Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROBERTO F. RODELAS, Petitioner,	**G.R. No. 244423**
	Present:
-versus-	LEONEN, *J., Chairperson,* GESMUNDO, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
MST MARINE SERVICES (PHILS.), Respondent.	**Promulgated:** November 4, 2020 MisPDCBath

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DECISION

LEONEN, *J.:*

A seafarer does not lose the right to consent to the prescribed medical treatments of a company-designated physician. The employer has the option to either wait for the seafarer to consent to the procedure or to terminate it within the 120/240 day period in which it should make a final and definite assessment of the seafarer's disability. In terminating a seafarer's treatment, the employer either recognizes the lack of a final assessment, or the finality of its interim assessment.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Decision[2] and Resolution[3] of the Court of Appeals in

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1 *Rollo*, pp. 7–24.

2 Id. at 32–51. The February 20, 2018 Decision was penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan.

CA-G.R. SP No. 142957. The Court of Appeals modified the decision of the Panel of Voluntary Arbitrators[4] and found petitioner entitled to permanent partial disability benefits instead of permanent total disability benefits.

MST Marine Services (Phils.), Inc. (MST Marine), hired Roberto Rodelas (Rodelas), Jr. as Chief Cook aboard MV Sparta for its principal, Thome Management Private Limited.[5] Rodelas is a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) which had a collective bargaining agreement with MST Marine effective from January 1, 2012 to December 31, 2014.[6]

Rodelas' duties as Chief Cook in MV Sparta included receiving provisions of the ship such as frozen fish and meat, maintaining these provisions, and preparing meals for the crew.[7]

On May 6, 2014, Rodelas felt pain on his lower right abdomen and back. He was then brought to a clinic in South Korea where he was diagnosed with lumbar sprain.[8] He was given medicine and was advised to undergo a Magnetic Resonance Imaging or Computed Tomography scan if the medication did not improve his condition.[9]

On May 22, 2014, he was brought to a hospital in South Korea, where he was diagnosed with "Chronic Back Pain. HIVD-Herniated Inter Vertebral Disc L4L5 (bulging)[,]" a colon inflammation, and was declared unfit to work.[10]

On May 24, 2014, Rodelas was repatriated to the Philippines.[11] Two days after, he was referred to the company-designated physicians at Nolasco Medical Clinic for a post-employment medical exam.[12] During the examination, he complained of back pain and abdominal discomfort. Thus, he was referred to an orthopaedic surgeon for examination of his spine and a gastroenterologist.[13] After a series of tests, his abdominal condition was diagnosed as "non-specific appendicitis" and was later declared to be asymptomatic and marked "resolved."[14]

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3 Id. at 29–31. The January 14, 2019 Resolution was penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan.

4 Id. at 96–112. The Panel of Voluntary Arbitration in AC-028-RCMB-NCR-MVA-003-01-01-2015 that issued the September 15, 2015 Decision was composed of MVA Jesus S. Silo (Chairperson) and members MVA Leonardo B. Saulog and MVA Herminigildo C. Javen.

5 Id. at 33.

6 Id. at 134.

7 Id. at 9–10.

8 Id. at 33.

9 Id.

10 Id.

11 Id.

12 Id. at 805.

13 Id.

14 Id. at 806.

On May 30, 2014, he was examined by an orthopaedic surgeon for his back pain. The surgeon recommended that Rodelas undergo physical therapy for six (6) sessions and, if the pain subsists, to undergo an MRI of his spine.[15] He was then diagnosed with "Lumbar Degenerative Disc Disease/Herniated Nucleus Pulposus."[16] After completion of the sessions, he returned and complained of back pain and numbness of his right leg. Thus, the orthopaedic surgeon recommended an MRI of his spine and found:

> VENTRAL AND BILATERAL DISC PROTRUSION MORE TOWARDS THE RIGHT SIDE AT L4-5 LEVEL WITH ACCOMPANYING DEGENERATIVE DISC DESSICATION CHANGES AND SLIGHT SPINAL CANAL STENOSIS.[17] (Citation omitted)

On July 4, 2014, the orthopaedic surgeon recommended that Rodelas undergo "Laminotomy, Discectomy[,] and Foraminotomy with application of spacer L4-5[,]" otherwise referred to as spine surgery, and to continue his medications.[18] After several follow-up sessions, petitioner was undecided if he will undergo spine surgery.[19]

On September 6, 2014, MST Marine sought the opinion of its designated physicians in Nolasco Medical Clinic whether the pain in Rodelas' lower right extremity was caused by his back problem. It further requested for an assessment/disability grading of Rodelas' back problem. Dr. Elpidio Nolasco (Dr. Nolasco) replied in the affirmative and assessed petitioner's back problem as "[s]light rigidity of one third (1/3) loss of motion or lifting power of the trunk (back)" with a Grade 11 disability.[20]

On September 10, 2014, Dr. Nolasco responded to MST Marine's additional queries on the etiology, risk factors, and plan of management in case Rodelas decides not to undergo surgery:

> Regarding your queries:
>
> The etiology and risk factors of patient's medical condition and the plan of management, in the event that Mr. Rodelas will not undergo his recommended procedure.
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> Etiology is herniated disc.
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> Risk factors: lifting of heavy weights, heavy upper body

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15 Id.
16 Id.
17 Id. at 807.
18 Id. at 34 and 807.
19 *See* Medical Reports for the following dates: July 14, 2014, July 21, 2014, July 28, 2014, August 5, 2014, August 12, 2014, and August 20, 2014, pp. 295–325.
20 *Rollo*, p. 326.

> Plan of management: Spine surgery if not, continuous rehabilitation therapy[.] [21]

Dr. Nolasco reiterated Rodelas' disability grading:

> Mr. Rodelas' interim disability grade
>
> Disability grading for back is:
>
> Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk (back)..... Gr. 11
>
> Reference:
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> Primer 2010 POEA Standard Employment Contract, Under Chest-Trunk-Spine, page 21. Item #6[.] [22]

On September 18, 2014, Rodelas went back to Nolasco Medical Clinic where he was referred to the orthopaedic spine surgeon who recommended epidural injections and physical therapy. However, he was unsure of receiving injections.[23]

On September 24, 2014, Rodelas alleged that he was advised to go to PANDIMAN, his principal's correspondent in the Philippines.[24] There, he was told of the Grade 11 disability assessment and was offered compensation amounting to US$14,345.18 as stated in the Collective Bargaining Agreement.[25] He was allegedly told that to question this assessment, he should "seek a second medical opinion[.]"[26]

On September 26, 2014, Rodelas sought an opinion from Dr. Renato P. Runas (Dr. Runas), who declared that "spinal surgery will not provide a complete recovery from the symptoms" and that Rodelas was "permanently unfit for sea duty in whatever capacity with a permanent disability."[27]

Rodelas continued his medical treatment in the Nolasco Medical Clinic. After several sessions, Rodelas was still undecided on whether he will undergo spine surgery or receive epidural injections.[28]

After his last check-up on October 17, 2014, MST Marine opted to

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21 Id. at 327.
22 Id.
23 Id. at 329.
24 Id. at 16.
25 Id. at 14.
26 Id.
27 Id. at 34.
28 Id. at 332–339. *See* Medical Reports for September 26, 2014, September 30, 2014, October 9, 2014, and October 17, 2014.

terminate Rodelas' treatment due to his inability to decide on undergoing the recommended course of treatment. MST Marine claimed this was when it informed Rodelas of his disability grading and offered him the amount of US$14,325.19 as settlement.[29]

Rodelas rejected the offer and sought the help of his union. On October 22, 2014, AMOSUP sent a letter to MST Marine inviting them for a clarificatory meeting to discuss Rodelas' disability benefits.[30] However, they failed to arrive at an amicable settlement.[31]

Thus, on November 10, 2014, Rodelas filed a Notice to Arbitrate with the National Conciliation and Mediation Board.[32] During the conferences, Rodelas requested for a third medical assessment, but MST Marine did not act on it despite numerous requests for referral. Thus, the parties submitted the case for decision.[33]

On September 15, 2015, the Panel of Voluntary Arbitrators issued a decision, the dispositive portion of which stated:[34]

> **WHEREFORE, PREMISES CONSIDERED**, a decision is hereby rendered ORDERING herein respondents MST MARINE SERVICES (PHILS.), INC[.] AND ARTEMIO V. SERAFICO to pay jointly and solidarily complainant ROBERTO RODELAS, JR., the amount of NINETY FIVE THOUSAND NINE HUNDRED FORTY NINE U.S. DOLLARS ($95,949.00) as permanent total disability benefits; and ten percent (10%) thereof as attorney's fees in the amount of **NINE THOUSAND FIVE HUNDRED NINETY FOUR U.S. DOLLARS AND NINETY CENTS ($9,594.90),** or in the total amount of **ONE HUNDRED FIVE THOUSAND FIVE HUNDRED THIRTY NINE AND NINETY CENTS ($105,539.9[0]),** or its Philippine Peso equivalent converted at the prevailing rate of exchange at the time of actual payment[.][35] (Emphasis in the original)

The Panel of Voluntary Arbitrators held that entitlement to permanent total disability benefits does not depend on the assessment of the company-designated physician, but on the capacity of the employee to pursue and earn from his usual work.[36] Relying on *Crystal Shipping v. Natividad*,[37] it held that a disability preventing a seafarer from performing and earning from his usual work for more than 120 days leads to permanent total disability. It noted that more than 120 days have lapsed from Rodelas' repatriation on May 24, 2014 until the case was submitted for decision. It also held that

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29 Id. at 809.
30 Id. at 340.
31 Id. at 34.
32 Id.
33 Id. at 97.
34 Id. at 34.
35 Id. at 35.
36 Id. at 106.
37 510 Phil. 332 (2005) [Per J. Quisumbing, First Division].

Rodelas cannot go back to his sea duties without serious discomfort and danger to his life. Thus, he was awarded permanent total disability benefits amounting to US$95,949.00 as stipulated in the Collective Bargaining Agreement[38] and 10% attorney's fees.[39]

It also gave more weight to Dr. Runas' findings over the company-designated physicians' because it was grounded on the impact of the nature of Rodelas' work in relation to his injury.[40]

On November 10, 2015, MST Marine filed a petition for review before the Court of Appeals.[41]

Pending appeal, the Panel of Voluntary Arbitrators granted and issued a writ of execution for the satisfaction of its award. Hence, on February 9, 2016, MST Marine issued an RCBC Check No. 670781 amounting to ₱5,013,145.25 to NLRC which then released it to Rodelas.[42]

On February 20, 2018, the Court of Appeals issued a Decision[43] partially granting the Petition and modifying the award from permanent total to partial disability benefits amounting only to US$7,465.00:

> **WHEREFORE**, the instant petition for review is hereby **PARTIALLY GRANTED**.
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> Accordingly, the Decision dated 15 September 2015 rendered by the Panel of Voluntary Arbitrators of the NCMB is **MODIFIED**, ordering petitioner MST Marine Services (Phils.) and Artemio V. Serafico to jointly and severally pay respondent Roberto F. Rodelas, Jr. permanent and partial disability benefits corresponding to a Grade 11 disability under the 2010 POEA-SEC in the amount of US$7,465.00 or its peso equivalent at the time of payment, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction[.][44] (Emphasis in the original)

The Court of Appeals found that Rodelas was only entitled to permanent and partial disability benefits.[45] It held that the period of assessment of the company-designated physician was extended from 120 to 240 days because Rodelas needed further treatment.[46] Before the lapse of the 240-day period, Rodelas already filed his claims with the National

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38 *Rollo*, pp. 106–107.
39 Id. at 107–108.
40 Id. at 108.
41 Id. at 811.
42 Id.
43 Id. at 32–51.
44 Id. at 49–50.
45 Id. at 47.
46 Id. at 42.

Conciliation and Mediation Board.[47] It held that Rodelas' failure to decide on the prescribed treatment prevented the company-designated physician from making a final assessment within the 240-day period.[48] It ruled that the Grade 11 disability rating is merely an interim assessment that is not definitive of petitioner's condition.[49] Thus, Rodelas' right to consult with a physician of his own choice was premature because it presupposed the existence of a final assessment of his disability from the company-designated physician .[50]

Nonetheless, the Court of Appeals held that as a matter of equity, Rodelas was entitled to permanent partial disability benefits, since it is undisputed that his injury was work-related.[51] It gave credence to the Grade 11 disability rating assessment of the company-designated physician who examined, diagnosed, and treated Rodelas from his medical repatriation.[52] It modified the rate as provided for in Section 32 of the 2010 POEA Standard Employment Contract (POEA-SEC).[53]

Finally, the Court of Appeals found that Rodelas was not entitled to attorney's fees as he was neither forced to litigate nor were his wages unlawfully withheld as the delay was caused by his own indecision.[54]

The Court of Appeals denied Rodelas' motion for reconsideration in its January 14, 2019 Resolution.[55] Hence, this Petition.

Petitioner does not dispute receiving several consultations and treatments from company-designated physicians. However, he alleges that even after he had signified his intention to undergo surgery he was told by respondent that he can no longer return to his sea duties.[56] He claims he was advised by respondent to go to its correspondent in the Philippines, PANDIMAN.[57] There, he learned that he was assessed a Grade 11 disability with a compensation of US$14,345.18.[58] He was allegedly told that if he wanted to dispute this assessment, he should seek a second medical opinion.[59] Thus, he went to Dr. Runas who found him permanently unfit for sea duties, which the respondent refused to acknowledge.[60] It was then that he sought the help of his union, AMOSUP, to claim his disability benefits.[61]

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47 Id. at 44.
48 Id.
49 Id. at 46.
50 Id. at 46–47.
51 Id. at 17. Court of Appeals Decision.
52 Id. at 47–48.
53 Id. at 48.
54 Id. at 49.
55 Id. at 29.
56 Id. at 13.
57 Id. at 16.
58 Id. at 14.
59 Id.
60 Id. at 14–15.
61 Id. at 15.

Petitioner asserts he sought a second opinion from Dr. Runas to get an improved offer of compensation and possible amicable settlement from the respondent.[62] Further, he argues that the company-designated physician's assessment was final[63] and that his medical condition already rendered him totally and permanently disabled by law.

On the other hand, respondent contends that its representative had been diligent in responding to petitioner's medical needs. It faults petitioner for his repeated failure to avail of the prescribed surgery and injections which led to its decision to terminate his medical treatment.[64] Respondent denies dissuading petitioner from consenting to the surgery and claims even the company-designated physician was consistent in its recommendation to proceed with surgery. Since there was a chance petitioner could regain his full functional capacity after the surgery, respondent asserts petitioner should have consented to the procedure.[65] It concludes that petitioner's unjustified refusal to undergo surgery disqualifies him from claiming disability benefits under Section 20.D of the POEA-SEC and Article 15.4 of the Collective Bargaining Agreement.[66]

Respondent insists that the assessment was only interim and blames the lack of a final assessment on petitioner's inability to decide on undergoing the surgery.[67] It avers that petitioner's continued medical treatment after the 120th day effectively extended the period to 240 days for respondent to finalize his disability assessment.[68] Since there was no final assessment issued by its company-designated physician when petitioner filed the notice to arbitrate, respondent alleges that petitioner's claim for disability benefits is premature and lacks a cause of action.[69]

Respondent imputes bad faith on petitioner's act of securing a second medical opinion from Dr. Runas while he was still undergoing treatment from the company-designated physician.[70] Petitioner allegedly did not have a right to seek a second opinion since his treatment has yet to be completed.[71] In addition, it claims that Dr. Runas' examination should not be given credence for being speculative as he only examined petitioner once without conducting any diagnostic or confirmatory medical tests. This is compared to the company's course of treatments spanning five (5) months.[72] It also avers that Dr. Runas' findings were deficient as he failed to identify

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62 Id. at 18.
63 Id. at 16–18.
64 Id. at 820.
65 Id. at 820–821.
66 Id. at 821.
67 Id. at 824.
68 Id.
69 Id. at 825–826.
70 Id. at 828.
71 Id. at 835.
72 Id. at 828–831.

the degree of disability in accordance with the provisions of the Collective Bargaining Agreement and POEA-SEC.[73] Respondent concludes that whatever disability Dr. Runas assessed was attributable solely to petitioner's refusal to undergo surgery.[74]

Finally, it claims that even if petitioner was entitled to disability benefits, he is only entitled to a Grade 11 disability as found by the company-designated physician who assessed that petitioner's back injury only slightly affected the movement of his lower extremities.[75]

Respondent reasons that the treatments it sponsored for five months from May 26 to October 17, 2014 suffice in determining petitioner's disability grading and it was petitioner's indecisiveness which prevented him from regaining his pre-injury capacity. Thus, it claimed that the Court of Appeals correctly awarded partial disability compensation equivalent to Grade 11 disability under the POEA Rules.

The relevant issues in this case are as follows:

First, whether or not this Court may resolve factual issues involved in a petition under Rule 45 of the Rules of Court;

Second, whether or not petitioner had cause of action for disability benefits when the notice to arbitrate was filed;

Third, whether or not the petitioner's refusal to undergo surgery disqualified him from availing disability benefits; and

Lastly, whether or not petitioner is entitled to permanent total disability benefits.

This Court grants the Petition.

I

In a Petition for Review on Certiorari under Rule 45, this Court is limited to questions of law.[76] This rule admits of certain exceptions as laid down in *Pascual v. Burgos*:[77]

(1) When the conclusion is a finding grounded entirely on

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73 Id. at 832.
74 Id. at 833.
75 Id. at 834.
76 RULES OF COURT, Rule 45, sec. 1.
77 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

> speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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) ***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 facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[78] (Citation omitted, emphasis supplied)

Petitioner must demonstrate that the case falls under the exceptions which would warrant a review of factual questions.[79]

Here, the factual findings of the Court of Appeals and Panel of Voluntary Arbitrators are conflicting. Petitioner then assails the Court of Appeals' comprehension of facts as supposedly based on speculations, surmises, and conjectures contrary to evidence on record.[80]

This Court agrees. In reversing the Panel of Voluntary Arbitrator's award of permanent disability benefits, the Court of Appeals failed to consider the termination of petitioner's treatment because of his indecision to undergo surgery, his right to consent with the prescribed medical procedures, his right to a second opinion, and the weakness of respondent's evidence.

II

Articles 197 to 199 of the Labor Code, the Amended Rules on Employee Compensation, the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), and the Collective Bargaining Agreement provide the guidelines for payment of disability benefits.[81]

An employee who sustains an injury or contracts an illness in relation to the conduct of his work may be entitled to three types of disability benefits under the Labor Code:

ARTICLE 197. [191] *Temporary total disability.* –

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78 Id. at 182–183.

79 Id. at 167 citing *Borlongan v. Madrideo*, 380 Phil. 215, 223 (2000) [Per J. De Leon, Jr., Second Division].

80 *Rollo*, p. 8.

81 *Tamin v. Magsaysay Maritime Corporation*, 794 Phil. 286 (2016) [Per J. Velasco, Third Division].

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. (As amended by Section 2, Executive Order No. 179)

b.

. . . .

ARTICLE 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.

b. The monthly income benefit shall be guaranteed for five years, and shall be suspended if the employee is gainfully employed, or recovers from his permanent total disability, or fails to present himself for examination at least once a year upon notice by the System, except as otherwise provided for in other laws, decrees, orders or Letters of Instructions. (As amended by Section 5, Presidential Decree No. 1641)

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;

. . . .

d. The number of months of paid coverage shall be defined and approximated by a formula to be approved by the Commission.

ARTICLE 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. (Citations omitted)

Meanwhile, Rule X, Section 2 of the Amended Rules on Employee Compensation states the period of entitlement to disability benefits:

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.

(b) After an employee has fully recovered from an illness as duly certified to by the attending physician, the period covered by any relapse he suffers, or recurrence of his illness, which results in disability and is determined to be compensable, shall be considered independent of, and separate from, the period covered by the original disability. Such a period shall not be added to the period covered by his original disability in the computation of his income benefit for temporary total disability (TTD). (ECC Resolution No. 1029, August 10, 1978). (Emphasis supplied)

Section 20 of the POEA-SEC provides additional guidelines:

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 postemployment 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.

. . . .

> 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.

Based on the foregoing, an employer has the following obligations upon a seafarer's medical repatriation:

> In fact, in The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc., the Court ruled that the POEA-SEC contemplates three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in case the seafarer is not declared fit to work after being treated by the company-designated physician.[82]

The 120/240-day period is for the company-designated physician to make a final and definite assessment as to the extent of a seafarer's disability and fitness to return to work. During this period, a seafarer is entitled to receive sickness allowance and obligated to report to the company-designated physician.[83]

Magsaysay Mol Marine, Inc. v. Atraje[84] reiterated the rules on the issuance of a final medical assessment:

> In *Talaroc v. Arpaphil Shipping Corp.*, this Court summarized the rules regarding the duty of the company-designated physician in issuing a final medical assessment, 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;
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> > 2. If the company-designated physician fails to give his

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82 *Carino v. Maine Marine Phils. Inc.*, G.R. No. 231111, October 17, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64770> [Per J. Caguioa, Second Division] citing *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374 (2014) [Per J. Brion, Second Division].

83 POEA-SEC, sec. 20 (3).

84 G.R. No. 229192, July 23, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64478> [Per J. Leonen. Third Division].

> assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
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> 3. *If the company-designated physician fails to give his assessment within the period of 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.[85] (Citations omitted)

The assessment must not only be final but should also "reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such."[86] The purpose of a final and determinative assessment is for the award of disability benefits to "be commensurate with the prolonged effects of the injuries suffered."[87]

In this case, it is not disputed that petitioner incurred a work-related injury aboard MV Sparta.[88] Petitioner asserts that the Grade 11 disability assessment of the company-designated physician was final as he was offered compensation based on this.[89] However, respondent contends that its designated physician was unable to arrive at a final assessment of petitioner's disability due to his unjustified refusal to undergo surgery.[90]

This Court rejects respondent's contentions.

Respondent is not obliged to exhaust the extended period of 240 days and wait for petitioner's consent to undergo surgery before terminating petitioner's treatment. However, in terminating petitioner's treatment, its interim assessment as to petitioner's disability rating without the benefit of surgery necessarily becomes its final and definitive assessment.

Respondent is now estopped from assailing the finality of its assessment. It admitted to terminating petitioner's treatment on October 17, 2014 because of the latter's indecision to undergo surgery:

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85 Id.
86 Id.
87 Id.
88 *Rollo*, p. 16, Court of Appeals Decision.
89 Id. at 17.
90 Id. at 824.

> Considering that the Petitioner was not keen on undergoing the surgery and injection recommended by the company-designated physicians, Respondent and its foreign principal opted to terminate his treatment, which decision duly discussed with him. Respondent, through Pandiman Philippines Inc., the foreign Principal's local correspondent, in utmost good faith, offered to pay Petitioner USD14,325.19, the amount corresponding to Disability Grade 11, computed based on the rate provided by the CBA. Petitioner, however, rejected the Respondent's offer.[91]

In terminating the treatment without surgery, petitioner's disability rating remained at Grade 11. Further, in offering US$14,345.18 based on the interim disability rating, respondent recognized the finality of the interim assessment. Such act fulfils the purpose of a final and determinative assessment which is to award a seafarer his or her disability benefits "commensurate to the prolonged effects of the injuries suffered."[92] This signifies that after several months of treatment, respondent was convinced that without surgery, petitioner's disability rating would remain at Grade 11. Thus, it is estopped from assailing the finality of its assessment.

Respondent cannot be allowed to invoke petitioner's indecision only when it is favorable. On one hand, it invokes petitioner's indecision in order to extend the period of treatment despite petitioner's reluctance to undergo spine surgery.[93] Yet it invokes the same for its failure to arrive at a final and definite assessment. This only shows that respondent made a calculated decision in waiting for petitioner's consent to undergo surgery.

Respondent had 120 days from May 26, 2014 when petitioner first reported to Nolasco Medical Clinic, or until September 23, 2014 to assess petitioner's disability and make a definite and final assessment as to his fitness to work. On September 6, 2014, respondent inquired as to the status of petitioner's treatment, to which its doctor gave an interim assessment of a Grade 11 disability.[94]

Respondent then asked its company-designated physician as to the plan of management and risk factors should petitioner forego spine surgery. In its report, the company-designated physician reiterated petitioner's Grade 11 interim disability.[95] Respondent further clarified if petitioner's condition will improve with surgery, to which their designated physician answered:

> Mr. Rodelas' condition is expected to improve with surgery. If he will not undergo surgery and resort to continuous physical therapy, his condition will not improve. In fact, he has already undergone several

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91 Id. at 809.

92 *Magsaysay Mol. Marine v. Atraje,* G.R. No. 229192, July 23, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64478> [Per J. Leonen. Third Division].

93 *Rollo,* p. 808.

94 Id. at 823.

95 Id.

physical therapy sessions but his condition di not really improve.[96]

Given these clarifications, on September 18, 2014, respondent decided to extend petitioner's medical treatment.[97] The extension of the period of assessment was confirmed when petitioner reported to the company designated physician on September 26, 2014 for a follow-up check-up.[98]

Respondent also imputes bad faith on petitioner for continuing treatments even after consulting with Dr. Runas. Petitioner allegedly deceived respondent when he purported that he was still considering surgery even if he was already convinced that he was permanently unfit for sea duties.[99]

This Court disagrees. Since the period of petitioner's treatment had been extended to 240 days, he may continue to avail of his treatments within this period. In fact, petitioner is mandated to report to the company-designated physician, otherwise, he risks forfeiting his disability benefits.[100]

Sunit v. OSM Maritime Services, Inc.,[101] held that during the 120/240-day assessment period, the employee is in a state of temporary total disability:

> The case of *Vergara v. Hammonia Maritime Services, Inc.* harmonized the provisions of the Labor Code and the AREC with Section 20 (B) (3) of the POEA-SEC (now Section 20 [A] [3] of the 2010 POEA-SEC). Synthesizing the abovementioned provisions, *Vergara* clarifies that the 120-day period given to the employer to assess the disability of the seafarer may be extended to a maximum of 240 days:
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> > As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. ***For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability*** as he is totally unable to work. He receives his basic wage during this period 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

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96 Id. at 328.

97 Id. at 808.

98 Id.

99 Id. at 827.

100 POEA-SEC, sec. 20 (3), par. 3 provides:
For this purpose, the seafarer shall submit himself to a postemployment 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.

101 806 Phil. 505 (2017) [Per J. Velasco, Third Division] citing *Hammonia Maritime Services, Inc.*, 588 Phil. 895 (2008) [Per J. Brion, Second Division].

> condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. ***If the 120 days initial period is exceeded and no such 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.*** The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[102] (Citation omitted, emphasis supplied)

Thus, respondent cannot blame petitioner for continuously reporting to the company-designated physician. Since petitioner is in a state of temporary total disability on September 26, 2014, he is entitled to enjoy the benefits provided by law. His consultation with Dr. Runas during this period does not remove his right to receive medical treatments from respondent.

III

Seafarers do not lose their right to consent to the prescribed medical procedure of the company-designated physician. In *Dr. Rubi Li v. Spouses Soliman*,[103] this Court recognized the right of a person to decide on what can and cannot be done to his or her body, and to arrive at an informed consent on a potentially dangerous medical procedure:

> The doctrine of informed consent within the context of physician-patient relationships goes far back into English common law. As early as 1767, doctors were charged with the tort of "battery" (i.e., an unauthorized physical contact with a patient) if they had not gained the consent of their patients prior to performing a surgery or procedure. In the United States, the seminal case was *Schoendorff v. Society of New York Hospital* which involved unwanted treatment performed by a doctor. Justice Benjamin Cardozo's oft-quoted opinion upheld the basic right of a patient to give consent to any medical procedure or treatment: ***"Every human being of adult years and sound mind has a right to determine what shall be done with his own body***; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages." From a purely ethical norm, informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.[104] (Citations omitted, emphasis supplied)

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[102] Id. at 515–516.
[103] 666 Phil. 29 (2011) [Per J. Villarama, En Banc].
[104] Id. at 54–55.

Respondent argues that petitioner's unjust refusal of the prescribed medical treatment disqualifies him from receiving disability benefits under Section 20.D of the POEA-SEC and Article 15.4 of the Collective Bargaining Agreement. [105]

This Court denies these contentions.

Here, respondent failed to prove that petitioner's refusal to undergo surgery was unjustified. Other than mere speculation that petitioner will be better with surgery,[106] there was no evidence supporting this allegation. The company-designated physician clarified that the results of the surgery may range from "improvement of functional capacity with residual disability to full functional capacity."[107] Thus, even if petitioner consented to surgery, there is no conclusive proof that he will be restored to his previous capacity, or that he will be able to return to his duties.

This Court gives credence to petitioner's reasons for his reluctance to undergo an invasive medical procedure. Assessing the risks, he feared not being able to return to his sea duties even after receiving surgery:

> Petitioner thereafter reported to respondent manning agency and manifested his willingness to undergo surgical operation. Petitioner wanted the operation to push through the earliest time possible as he wanted to go back to sea duty. But when he asked respondent manning agency if after the operation he can resume his duties as a seafarer, the latter responded that petitioner can no longer go back to sea duties. He can no longer be rehired as the company will not risk petitioner to send on board the vessel knowing that he has back injury.
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> Petitioner thereafter, went back to Dr. Pidlaoan to verify what would be his condition if he decided to push through with the operation. Dr. Pidlaoan confirmed to petitioner that the latter will experience limitation of movement including the bending and stretching movement, most specially carrying objects. With all those limitations of movement, it only means one thing[:] complainant can no longer go back to sea duty as a seafarer.
>
> Because of the statement of the company doctor, petitioner was now confused whether he will undergo surgical operation. Even without being operated yet, petitioner has already experienced all the limitation of movements which the doctor explained to him. And these limitations will linger on even if he will be subject for surgical operations.[108]

Petitioner's refusal to consent to the procedure does not disqualify him

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105 *Rollo*, p. 821.
106 Id.
107 Id. at 331.
108 Id. at 13–14.

from availing of disability benefits.[109]

Section 20.D of the POEA-SEC reads:

> Section 20. COMPENSATION AND BENEFITS. —
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> . . . .
>
> D. No compensation and benefits shall be payable in respect or 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.

Under this provision, a seafarer is disqualified from receiving disability benefits if the employer proves the following: (1) that the injury, incapacity, or disability is directly attributable to the seafarer; (2) that the seafarer committed a crime or willful breach of duties; and (3) the causation between the injury, incapacity, or disability, and the crime or breach of duties. None of these requirements are present here. There was no allegation that petitioner breached his duties or committed a crime. Respondent merely alluded to petitioner's refusal to undergo surgery as the supposed cause of his illness.[110]

Moreover, *Centennial Transmarine Inc. v. Sales*,[111] held that a seafarer's refusal to undergo surgery is not a breach of duty under Section 20.D of the POEA-SEC as the employer had several opportunities to stop the seafarer's treatment for his supposed breach of duty, but failed to do so:

> Further, if, as CTI argues, Sales' refusal for surgery was a breach of duty, then CTI should have immediately stopped the medical treatment of Sales. From the facts, Sales refused to undergo surgery as early as July 2006. Yet, CTI continued observing and treating Sales conservatively through physical rehabilitation. CTI had several opportunities to notify Sales, during his treatment and physical therapy sessions, that not resorting to surgery is a breach and would forfeit his disability benefits. Further, if Sales had indeed abandoned treatment, CTI would not have issued a disability assessment in September 2006 because Sales had not completed his treatment. The foregoing factual incidents do not convince this Court that CTI considered Sales to have breached his duty.[112]

Similar to *Centennial Transmarine*, respondent had several opportunities to stop petitioner's treatment had it genuinely believed that he was disqualified under Section 20.D of the POEA-SEC. As early as July 4,

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109 Id. at 821.

110 Id. at 821 and 833.

111 G.R. No. 196455, July 8, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65532> [Per J. Carandang, First Division].

112 Id.

2014, the company-designated physician has recommended surgery. Since then, at least six (6) more sessions went by where petitioner was undecided about spine surgery.[113] In fact, respondent even extended the period of treatment to give petitioner time to consider the procedure.[114] Thus, respondent's invocation of Section 20.D is baseless and a mere afterthought.

Respondent also invokes Article 15.4 of the Collective Bargaining as basis for petitioner's disqualification:

> Proof of continued entitlement to medical attention for work-related condition shall be by submission of satisfactory medical reports, endorsed, where necessary, by a company appointed doctor. 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. *The seafarers agree to follow the full course of treatment prescribed by the designated Company doctor, including advice regarding exercise, rest, or other factor which may hinder his proper recovery.* Failure to do so may affect any subsequent disability or death benefit. The company appointed doctor or clinic attending to a medically repatriated seafarer must submit a medical report on the status, predicted degree of disability or continued duration of treatment of the seafarer within one hundred (100) days from arrival in the Philippines.[115] (Emphasis supplied)

There is nothing in this provision which can be construed as evidence that members of the union bargained away their right to consent in all prescribed medical procedures of the company-designated physician. While it is the employer's responsibility to shoulder medical treatments of its employees injured in relation to their work,[116] they cannot compel their employees to undergo invasive medical treatments.

Even assuming this provision mandates an employee to assent to all the prescribed treatment of the company-designated physician, it was not conclusively established that spine surgery was the only available treatment. Continuous rehabilitation therapy was part of Dr. Nolasco's plan of management had petitioner refused spine surgery.[117] In fact, in the

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[113] *See* Medical Reports dated July 21, 2014, July 28, 2014, August 5, 2014, August 12, 2014, and August 20, 2014, *Rollo*, pp. 314–325.

[114] Id. at 808.

[115] Id. at 148–149.

[116] POEA SEC 2010, sec. 20 states:
SECTION 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:
. . . .
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 t 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.* (Emphasis supplied).

[117] Id. at 327.

company-designated physician's September 26, 2014 medical report, it was stated that rehabilitation therapy will be conducted even after epidural injections.[118] Thus, petitioner is not disqualified from availing of his disability benefits.

IV

In a long line of cases, this Court has recognized the right of a seafarer to seek a second opinion:

> Respecting the findings of the CA that it is the 1996 POEA-SEC which is applicable, nonetheless the case of *Abante v. KJGS Fleet Management Manila* is instructive and worthy of note. In the said case, the CA similarly held that the contract of the parties therein was also governed by Memo Circular No. 55, series of 1996. Thus, the CA ruled that it is the assessment of the company-designated physician which is deemed controlling in the determination of a seafarer's entitlement to disability benefits and not the opinion of another doctor. Nevertheless, that conclusion of the CA was reversed by this Court. Instead, the Court upheld the findings of the independent physician as to the claimant's disability. The Court pronounced:
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> > Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo Circular No. 9, series of 2000, apropos is the ruling in *Seagull Maritime Corporation v. Dee* involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.
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> Verily, in the cited case of *Seagull Maritime Corporation v. Dee*, this Court held that nowhere in the case of *German Marine Agencies, Inc. v. NLRC* was it held that the company-designated physician's assessment of the nature and extent of a seaman's disability is final and conclusive on the employer company and the seafarer-claimant. While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion.
>
> The case of *Maunlad Transport, Inc. v. Manigo, Jr.* is also worthy of note. In the said case, the Court reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration, to wit:

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[118] Id. at 332.

> All told, the rule is that under Section 20-B (3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.
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> In the recent case of *Daniel M. Ison v. Crewserve, Inc., et al.*, although ruling against the claimant therein, the Court upheld the above-cited view and evaluated the findings of the seafarer's doctors vis-a-vis the findings of the company-designated physician. A seafarer is, thus, not precluded from consulting a physician of his choice. Consequently, the findings of petitioner's own physician can be the basis in determining whether he is entitled to his disability claims.
>
> Verily, the courts should be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.
>
> Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These pieces of evidence will in turn be used to determine the benefits rightfully accruing to him.[119] (Citations omitted)

Transocean Ship Management (Phils.), Inc. v. Vedad[120] explained that the mechanism of referral to a third doctor was created to balance the right of a seafarer to seek opinion from his preferred physician, and the possibility of bias in the assessment of a company-designated physician:

> In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical

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[119] *Nazareno v. Maersk Filipinas Crewing Inc.*, 704 Phil. 625, 633–635 (2013) [Per J. Peralta, En Banc].
[120] 707 Phil. 194 (2013) [Per J. Velasco, Third Division].

> findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B)(3) of the POEA-SEC quoted above.[121]

Section 20 A of the 2010 POEA-SEC states in part:

> 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.

Here, the parties have conflicting versions of when respondent informed petitioner of the interim assessment and offered the settlement amount. Petitioner asserts that it was on September 24, 2014 when he was made to report to PANDIMAN who informed him of a Grade 11 disability assessment and offered him US$14,345.18 as settlement.[122]

On the other hand, respondent alleges that it was only after October 17, 2014, when it terminated petitioner's treatment, that it made the offer.[123] It insists that it could not have made such offer on September 24, 2014 because at that time, petitioner was still undecided on whether he will undergo surgery.[124] Respondent also imputes bad faith on petitioner for making it believe that he would still avail of the company-sponsored treatment when he already secured a second opinion with the belief that he was permanently unfit to return to work. Respondent alleges that it only received Dr. Runas' medical opinion on October 23, 2014.[125]

This Court finds petitioner's version more credible.

As both parties failed to present proof to support their allegations when the interim assessment and offer was made, the totality of evidence should be weighed in favor of the seafarer in case of doubt as held in *Saso v. 88 Aces Maritime Service Inc.*:[126]

> It bears to stress that in the same way that a seafarer has the duty to faithfully comply with and observe the terms and conditions of the POEA-SEC, the employer also has the duty to provide proof that the procedures laid therein were followed. And in case of doubt in the evidence presented by the employer, the scales of justice should be tilted in favor of the seafarer pursuant to the principle that the employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the

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121 Id. at 707.
122 *Rollo*, p. 14.
123 Id. at 820.
124 Id. at 823-824.
125 Id. at 825.
126 770 Phil. 677 (2015) [Per J. Del Castillo, Second Division].

employee.[127] (Citations omitted)

In this case, the company-designated physician already had an interim disability grading for petitioner as early as September 6, 2014. Before the expiration of the initial 120 days, respondent repeatedly coordinated with its physician—assessing the risk factor, plan of management, and expected results should petitioner avail of the surgery. It is significant that under the Collective Bargaining Agreement, the employee is entitled up to 130 days of medical attention.[128]

Since petitioner's reluctance to consent to surgery resulted in the extension of the period for his treatment, it is reasonable that respondent and petitioner communicated with each other. It is illogical for respondent to extend the period of treatment on September 18, 2014 and continue incurring medical costs without prior communications with petitioner.[129] Hence, it is highly unlikely that the respondent only coordinated with petitioner after October 17, 2014, or the last day that he reported to the company-designated physician. Respondent did not even specify the actual date when it allegedly discussed with petitioner the termination of his treatment.[130] Thus, this Court gives more credence to petitioner's allegation that he reported to PANDIMAN on September 24, 2014 where he was informed of the disability assessment, offer of compensation, and referral to a second doctor.

This then prompted petitioner to consult with Dr. Runas on September 26, 2014, who found him "permanently unfit for sea duty in whatever capacity with permanent disability[:]"

> Based on the above manifestations, Seaman Rodelas is incapacitated as a result of the back injury sustained onboard. According to him. He cannot recall any incident of low back pain prior to the injury and also not mentioned in his physical examination report prior to boarding. As a Chief Cook/seaman, his job is not only limited to the confines of the kitchen. He is also engaged in strenuous and rigorous activities which include heavy lifting during re-supply and re-provision. He also assists and carries heavy loads as ordered by his superior. These activities will exert undue pressure on the involved discs will only offer mild and temporary relief. Spinal surgery will not provide a complete recovery from the symptoms, as residual pain is commonly experienced in patients undergoing spinal surgery. He has lost his pre-injury capacity status. He will benefit from lifestyle and work modification. Since he can no longer perform the usual routine jobs as a seafarer, he is permanently unfit for sea duty in whatever capacity with permanent disability.[131]

Respondent emphasizes that Dr. Runas only examined petitioner once,

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127 Id. at 691.
128 *Rollo*, p. 148 citing Art. 15.3 (a), Collective Bargaining Agreement.
129 Id. at 808.
130 Id. at 809.
131 Id. at 14.

without conducting medical and other diagnostic tests and relied only on his patient's medical history.[132] Thus, it concludes that Dr. Runas' medical assessment deserves scant consideration.

Again, this Court disagrees.

In *Maunlad Transport, Inc. v. Manigo*,[133] the assessment of the company-designated physician is not by itself, binding or conclusive:

> All told, the rule is that under Section 20-B (3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.[134]

In this case, Dr. Nolasco gave a Grade 11 disability rating to petitioner's condition without surgery. It does not escape this Court that Dr. Nolasco may have given a disability rating more favorable to the respondent. It is also apparent that respondent tried to downplay its failure to accede to petitioner's request for a referral to a third doctor.[135] This Court relies on the findings of the Panel of Voluntary Arbitrators that there is no incompatibility in the medical opinion of Dr. Nolasco and that of Dr. Runas:

> The company-designated physician assessed complainant's disability Grade 11, while Dr. Runas, complainant's doctor, did not give any Specific grade but assessed complainant to be permanently unfit for sea duty in whatever capacity with permanent disability. The company doctor based his assessment on the gravity or the medical significance of the injury while Dr. Runas based his assessment in relation to nature of work of the seafarer. ***It must be noted that these assessments are not incompatible with each other***. Both speak of disability. The only difference is the determination of whether or not complainant is permanently and totally disabled
>
> And since there was no referral to the third doctor because of the inaction of respondents despite the repeated manifestations of willingness to undergo third assessment by complainant, this Panel took the cudgel to study and decide the contradicting medical opinions of the parties and related jurisprudence. In *HFS Philippines, Inc. v. Pilar*, the Court held that

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[132] Id. at 827–832.
[133] 577 Phil. 319 (2008) [Per J. Austria-Martinez, Third Division].
[134] Id. at 330.
[135] *Rollo*, p. 97.

> claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court based on its inherit merit.
>
> After judicious evaluation of the medical opinions of the parties, We find reason on the medical assessment of Dr. Renato Runas. As mentioned earlier, both opinions of the doctors speak of disability. They only differed as to whether the latter is permanently or totally disabled. Dr. Renato Runas, as a surgeon specializing in orthopedics and trauma injuries, merely elucidated the impact of complainant's injury to the nature of his work as a seaman. And true enough, the same is compatible with determining the nature of permanent total disability, which is "disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do."[136]

Dr. Nolasco's identification of "lifting heavy weights [and] heavy upper body" as risk factors for petitioner is relevant.[137] Given these findings, it is highly improbable that petitioner can return as Chief Cook since it will be risky for him to carry out his basic functions such as loading the provisions of a ship.[138] It is also unlikely that he can be employed in a similar capacity given his condition.

Finally, in the similar case of *Tamin v. Magsaysay*,[139] a chief cook was assessed a Grade 11 disability rating and was declared fit to work after having undergone amputation of his left index finger. However, this Court ruled otherwise:

> The law is clear on the total and permanent nature of petitioner's disability. As it were, petitioner was not able to perform his gainful occupation as chief cook and seafarer for more than 240 days. Given petitioner's loss of gripping power and inability to carry light objects, it is highly improbable that he would be employed as a chief cook again.
>
> Jurisprudence has repeatedly held that disability is intimately related to one's earning capacity. It is the inability to substantially do all material acts necessary to the pursuit of an occupation he was trained for without any pain, discomfort, or danger to life. A total disability does not require that the seafarer be completely disabled or totally paralyzed. What is necessary is that the injury incapacitates an employee from pursuing and earning his or her usual work. A total disability is considered permanent if it lasts continuously for more than 120 days.[140] (Citation omitted)

Based on the totality of evidence, it is reasonable that without surgery, petitioner could not have been declared fit for duty as Chief Cook. This explains the numerous opportunities respondent gave to petitioner to

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136 Id. at 108–109.
137 Id. at 327.
138 Id. at 9–10.
139 794 Phil. 286 (2016) [Per J. Velasco, Third Division].
140 Id. at 303.

consider surgery and risk the chance of improvement. Contrary to respondent's suggestion, it was not petitioner's indecision that prevented him from pursuing his usual work. Rather, it is precisely his strenuous work aboard the MV Sparta that resulted to his disability.

Thus, this Court reinstates the award of permanent disability benefits by the Panel of Voluntary Arbitrators amounting to US$95,949.00 based on the Collective Bargaining Agreement:

> 20.1.4 Permanent Medical Unfitness
>
> A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, as follows: US$ 151,470.00 for senior officers, US$ 121,176.00 for junior officers, and US$ 90,882.00 for ratings (effective 2012); US$ 155,257.00 for senior officers, US$ 124,205.00 for junior officers, and US$ 93,154.00 for ratings (effective 2013); US$ 159,914.00 for senior officers, US$ 127,932.00 for junior officers, and US$ 95,949.00 for ratings (effective 2014). Furthermore, *any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.*[141] (Emphasis supplied)

As regards petitioner's claim for attorney's fees, the award of 10% of the total claim is likewise reinstated. Contrary to respondent's allegation, petitioner was compelled to litigate because of its refusal to heed his request for referral to a third doctor. Lastly, since petitioner did not assail the denial of his claim for moral damages, its award lacks basis.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The February 28, 2018 Decision and January 14, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 142957 are **REVERSED,** and the September 15, 2015 Decision of the Panel of the Voluntary Arbitrators of the National Conciliation and Mediation Board is **REINSTATED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

[141] *Rollo*, p. 150.

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

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

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice