Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MICHELLE MIRO WENCESLAO, Petitioner,	**G.R. No. 253191**
- versus -	Present: GESMUNDO, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
C.F. SHARP CREW MANAGEMENT, INC., *et al.*, Respondents.	Promulgated: MAY 14 2021

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DECISION

CARANDANG, *J.*:

Before Us is an appeal by *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Michelle Miro Wenceslao (Michelle) assailing the Decision[2] dated January 27, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 162014.

Facts of the Case

On March 31, 2017, C.F. Sharp Crew Management, Inc. (CSC), acting on behalf of its foreign principal Norwegian Cruise Line, Ltd., hired Michelle as a waitress onboard M/S Norwegian Sky. The employment contract is covered by a collective bargaining agreement (CBA).[3]

On August 8, 2017, while on board the vessel and performing her duties, Michelle suddenly felt a snap on her lower back as she was turning

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1 *Rollo*, pp. 3-27.

2 Penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Gabriel T. Robeniol and Louis P. Acosta; id. at 35-41.

3 Id. at 36, 46-69.

her trunk. She proceeded to the vessel infirmary due to the low back pain. She also cannot straighten her right hip and right knee. The vessel infirmary initially prescribed Michelle to take muscle relaxants. However, due to the persistent back pain, Michelle was medically repatriated to the Philippines on October 16, 2017.[4]

On October 20, 2017, Michelle was immediately examined by the company-designated physicians, where she was found to be suffering from disc bulge and disc desiccation. Michelle underwent a series of physical therapy sessions and medical check-ups. After 18 sessions, she claimed minimal improvement. The company-designated physician reviewed the initial magnetic resonance imaging test of Michelle and conducted an electro-diagnostic test of her lower extremities. On January 18, 2018 and January 22, 2018, after consideration of her persisting low back pain and test results, the company-designated physician recommended Michelle's surgery through a procedure called the Transforminal Lumbar Interbody Fusion of L5-S1.[5]

On January 24, 2018, Michelle wrote to the company-designated physician stating that she would prefer alternative treatment for her back pain instead of undergoing surgery. On January 26, 2018, Michelle was discharged by the company-designated physicians from the Orthopedic Spine Surgery. The company-designated physicians prescribed Michelle analgesics and instructed her to do "self-directed" strengthening exercises.[6] Michelle claimed that her physical treatments were discontinued without any word from the company-designated physician. As a result, she consulted with a second physician.[7] On March 26, 2018, Michelle's personal physician assessed her to be partially and permanently disabled. The second physician stated that her persistent back pains resulted in her "inability to tolerate prolonged sitting or standing, inability to tolerate walking a medium range distance, difficulty in going up and down the stairs, and inability to perform moderate to heavy forms of physical activity,"[8] which rendered her unfit to work as a seafarer.[9]

With her medical assessment from the second physician, Michelle filed a complaint through the Single-Entry Approach against CSC. At said proceedings, parties agreed to refer the matter to a third doctor. On July 12, 2018, the parties proceeded to the Philippine Orthopedic Center for consultation with Dr. Leander Peralta.[10] It was at the consultation with the third physician that CSC furnished Michelle a copy of the company-designated assessment dated January 26, 2018.[11] The assessment of the company-designated physician stated that no definitive management is

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4 Id. at 36.
5 Id.
6 CA *rollo*, p. 127.
7 Id. at 74.
8 *Rollo*, p. 72.
9 Id.
10 CA *rollo*, pp. 74-75, 77-78.
11 *Rollo*, pp. 73-74.

possible for Michelle due to her refusal to undergo surgery.[12]

After the consultation, the third doctor assessed Michelle's condition with Grade 8 disability rating, partial and permanent disability. Despite the assessment of the third doctor, Michelle insisted that she be paid full disability benefits following the CBA because she failed to return to work for more than 240 days from her repatriation. CSC refused her demand. As a result, Michelle pursued her labor complaint with the National Labor Relations Commission (NLRC).[13]

At the proceedings before the Labor Arbiter (LA), Michelle claimed that it was her first time to see the company-designated physician's assessment dated January 27, 2018.[14] Attached to CSC's position paper dated September 24, 2018 is the said assessment stating that Michelle's condition is rated with Grade 6 in accordance with the schedule of disabilities under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (2010 POEA-SEC) or "severe or total rigidity of the trunk or total loss of lifting power of heavy objects."[15]

Ruling of the Labor Arbiter

In a Decision[16] dated January 28, 2019, the LA awarded Michelle disability benefits following the Grade 8 rating of the third doctor. The LA did not agree with Michelle's claim that the company-designated physician failed to issue a final assessment. The company assessment dated 27 January 2018 consisted of Michelle's Grade 6 disability-rating, issued 103 days from her repatriation, which is well-within the mandated 240-day period under labor laws. In any case, as parties agreed to consult a third physician, the findings of said physician shall be final and binding pursuant to the provisions of the 2010 POEA-SEC. Thus, Michelle is bound by the Grade 8 rating of the third doctor. The LA also held that the benefits awarded under the CBA is inapplicable. Under the CBA, recovery of disability benefits shall be granted when the illness or injury resulted from an accident. The LA found that Michelle's back conditions could not have resulted from an accident, which only entitles her to disability benefits under the 2010 POEA-SEC. The LA awarded US$16,795.00 as disability benefits corresponding to the Grade 8 rating and US$1,679.50 representing attorney's fees.[17]

Ruling of the National Labor Relations Commission

Michelle raised her case on appeal with the NLRC Third Division,

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12 Id.
13 CA *rollo*, pp. 77-79.
14 Id. at 77-78.
15 Id. at 126.
16 Penned by Labor Arbiter Romeo O. Fabregas, Jr.; id. at 157-165.
17 Id. at 162-165.

which affirmed the LA ruling in its Decision[18] dated March 29, 2019.

Michelle then filed with the CA a Petition for *Certiorari*[19] under Rule 65 of the Rules of Court.

Ruling of the Court of Appeals

In the assailed Decision[20] dated January 27, 2020, the CA affirmed the ruling of the labor tribunals. The CA held that parties agreed to seek the medical opinion of a third physician, who assessed Michelle's back conditions to be work-related and rated at Grade 8. As the third doctor's medical opinion is binding upon the parties pursuant to the provisions of the 2010 POEA-SEC, Michelle must be awarded disability benefits corresponding to the Grade 8 rating.[21]

Proceedings before the Court

Unsatisfied with the Decision of the CA, Michelle filed an appeal by *certiorari* with this Court under Rule 45 of the Rules of Court. She reiterated her claim for payment of full disability benefits. She argued that there were consistent conclusions from her personal physician and the third doctor that she remained unfit to return to work. The length of time a seafarer lost their earning capacity is the sole factor in determining whether or not a seafarer is totally and permanently disabled. Here, due to her inability to return to work for more than 240 days, her disability is deemed permanent and total. On that note, Michelle's unfitness to work should prevail over any disability grading, including the Grade 8 rating issued by the third doctor.[22]

Michelle also claimed that the company-designated physician failed to issue a valid, final and definitive assessment. The assessment dated January 26, 2018 of the company-designated physician did not contain any clear pronouncement as to her capacity to return to work. The company-designated physician is obligated to issue a final and definite assessment of the seafarer's fitness or unfitness to return to work within 120/240-day period. Without the timely issuance of the foregoing assessment, the opinions of the independent physician are irrelevant because the seafarer is already conclusively presumed to be suffering from a permanent and total disability. Furthermore, the Grade 6 assessment issued by the company-designated physician on January 27, 2018 was never presented to Michelle. She claimed that she only learned of the assessment at the LA proceedings, which was already beyond 240 days from her repatriation. The company's failure to timely furnish Michelle a copy of this assessment is a violation of due process.[23]

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18 Penned by Presiding Commissioner Alex A. Lopez with the concurrence of Commissioners Pablo C. Espiritu, Jr. and Cecilio Alejandro C. Villanueva; id. at 25- 36.

19 Id. at 3-21.

20 Supra note 2.

21 *Rollo*, pp. 39-41.

22 Id. at 12-17.

23 Id. at 19-23.

Finally, Michelle argued that she is entitled to payment of full disability benefits according to the CBA. The injury she sustained is from an accident. The sudden snap of Michelle's back while in the performance of her duties is considered as an "unexpected and unfortunate" occurrence. Considering that she qualifies with the application of the CBA, the amount of US$100,000.00 should be paid as full disability benefits. She also prayed for payment of moral and exemplary damages and attorney's fees.[24]

In the Comment,[25] CSC argued that the petition be dismissed outright. An appeal by *certiorari* under Rule 45 of the Rules of Court shall only relate to questions of law. In filing the instant petition, Michelle sought for a factual review of the case. However, Michelle failed to demonstrate that her case falls in any of the exceptions for this Court to take cognizance of her petition.[26] Moreover, the labor tribunals and the CA have consistently ruled that Michelle is only entitled to the disability benefits corresponding with the Grade 8 rating of the third doctor. Michelle cannot depart from this especially since she agreed to the consultation with the third physician. The 2010 POEA-SEC is also explicit that the disability grading of the third doctor shall be final and binding upon the parties. The assessment of the third physician stands and cannot be interpreted as a declaration that Michelle's back condition is permanent and total.[27] Finally, the provisions of the CBA are inapplicable because Michelle's back injury did not result from an accident.[28] Michelle is also not entitled to payment of damages and attorney's fees.[29]

Michelle filed a Reply[30] reiterating her arguments in the petition.

Ruling of the Court

As a rule, an appeal by *certiorari* under Rule 45 of the Rules of Court pertains to questions of law.[31] It does not extend to factual issues.[32] However, in the exercise of discretionary review, this Court may take cognizance of the petition when the findings of fact and the conclusions of the assailed judgment are not in accordance with law or with the applicable decisions of the Supreme Court.[33] Here, We find that the CA erred in applying the third doctor rule provided in the 2010 POEA-SEC.

The procedures for the seafarer to seek the medical opinion of a second physician and later a third physician ensues when the seafarer contests the final assessment of the company-designated physician. This is

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24 Id. at 23-27.
25 Id. at 80-105.
26 Id. at 87-89.
27 Id. at 89-96.
28 Id. at 96-100.
29 Id. at 100-104.
30 Id. at 110-125.
31 RULES OF COURT, Rule 45, Section 1.
32 *DST Movers Corp. v. People's General Insurance Corp.*, 778 Phil. 235, 244 (2016).
33 RULES OF COURT, Rule 45, Section 6.

embodied in Section 20(A)(3) of the 2010 POEA-SEC which states that "if a doctor appointed by the seafarer disagrees with the assessment [of the company designated physician], a third doctor may be agreed jointly between the employer and the seafarer." The rule further states that the third doctor's assessment shall be final and binding on the parties. Clearly, this rule presupposes that the company-designated physician must have issued a valid, final, and definite assessment on the seafarer's fitness or unfitness to work for without it, the second physician or ultimately the third doctor rule will not apply.[34]

To constitute a final and definitive assessment issued by the company-designated physician, the same must "state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related."[35] The final assessment of the company-designated physician should be issued within 120 days from the date of the seafarer's medical repatriation, or within 240 days if supported with justification for extension of medical treatment.[36] Failure to issue a final assessment within the foregoing periods renders a seafarer's illness or injury permanent and total regardless of justification.[37] Aside from the timely issuance of the company-designated physician's medical assessment within the 120/240-day periods, the company or its doctors are mandated to furnish the same to the seafarer.[38] The seafarer must be fully and properly informed of his medical condition.[39] The results of his/her medical examinations, the treatments extended to him/her, the diagnosis and prognosis, if needed, and, of course, his/her disability grading must be fully explained to him/her by no less than the company-designated physician.[40] The seafarer must be accorded proper notice and due process especially where his/her well-being is at stake.[41] The effect of failure of the company to furnish the seafarer a copy of his medical certificate militates gravely against the company's cause.[42]

Applying the foregoing principles, We cannot uphold the Grade 8 rating of the third doctor because Michelle was not issued or furnished within 120/240 days of the company-designated physician's final assessment. On record, Michelle consistently claimed from the proceedings with the LA[43] to this Court[44] that she was only furnished the company-designated physician assessment during consultations with the third doctor or 269 days from her repatriation. Notably, this assessment dated January 26, 2018 does not constitute a final and definitive assessment as it is only a narration of events that led to Michelle's repatriation, the treatments she

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34 *Magsaysay Mol Marine, Inc. v. Atraje*, 836 Phil. 1061, 1083-1084 (2018), citing *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 737-738 (2013).

35 *Jebsens Maritime, Inc. v. Mirasol*, G.R. No. 213874, June 19, 2019.

36 *Elburg Shipmanagement Phils., Inc. v. Quiogue*, 765 Phil. 341, 362-363 (2015).

37 Id. at 363.

38 *Gere v. Anglo-Eastern Crew Management Phils., Inc.*, 830 Phil. 695, 706 (2018).

39 Id.

40 Id.

41 Id.

42 Id. at 711.

43 CA *rollo*, p. 78

44 *Rollo*, p. 6.

underwent and the diagnosis of disc bulge and disc desiccation, L5-S1. To reiterate, a final and definitive assessment must state that the seafarer is fit to work or the exact disability rating, or whether such illness is work-related.[45]

Even if We consider the Grade 6 assessment dated January 27, 2018 as the final assessment, the company did not furnish the assessment to Michelle within the mandated periods. CSC does not dispute Michelle's assertion that she only learned of the same when the company appended a copy in its position paper submitted at the LA proceedings. Notably, the proceedings were held months after the third doctor's consultation and long beyond 240 days from her repatriation. There is neither proof nor allegation that Michelle had been timely furnished of the assessment and that it had been explained to her at any time prior the LA proceedings. The Grade 6 assessment may explain the company's discontinuance or conclusion of Michelle's medical treatments and contradicts the company's inability to assess Michelle's conditions. Unfortunately, the company did not furnish Michelle of this assessment leaving her guessing the status of her health.

Without furnishing the final assessment to Michelle within the mandated 120/240-day periods, she was not given any opportunity to evaluate her medical assessment. As there was no definitive and final assessment from the company-designated physician to contest, seeking the medical opinion of a second physician or even a third physician could not have ensued. Relatedly, CSC's failure to furnish Michelle a final assessment within the foregoing periods rendered her disability permanent and total.

As to the monetary award of full disability benefits, We find the provisions of the 2010 POEA-SEC applicable and not the CBA. Article 21 of the CBA reads:

> Article 21- Disability
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> A seafarer who suffers a disabling permanent injury as a result of an accident from any cause whatsoever whilst in the employment of Norwegian, regardless of fault, including accidents occurring whilst travelling to or from the Ship and whose ability to work is reduced as a result thereof, shall in addition to his Sick Pay, be entitled to compensation according to the provisions of this Agreement.[46]

From the foregoing, in order to benefit from the provisions of the CBA, the seafarer's disability must have resulted from an accident. The term "accident" may be used as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some

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45 *Jebsens Maritime, Inc. v. Mirasol*, supra note 35.

46 *Rollo*, p. 55.

untoward occurrence aside from the usual course of events.[47] In this case, Michelle's back pain resulted from turning her trunk while in the performance of her duties as a waitress. Her condition is simply aggravated by work. In fact, the company-designated physician opined that if the patient's work involves repetitive and/or strenuous activities of the back, then these conditions is considered work-related.[48] Other than the fact that Michelle was in the performance of her duties, there is no proof of unlooked mishaps, occurrences, or fortuitous events that could have resulted in her condition. The provisions of the CBA are inapplicable.

Anent Michelle's prayer for payment of moral and exemplary damages, We find no reason to award the same. We are unconvinced that CSC acted in bad faith. From the facts, Michelle had been closely monitored and medically treated by the company doctors for four months since her repatriation. CSC even cooperated in seeking the medical opinion of a third physician. The company could not have acted in bad faith in seeking to uphold the Grade 8 disability rating of the third doctor. The only misgiving We find is the company's failure to timely furnish Michelle the final disability assessment of the company-designated physician which resulted in the award of permanent and total disability benefits. Finally, Michelle is awarded attorney's fees at 10% of the monetary award because she was forced to litigate her interests.[49]

WHEREFORE, the Decision dated January 27, 2020 of the Court of Appeals in CA-G.R. SP No. 162014 is **REVERSED** and **SET ASIDE**. Respondents C.F. Sharp Crew Management, Inc., *et al.* are **ORDERED** to pay petitioner Michelle Miro Wenceslao:

1) US$60,000.00 representing permanent and total disability benefits under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract;
2) Sickness allowance, if none had been paid; and
3) Attorney's fees at ten percent (10%) of the monetary award.

All amounts shall earn six percent (6%) interest *per annum* from finality of this Decision until full satisfaction.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

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47 *Julleza v. Orient Line Philippines, Inc.*, G.R. No. 225190, July 29, 2019, citing *NFD Int'l. Manning Agents, Inc./Barber Ship Mgmt. Ltd. v. Illescas*, 646 Phil. 244, 260 (2010).

48 CA *rollo*, p. 126.

49 CIVIL CODE, Article 2208 (2).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice