Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

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| **CHARLO P. IDUL,** *Petitioner,* | **G.R. No. 209907** |
| | Present: |
| - versus - | LEONEN, *J.*,* HERNANDO, *Acting Chairperson,* INTING, DELOS SANTOS, and LOPEZ, J. Y., *JJ.* |
| **ALSTER INT'L SHIPPING SERVICES, INC., JOHANN MKBLUMENTHAL GMBBH REEDEREI AND SANTIAGO D. ALMODIEL,** *Respondents.* | Promulgated: June 23, 2021 MisADCBath |

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## DECISION

**HERNANDO, *J.*:**

This Petition for Review on *Certiorari*[1] assails the May 14, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 119246, which reversed the December 14, 2010 Decision[3] and the February 28, 2011 Resolution[4] of the National Labor and Relations Commission (NLRC). In its September 20, 2013 Resolution,[5] the CA did not reconsider its earlier pronouncement.

**Antecedent Facts:**

Petitioner Charlo P. Idul (Idul) was employed by Alster Int'l Shipping Services, Inc. (Alster Shipping) on behalf of its principal, Johann

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* On Wellness Leave.

1 *Rollo*, pp. 4-31.

2 CA *rollo*, pp. 240-255; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes

3 Id. at 38-47.

4 Id. at 56-57.

5 Id. at 256-257.

Mkbluementhal GMBBH Reederei, for a period of 12 months.[6] On April 14, 2008, he boarded the vessel M/V IDA to commence his services as a bosun.

On December 4, 2008, Idul figured in an accident while working when the lashing wires broke and hit his left leg resulting to a fracture. He disembarked the vessel and underwent surgery in a hospital in France. Thereafter, he was repatriated back to the Philippines for further medical attention.

On December 11, 2008, he was referred by the company to Metropolitan Medical Center (MMC) under the care of Dr. Robert Lim (Dr. Lim), and orthopedic surgeon, Dr. William Chuasuan Jr. (Dr. Chuasuan). He was given medication and instructed to undergo rehabilitation therapy.[7] He was also asked to come back for follow-up check-ups.

The company-designated physician issued medical reports dated February 2, 2009,[8] March 9, 2009,[9] March 30, 2009,[10] June 15, 2009,[11] and July 6, 2009.[12] In the medical report dated **July 6, 2009**, Dr. Chuasuan gave Idul a Grade 10 disability rating due to "immobility of ankle joint in abnormal position."

Prior to this, or on **March 16, 2009**, Idul sought the opinion of his own doctor of choice, Dr. Venancio P. Garduce Jr. (Dr. Garduce). After a single consultation, Dr. Garduce assessed Idul to be totally and permanently disabled.[13] Thereafter, Alster Shipping offered to pay Idul the amount of $10,750.00 as disability benefit in accordance with the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC). However, Idul rejected the offer and insisted that he was entitled to full disability benefits.

On **June 3, 2009**, Idul filed a complaint[14] for total and permanent disability benefits with damages before the Department of Labor and Employment (DOLE). During the preliminary mandatory conference, the parties failed to reach a settlement. In Idul's Position Paper,[15] he claimed that he was entitled to full disability benefits since the injury he suffered rendered him incapable of performing his grueling duties as a bosun.

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[6] Id. at 85.
[7] Id. at 87-88.
[8] Id. at 89.
[9] Id. at 90.
[10] Id. at 91.
[11] Id. at 92.
[12] Id. at 93.
[13] Id. at 112.
[14] Id. at 58-60.
[15] Id. at 95-105.

Due to the extent of his injury, he argued that he was entitled to a Disability Rating of Grade 1 or an equivalent of $60,000.00 in disability benefits. He posited that both doctors already concurred as to the extent and nature of his injury but Alster Shipping still failed to satisfy his claim. Additionally, he asked for sickness allowance and damages.

On the other hand, Alster Shipping denied liability for full disability benefits. It maintained that Idul was not eligible for full disability benefits considering that he was assessed by the company-designated physician to be suffering from a Grade 10 disability only. Thus, the parties are bound by such declaration of the company-designated physician in accordance with the POEA SEC. To support this assertion, it pointed out that Idul's condition did not even fall under Section 32 of the POEA SEC which enumerates Grade 1 disabilities.

Moreover, the disability rating by Dr. Chuasuan was issued within the 240-day period, negating any claim that the temporary total disability developed into a permanent total disability. Additionally, Alster Shipping belied any claim against Mr. Almodiel, who was merely their VP for operations. Lastly, it contended that Idul is not entitled to damages and attorney's fees for lack of factual and legal basis.

**Ruling of the Labor Arbiter:**

The Labor Arbiter, in a May 31, 2010 Decision,[16] ruled in favor of Alster Shipping. It gave more credence to the findings of Dr. Lim and Dr. Chuasuan who were able to monitor and observe Idul while he was undergoing treatment and rehabilitation, rather than Dr. Garduce's assessment which was made after a single consultation. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering respondents Alster Shipping Services, Inc. and/or Johann Mkblumenthal Gmbh Reederei to pay in solidum complainant CHARLO P. IDUL the Philippine Peso equivalent at the time of payment of TEN THOUSAND SEVENTY-FIVE US DOLLARS (US$10,075.00) representing partial payment total disability compensation.
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> All other claims are **DISMISSED** for lack of merit.
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> **SO ORDERED**.[17]

Aggrieved, Idul filed an appeal[18] with the NLRC. He argued that the LA erred in relying on the medical assessment of the company-designated

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[16] Id. at 49-54.
[17] Id. at 54.
[18] Id. at 133-146.

physician and in disregarding the effect of the injury on his occupation as a seafarer. Moreover, he averred that his claim for damages and attorney's fees were proper since he remained unemployed while recovering from the injury, and was constrained to engage the services of a lawyer to enforce his claim against Alster Shipping.

**Ruling of the National Labor Relations Commission:**

In its December 14, 2010 Decision,[19] the NLRC reversed the Labor Arbiter's findings. It explained that it is the loss of earning capacity and not the mere medical significance of the injury that determines the gravity of disability. Thus, Idul's inability to perform his job for more than 120 days from the time he was examined by Dr. Chuasuan entitled him to permanent disability benefits. Despite Alster Shipping establishing Idul's disability grading within the extended 240-day temporary total disability period, the fact remains that he was still unable to return to work beyond the 120-day period.

Additionally, it held that in case of doubt between the findings of Dr. Lim and Dr. Chuasuan on one hand, and Dr. Garduce's on the other, the scales of justice tilt in favor of the findings of the seafarer's doctor. The dispositive portion of the NLRC's decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding the appeal impressed with merit. Complainant-appellant is hereby declared to be permanently and totally disabled. Respondent-appellees are ordered to pay complainant-appellant the amount of US$60,000.00 or its peso equivalent at the exchange rate at the time of payment plus ten percent thereof as attorney's fees. The decision of the Labor Arbiter dated May 31, 2010 is hereby **MODIFIED** accordingly.
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> **SO ORDERED.**[20]

Discontented, Alster Shipping filed a motion for reconsideration with the NLRC which the latter denied in its February 28, 2011 Resolution. Thus, Alster Shipping elevated the case to the CA.

**Ruling of the Court of Appeals:**

The CA, in its April 30, 2013 Decision,[21] upheld the ruling of the LA. It held that Idul's condition cannot be considered a permanent total disability that would entitle him to the maximum disability benefit of $60,000.00. It stressed that a temporary total disability becomes permanent only when the company-designated physician declares it to be so within the 240-day period,

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[19] *Supra* note 3.
[20] Id. at 46.
[21] *Supra* note 2.

or when after the lapse of said period, the physician fails to make such declaration.

The appellate court also reiterated that the POEA SEC provides that when a seafarer sustains a work-related injury, one's fitness to work shall be determined by the company-designated physician. If the seafarer's physician of choice disagrees with that of the company-designated physician, the opinion of a third doctor may be jointly decided upon by the employer and seafarer, whose decision shall be binding on both parties.

Since there was no agreement on a third doctor, the CA held it was constrained to uphold the findings of Dr. Chuasuan with respect to Idul's disability. The CA also noted that Dr. Lim and Dr. Chuasuan examined and treated Idul for almost seven (7) months. Therefore, their detailed knowledge and familiarity with his medical condition and progress produced a more accurate finding of Idul's disability. The dispositive portion of the CA's Decision reads:

> **WHEREFORE**, premises considered, the assailed Decision dated 14 December 2010 and Resolution dated February 28, 2011 rendered by the NLRC in NLRC LAC Case No. 09-000657-10, NLRC Case No. NCR(M) 06-08262-09 are SET ASIDE. The Decision of the Labor Arbiter dated 31 May 2010 is hereby **REINSTATED.**
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> **SO ORDERED**.[22]

Aggrieved, Idul filed a motion for reconsideration which was denied by the CA in its September 20, 2013 Resolution. Hence, the present petition.

## Issue

Whether the appellate court committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating the assailed Decision and Resolution, which gave credence to the company-designated physician and found petitioner not entitled to permanent and total disability benefits.

## Our Ruling

We dismiss the Petition.

At the outset, a clarification on petitioner's mode of appeal must be made. While the caption of the pleading is denominated as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioner likewise manifested that "*the Honorable Court of Appeals is the impleaded public*

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[22] Id. at 254.

*respondent in this Petition conformably with Section 5, of Rule 65 of the 1997 Rules of Civil Procedure, as amended...x x x"*[23]

Notably, what is being assailed in this petition is the Decision dated May 14, 2013 and September 20, 2013 Resolution of the CA. Pursuant to Rule 45 of the Rules of Court, an appeal is the proper remedy to obtain the reversal of judgments or final orders or resolutions of the CA:

> SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.
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> SECTION 2. *Time for filing; extension* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.[24]

Petitioner received the Resolution of the CA denying his Motion for Reconsideration on October 3, 2013. Thus, he had 15 days or until October 18, 2013 to file its Petition for Review on *Certiorari* under Rule 45. However, the present petition was only filed on November 15, 2013 or way beyond the 15-day reglementary period.

Seemingly, a Petition for *Certiorari* under Rule 65 was filed to make up for the loss of petitioner's right to an ordinary appeal. However, it is elementary that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available.[25] While the Court has, in several cases, previously granted a petition for *certiorari* despite the availability of an appeal, it only applies (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.[26] Conversely, the case at bar does not fall under any of the exceptions.

As further explained in a litany of cases:

> [S]ince the Court of Appeals had jurisdiction over the petition under Rule 65, any alleged errors committed by it in the exercise of its jurisdiction

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[23] *Supra* note 1 at 5.
[24] RULES OF COURT, Rule 45, Secs. 1 and 2.
[25] *Butuan Development Corporation v. Court of Appeals,* 808 Phil. 443, 451 (2017).
[26] *Hanjin Engineering and Construction Co. Ltd v. Court of Appeals,* 521 Phil. 224, 244-245 (2006).

> would be errors of judgment which are reviewable by timely appeal and not by a special civil action of *certiorari*. If the aggrieved party fails to do so within the reglementary period, and the decision accordingly becomes final and executory, he cannot avail himself of the writ of *certiorari*, his predicament being the effect of his deliberate inaction.
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> The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997 Rules of Civil Procedure. Rule 45 is clear that the decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. Under Rule 45 the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of motion for reconsideration.
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> [x x x x]
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> For the writ of *certiorari* under Rule 65 of the Rules of Court to issue, a petitioner must show that he has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only available but also a speedy and adequate remedy.[27]

In order to avail of the remedy of *certiorari* under Rule 65, the following must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[28] However, Idul failed to satisfy these requisites.

It bears stressing that in filing the present petition for *certiorari*, Idul raised the following arguments, which delve into the wisdom and soundness of the Decision of the CA, and not errors in jurisdiction:

> A. The CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating the assailed decision and resolution when it ruled that petitioner is not entitled to permanent and total disability benefits.
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> B. The CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating the assailed decision and resolution when it solely gave credence to the certification of the company physician without considering the findings of petitioner's doctor of choice.[29]

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27 *Asian Transmission Corp. v. Court of Appeals*, 469 Phil. 496, 504 (2004). Citations omitted.
28 *Sanchez v. Court of Appeals*, 345 Phil. 155, 179 (1997).
29 *Supra* note 1 at 13.

As held in *Cathay Pacific Steel Corp. v. Court of Appeals,*[30] where the issue or question involves or affects the wisdom or legal soundness of the decision, and not the jurisdiction of the court to render said decision, the same is beyond the province of a petition for *certiorari.*[31] By simply alleging grave abuse of discretion amounting to lack or in excess of jurisdiction without explaining why an appeal could not cure the errors by the CA, petitioner failed to prove that there was no other plain, speedy, and adequate remedy under the law.[32] To reiterate, the remedy of a petition for review on *certiorari* under Rule 45 was available to Idul. Nevertheless, for unknown reasons, petitioner opted not to avail of the said remedy.

Even assuming that Idul availed of the correct remedy, the petition still lacks merit. The CA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in annulling the Decision of the NLRC, and reinstating the Labor Arbiter's Decision. The CA correctly concluded that a temporary total disability only becomes permanent when 1) the company-designated physician declares it to be so within the 240-day period; or 2) when after the lapse of the 240-day period, the company-designated physician fails to make such declaration.[33]

To support such conclusion, the appellate court cited the cases of *Vergara v. Hammonia Maritime Services Inc.,*[34] *Magsaysay Maritime Corporation . Lobusta,*[35] *Santiago v. Pacbasin Shipmanagement Inc.,*[36] *Pacific Ocean Manning, Inc. v. Penales,*[37] *PhilAsia Shipping Agency Corp. v. Tomacruz,*[38] and *Kestrel Shipping Co., Inc., v. Munar.*[39] In the more recent case of *Mawanay v. Philippines Transmarine Carriers Inc.,*[40] this Court held:

> [T]he 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 condition is defined under the POEA [SEC] 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**

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30 531 Phil. 620 (2006).
31 Id. at 630. Citations omitted.
32 Id. at 631.
33 *Supra* note 2 at 252.
34 588 Phil. 895 (2008).
35 680 Phil. 137 (2012).
36 686 Phil. 255 (2012).
37 694 Phil. 239 (2012).
38 692 Phil. 632 (2012)
39 702 Phil. 717 (2013)
40 G.R. No. 228684, March 6, 2019 citing *Kestrel Shipping Co., Inc. v. Munar,* 702 Phil. 717 (2013).

> **exists**. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. (Emphasis supplied)

In this case, the medical reports issued by Dr. Lim and Dr. Chuasuan reveal that Idul was examined, treated, and rehabilitated for about seven (7) months. Thereafter, Dr. Chuasuan's assessment of Idul's disability grading was issued on July 6, 2009 or on the 207th day from December 11, 2008, and therefore, well within the 240-day period. Clearly, Idul's condition did not become a permanent total disability just by the mere lapse of the 120-day period, especially since the extension was necessary for his rehabilitation.

As to the conflicting findings of Dr. Chuasuan on one hand and Dr. Garduce on the other, the medical findings of Dr. Chuasuan must prevail. Under Section 20 (A) (3) of the 2010 POEA-SEC, if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on both parties.

At this point, it bears stressing that the employee seeking disability benefits carries the responsibility to secure the opinion of a third doctor.[41] In fact, the employee must actively or expressly request for it.[42] The referral to a third doctor has been recognized by this Court to be a mandatory procedure.[43] Failure to comply therewith is considered a breach of the POEA-SEC, and renders the assessment by the company-designated physician binding on the parties.[44]

Considering the foregoing circumstances, Dr. Chuasuan's assessment of a Grade 10 disability, which was a result of months of consultations, examinations, and treatments, prevails. It certainly bears more weight than the findings of Dr. Garduce who only examined Idul once and based his medical assessment on the latter's previous medical history.[45]

**WHEREFORE**, the Petition is **DENIED.** The May 14, 2013 Decision of the Court of Appeals and September 20, 2013 Resolution in CA-G.R. SP No. 119246, are hereby **AFFIRMED.**

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41 *Hernandez v. Magsaysay Maritime Corporation,* G.R. No. 226103, January 24, 2018. Citations omitted.

42 Id.

43 *Multinational Ship Management, Inc. v. Briones*, G.R. No. 239793, January 27, 2020 citing *INC Shipmanagement, Inc. et al. v. Rosales*, 744 Phil. 774, 787 (2014).

44 *Pacific Ocean Manning Inc. v. Solacito*, G.R. No. 217431, February 19, 2020 citing *INC Shipmanagement, Inc. et al. v. Rosales*, 744 Phil. 774, 786-787 (2014).

45 *Magsaysay Maritime Corp. et al. v. Verga,* G.R. No. 221250, October 10, 2018 citing *Jebsens Maritime, Inc. v. Rapiz*, 803 Phil. 266, 272 (2017).

**SO ORDERED.**

**RAMON PAUL L. HERNANDO**
Associate Justice
Acting Chairperson

**WE CONCUR:**

On Wellness Leave.
**MARVIC M. V. F. LEONEN**
Associate Justice

**HENRI JEAN PAUL B. INTING**
Associate Justice

**EDGARDO L. DELOS SANTOS**
Associate Justice

**JHOSEP Y. LOPEZ**
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.

**RAMON PAUL L. HERNANDO**
Associate Justice
Acting Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

**ALEXANDER G. GESMUNDO**
Chief Justice