_stenosis/article.htm> (visited May 5, 2019).

[60] <https://newheartvalve.com/uk/understand-your-heart/what-is-aortic-stenosis/ (visited May 5, 2019).

[61] <https://www.mayoclinic.org/diseases-conditions/aortic-stenosis/symptoms-causes/syc-20353139> (visited May 5, 2019).

[62] <https://www.mayoclinic.org/diseases-conditions/aortic-stenosis/symptoms-causes/syc-20353139> (visited May 5, 2019).

[63] <https://www.healthline.com/health/aortic-stenosis> (visited May 5, 2019).

> 1. Aortic Valve Stenosis is the narrowing of the valve that conducts blood from the heart to the aorta and to the circulatory system. The etiologies of aortic valve stenosis are a deformed heart (bicuspid) [which] is hereditary or genetic in origin, and childhood infection of Rheumatic Fever.
>
> 2. The risk factors are previous infection of Rheumatic Fever, an inherited deformed heart and age.
>
> 3. Stress test and 2DEcho will detect aortic stenosis in the PEME. The ECG may provide signs but not definitive.
>
> 4. Maximum medical care has already been reached in this case as the patient already underwent Aortic Valve Replacement.
>
> 5. **As the condition is pre-existing or hereditary, based on the POEA Contract, no disability is given.**[64] (emphasis supplied)

In *Fil-Pride Shipping Company, Inc., et al. v. Balasta,*[65] the Court ruled that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within a period of 120 or 240 days, pursuant to Article 192(c)(1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employee's Compensation *(AREC).* If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. Thus, even if it was shown that given the seafarer's delicate post-operative condition, a definitive assessment by the company-designated physician would have been unnecessary as, for all intents and purposes, the seafarer was already unfit for sea duty. Still, with the said doctor's failure to issue a definite assessment of the seafarer's condition on the last day of the statutory 240-day period, the seafarer was deemed totally and permanently disabled pursuant to Article 192(c)(1) of the Labor Code and Rule X, Section 2 of the AREC.

However, it must be pointed out that in the aforecited case, respondent sufficiently alleged the causal connection between his work duties/functions and his heart disease, *viz.*:

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[64] CA *rollo,* p. 181.
[65] 728 Phil. 297 (2014).

> Just the same, in several cases, cardiovascular disease, coronary artery disease, as well as other heart ailments were held to be compensable. Likewise, petitioners failed to refute respondent's allegations in his Position Paper that **in the performance of his duties as Able Seaman, he inhaled, was exposed to, and came into direct contact with various injurious and harmful chemicals,** dust, fumes/ emissions, and other irritant agents; **that he performed strenuous tasks** such as lifting, pulling, pushing and/or moving equipment and materials on board the ship; that **he was constantly exposed to varying temperatures of extreme hot and cold** as the ship crossed ocean boundaries; that he was exposed as well to harsh weather conditions; that in most instances, **he was required to perform overtime work**; and that **the work of an Able Seaman is both physically and mentally stressful**. It does not require much imagination to realize or conclude that these tasks could very well cause the illness that respondent, then already 47 years old, suffered from six months into his employment contract with petitioners. x x x [66] (emphases supplied)

Subsequently, in *Gamboa v. Maunlad Trans, Inc., et al.,*[67] the Court reiterated case law stating 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. Thus, a temporary total disability becomes total and permanent by operation of law.[68] Since the company-designated physician therein failed to arrive at a final and definitive assessment of petitioner seafarer's disability within the prescribed period, the law deems the same to be total and permanent, which is classified as Grade 1 under the POEA-SEC.

Again, it bears stressing that in the aforecited case, the conditions set forth in Section 32-A(21) of the 2010 POEA-SEC for degenerative changes in the spine (osteoarthritis), which is listed as an occupational disease, were satisfied. Thus:

> Moreover, degenerative changes of the spine, also known as osteoarthritis, 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:

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[66] Id. at 311-312.
[67] G.R. No. 232905, August 20, 2018.
[68] Id., citing *Talaroc v. Arpaphil Shipping Corporation,* G.R. No. 223731, August 30, 2017, 838 SCRA 402, 416; *Tamin v. Magsaysay Maritime Corporation, et al.,* 794 Phil. 286, 301 (2016).

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 petitioner's back problem to be work-related. (emphases supplied)

Clearly, the mere fact that a seafarer's disability exceeded 120 days, by itself, is not a ground to entitle him to full disability benefits. Such should be read in relation to the provisions of the POEA Standard Employment Contract which, among others, provide that an illness should be work-related. Without a finding that an illness is work-related, any discussion on the period of disability is moot.[69]

Cardiovascular disease is listed in Sec. 32-A as an occupational disease.

However, for cardiovascular disease to constitute as an occupational disease for which the seafarer may claim compensation, it is incumbent upon the seafarer to show that he developed the same under any of the following conditions identified in Section 32-A(11)[70]:

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[69] See *C.F. Sharp Crew Management, Inc. v. Rocha, et al.*, 809 Phil. 180, 199 (2017); see also *Monana v. MEC Global Shipmanagement and Manning Corporation, et al.*, 746 Phil. 736, 756 (2014).

[70] See *Bautista v. Elburg Shipmanagement Philippines, Inc., et al.*, supra note 55, at 498; see also *Dizon v. Naess Shipping Philippines, Inc.*, 786 Phil. 90, 102-103 (2016).

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work;

b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship;

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

d. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5;

e. In a patient not known to have hypertension or diabetes, as indicated in his last PEME.[71]

Respondent's aortic valve stenosis cannot be considered to have developed under any of the first three instances precisely because of his failure to show that the nature of his work as fitter involved "unusual strain" as to bring about an acute attack or acute exacerbation of his heart disease that he supposedly contracted in the course of employment. Even the CA conceded at the outset that there is absolutely no showing in the records "as to how [respondent's] nature of work caused or contributed to the aggravation of his illness."

As to the last two instances, there is no evidence that respondent has hypertension or diabetes; neither is there any allegation or proof that he was taking prescribed maintenance medicines or observing doctor-recommended lifestyle changes. While his blood pressure reading of 130/80mmHG is considered pre-hypertensive, there is no indication in his PEME that he was suffering from high blood pressure.[72] The medical reports issued by the

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[71] Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.
[72] *Rollo*, p. 149.

company-designated physicians also failed to disclose that respondent suffered from either of these conditions.

Neither can respondent rely on the fact that he passed the PEME prior to his engagement. Thus, we underscored in *Loadstar International Shipping, Inc. v. Yamson, et al.*[73]:

> xxx The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. In this regard, it is also true that the pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided the seafarer's working conditions bear causal connection with his illness. These rules, however, cannot be asserted perfunctorily by the claimant as it is incumbent upon him to prove, by substantial evidence, as to how and why the nature of his work and working conditions contributed to and/or aggravated his illness.[74] xxx

Indeed, respondent was unable to present substantial evidence to show that his work conditions caused, or at the least increased the risk of contracting his illness. Neither was he able to prove that his illness was pre-existing and that it was aggravated by the nature of his employment.[75]

Despite the dearth of evidence of work-relation or work-aggravation, the CA proceeded to take judicial notice that in several cases seafarers are exposed to harsh conditions of the sea, long hours of work and stress brought about by being away from their families, compounded by the wear and tear caused to their bodies by their work or labor. Additionally, the CA faulted petitioners for not presenting a copy of the results of respondent's coronary angiography, which it said gave rise to the presumption that such evidence if presented would be prejudicial to petitioners. On the assumption that the company-designated physician made a typographical error in the medical report, dated August 28, 2014,[76] stating that the result of the coronary angiography showed an "avanabus oitpin of the right coronary artery from the left coronary cell," the CA interpreted this to mean an anomalous origin of "the right coronary artery from the left coronary sinus." Since such anomaly rarely happens, though it can be surgically treated, the CA again faulted petitioners for not treating the same and for failing to show that respondent was able to work again as a fitter without endangering his

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[73] Supra note 56.
[74] Id.
[75] Id.
[76] CA *rollo*, p. 190.

life. Incidentally, respondent was able to obtain a copy of the report on coronary angiography which was attached to the petition for *certiorari* filed before the CA. The cardiologist's conclusion stated: "Insignificant coronary artery disease" with the recommendation to "continue medical therapy" and "aggressive secondary prevention."

The CA's reasoning based on generalized statements and presumptions does not suffice to prove entitlement to disability compensation. As we held in the aforecited case of *Loadstar International Shipping, Inc. v. Yamson, et al.*[77]:

> While it is true that probability and not ultimate degree of certainty is the test of proof in compensation proceedings, it cannot be gainsaid, however, that **award of compensation and disability benefits cannot rest on speculations, presumptions and conjectures.** In addition, the Court agrees with the finding of the NLRC that "**[c]omplainant** [Ernesto] **failed to demonstrate that he was subjected to any unusual and extraordinary physical or mental strain or event** that may have triggered his stroke.[78] (emphases supplied/citation omitted)

In labor cases, as in other administrative proceedings, **substantial evidence,** or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion, is required. The oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence.[79] Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent.[80] It has been ruled, time and again, that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence.[81]

In *Scanmar Maritime Services, Inc., et al. v. De Leon,*[82] the Court held that seafarers claiming disability benefits are burdened to prove the positive proposition that there is a reasonable causal connection between their ailment and the work for which they have been contracted. Logically,

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[77] Supra note 56.
[78] Id.
[79] *Esposo v. Epsilon Maritime Services, Inc.*, G.R. No. 218167, November 7, 2018, citing *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*, 678 Phil. 938, 946-947 (2011).
[80] Id., citing *Panganiban v. Tara Trading Shipmanagement, Inc.*, 647 Phil. 675, 688 (2010).
[81] *Interorient Maritime Enterprises, Inc. v. Creer III*, 743 Phil. 164, 184 (2014), citing *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 67 (2011).
[82] 804 Phil. 279 (2017).

the labor courts must determine their *actual work,* the nature of their ailment, and *other factors* that may lead to the conclusion that they contracted a work-related injury.[83] Thus:

> xxx this Court observes that all the tribunals below relied on the mere fact of the 22-year employment of De Leon as the causative factor that triggered his radiculopathy. **They did not even specify his duties as a seafarer throughout his employment.**
>
> At most, respondent merely alleged that in his last stint as a Third Mate, he was a watchstander. His job entailed that he was responsible to the captain for keeping the ship, its crew, and its cargo safe for eight hours a day. Still, **he did not particularize the laborious conditions of his work that would cause his injury**.
>
> The CA mentioned that De Leon was consistently engaged in stressful physical labor throughout his 22 years of employment. **But it did not define these purported stressful physical activities, nor did it point to any piece of evidence detailing his work.**
>
> x x x x
>
> **In effect, De Leon failed to show before the labor tribunals his functions as a seafarer, as well as the nature of his ailment. Absent these premises, none of the courts can rightfully deduce any reasonable causal connection between his ailment and the work for which he was contracted.**[84] (emphases supplied)

Consequently, although considered as an occupational disease, respondent's heart ailment did not satisfy the conditions under Section 32-A (11) 2010 POEA-SEC to be considered occupational.[85] His aortic valve stenosis not being work-related, the same is held/deemed not compensable.

As we reiterated in the recent case of *Esposo v. Epsilo Maritime Services, Inc.*:[86]

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[83] Id. at 288; see also *Teekay Shipping Phils., Inc. v. Jarin,* 737 Phil. 564, 573 (2014).
[84] Id. at 289-290.
[85] See *C.F. Sharp Crew Management, Inc., et al. v. Alivio,* 789 Phil. 564, 573 (2016).
[86] Supra note 79.

> Hence, although cardiovascular diseases are listed as occupational diseases, still, to be compensable under the POEA-SEC, all of the four (4) general conditions for occupational diseases under Section 32, **plus any one (1) of the conditions listed under Section 32-A for cardiovascular diseases,** must nonetheless be proven to have obtained and/or be obtaining. Moreover, the same must be work-related and must have existed during the term of the seafarer's employment.
>
> In the present case, Esposo failed to substantially prove his claim that his illness was work-related or that it was existing during the time of his employment with Epsilon. He failed to show that his illness was known to have been present during his employment or that the nature of his work brought an acute exacerbation thereof as required under Section 32-A (11)(a).[87] (boldface in the original)

As a final note, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on surmises. Liberal construction is not a license to disregard the evidence on record or to misapply our laws.[88]

WHEREFORE, the petition is **GRANTED.** The February 15, 2018 Decision and May 9, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 148879 are **REVERSED and SET ASIDE.** The September 20, 2016 Decision and October 27, 2016 Resolution of the National Labor Relations Commission (Fifth Division) are hereby **REINSTATED.**

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

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[87] Id.
[88] *Philman Marine Agency, Inc., et al. v. Cabanban,* 715 Phil. 454, 483 (2013); citations omitted.

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

(On Wellness Leave)
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