



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RUTHGAR T. PARCE,

G.R. No. 241309

Petitioner,

Present:

GESMUNDO, *CJ.*, Chairperson,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.V., and
LOPEZ, J., *JJ.*

- versus -

**MAGSAYSAY MARITIME
CORPORATION, PRINCESS
CRUISES LTD. and/or SORWIN
JOY G. RIVERA,**

Respondents.

Promulgated:

NOV 11 2021

[Signature]

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DECISION

LOPEZ, J., J.:

Before Us is a Petition for Review on Certiorari¹ assailing the February 27, 2018 Decision² and August 8, 2018 Resolution³ of the Court of Appeals (CA), in CA-G.R. SP No. 148328, which reversed and set aside the June 30, 2016 Decision⁴ of the National Labor Relations Commission (NLRC), that

¹ Rollo, pp. 32-73.

² Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with Associate Justices Mariflor P. Punzalan-Castillo and Danton Q. Buser, concurring; *id.* at 8-24.

³ *Id.* at 74-89.

⁴ Penned by Commissioner Presiding Commissioner Grace M. Venus and with Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio, concurring; *id.* at 332-342.

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previously affirmed the March 29, 2016 Decision⁵ of the Labor Arbiter, in NLRC LAC No. OFW-M-05-000392-16, granting Ruthgar T. Parce's claim for permanent and total disability.

The Antecedents

Ruthgar T. Parce (*Parce*) had been working for Magsaysay Maritime Agency, Inc. (*Magsaysay*) since 1992 as seafarer under different employment contracts.⁶

On September 8, 2014, Parce was engaged as Senior Electrical Fitter by Magsaysay for its foreign principal Princess Cruises Lines, Ltd (*Princess Cruises*). Armed with a fit to work certification, Parce boarded the vessel "Golden Princess" to complete a 10-month contract.⁷

In November 2014, while Parce was doing his routine work, he lifted heavy objects which caused pain in his left shoulder. He immediately consulted the ship doctor who gave him pain killers. However, the pain persisted, prompting the ship doctor to prescribe him stronger medicines. Unfortunately, the pain escalated and Parce found it difficult to perform his daily task. Hence, the ship doctor declared him unfit to work and recommended his repatriation for further medical treatment. On December 9, 2014, Parce arrived in the Philippines⁸.

On December 11, 2014, Parce reported to the company-designated physician, Shiphealth, Inc. (*Shiphealth*), for further examination and treatment. Thereat, he was made to undergo 36 therapy sessions.⁹

On April 13, 2015, Parce was informed that he has reached the maximum medical cure and no further treatment will be extended to him.¹⁰

Unknown to Parce, Shiphealth issued a Final Medical Report¹¹ dated April 15, 2015 relating to Parce's medical status, the full text of which reads:

Mr. Parce is a 59-year old, male from Roxas City who was referred due to left shoulder pain.

In December 2014, patient presented at the ship clinic with complaint of left shoulder pain, VAS 8/10, and associated limitation of motion. Shoulder

⁵ Penned by Labor Arbiter Veneranda C. Guerrero; *id.* at 266-204.

⁶ Petition, *id.* at 36.

⁷ *Id.* at 9.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 9-10.

¹¹ *Id.* at 158-159.

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immobilizer was applied. He was given oral analgesic that provided temporary relief. Home medical referral was advised to further evaluation and management.

Patient was medically repatriated on December 11, 2014 and was referred to our facility.

Past Medical History: known hypertensive for 5 years and maintained on amlodipine.

Family Medical History: unremarkable

Personal and Social History: Patient is married and a Roman Catholic. He is a non-smoker and occasional alcoholic beverage drinker.

Work History: Patient is a Master Electrician graduate. He previously worked as Technician in other ship companies for 10 years before he joined PCL in 1990. He embarked last October 24, 2014 for his 24th contract. This was his 1st medical repatriation.

Initial Physical Examination:

General Survey: conscious. Coherent, ambulatory, not in distress

Vital Signs: BP: 120/80HR; 84 beats/min, regular RR: 20 cycles/min

Temp: afebrile

HEENT: anicteric sclerae, no naso-aural discharge, no cervical lymphadenopathies, tonsilopharyngeal congestion, no anterior neck mass

Chest/Lungs: equal chest expansion, no retractions, clear breath sounds

CVS: adynamic precordium, normal rate, regular rhythm, no murmurs

Abdomen: flat, normoactive bowel movements, soft, no tenderness, no mass

Genitourinary: no costovertebral angle tenderness

Extremities: pink nail beds, good capillary refill, full and equal pulses, no cyanosis, no edema

Left shoulder: no swelling or tenderness, (+) limitation in range motion, no gross deformity.

Medical Course

Mr. Parce was seen and evaluated by Orthopedic Surgery Service on December 11, 2014. Assessment was rotator tendinitis, left, for which commencement of physiotherapy and analgesic intake were advised.

On January 7, 2015 patient was re-evaluated by Orthopedic Surgery. After completion of 6 sessions of physical therapy, he claimed reduction of left shoulder pain to VAS 6/10 from VAS 8/10. Improved range of motion of left shoulder was appreciated. Another 6 sessions of physical therapy (2nd set) were recommended.

Patient followed-up with Orthopedics on January 23, 2015 after completion of 2nd PT set. He claimed left shoulder pain of VAS 5/10. Physical exam revealed minimal improvement of range of motion. Local steroid injection done. Another set of 6 PT sessions (3rd PT set) was recommended.

Patient was re-evaluated by Orthopedics service on February 9, 2015. At that time, patient finished the 3rd set of physical therapy. Patient claimed left shoulder pain at VAS 4/10 felt only on end range motion. He was advised

new set of physical therapy to facilitate pain relief and return of function through strengthening and stretching exercises.

On February 23, 2015, patient was re-evaluated by Orthopedic Surgery service. Patient claimed left persistence of left shoulder pain at VAS 4/10. To check for possible cause of persistent shoulder complaints, plain MRI of the left shoulder was advised.

The patient completed the 5th set of physical therapy. He then followed up with Orthopedic Surgery service on March 25, 2015. Post-rehabilitation, patient reported of left shoulder pain at VAS 4/10. Findings on plain MRI of the left shoulder were suggestive of low-grade tear vs. tendinosis of the supraspinatus tendon. Orthopedic Surgery service saw no indication for surgical intervention. Assessment was rotator cuff tendinitis, left. Continued conservative management through analgesics and rehabilitative therapy was recommended.

Patient was re-evaluated by Orthopedic Surgery service on April 13, 2015. At that time, patient completed a set of 36 sessions of physical therapy. He clarified intermittent left shoulder felt only on end-range motion. Medical examination showed no swelling or tenderness of the left shoulder. Range of motion was within functional xxx. No further treatment intervention was warranted aside from continued self-directed strengthening and xxx exercises for the left shoulder. Mr. Parce was deemed maximally medically improved for the condition xxx by Orthopedic Surgery service.

Diagnosis:

Rotator cuff tendinitis, left
s/p Local steroid injection, left shoulder (January 23, 2015 - Manila)
s/p 6 sets of physical therapy (6 sessions each set)

Recommendations:

Maximally Medically Improved
Case Closed

Prepared by:

Shiphealth Medical Team/PGY (Signed)¹²

Subsequently, Princess Cruises issued a Memorandum¹³ which reviewed the above final medical report and considered Parce's status as fit without restrictions.

Despite being given the status of maximally medically improved in orthopedic point of view, Parce's pain still persisted.¹⁴ Thus, he consulted another physician, Dr. Manuel Fidel Magtira (*Dr. Magtira*), who made him undergo an MRI procedure. Upon evaluation of the MRI result vis-à-vis Parce's physical condition, Dr. Magtira found him unfit for sea duties as stated in the Medical Report dated June 25, 2015, viz.:

¹² *Id.* at 89.

¹³ *Id.* at 164.

¹⁴ *Id.*

Functional requirements vary from sedentary patient with low activity requirements, though that patient with more physical demanding work, excessive load on the affected joint not only hasten the exciting degenerative process, but is likely to produce new pathologies as well. It is for this reason that a permanent modification in Mr. Parce activities is suggested. I am therefore recommending a permanently UNFIT in any capacity for further sea duties.¹⁵

On July 2, 2015, Parce, through counsel, sent Magsaysay a letter requesting for referral to a third doctor in view of his own doctor's declaration of unfitness to return to sea service. Parce, likewise, requested Magsaysay, copies of all his medical records pertaining to his rehabilitation and treatment.¹⁶

In reply, Magsaysay asked for a copy of the second medical opinion of Parce's physician of choice so that they can study the possibility of entering into settlement negotiations.¹⁷

On August 20, 2015, Parce filed a complaint against Magsaysay and its foreign Principal, Princess Cruises, and Sorwin Joy G. Rivera, in his capacity as Fleet Director, before the Labor Arbiter. Parce prayed for payment of disability benefits pursuant to the POEA-SEC, reimbursement for medical expenses, damages, and attorney's fees.

After due proceedings, the Labor Arbiter issued a Decision dated March 29, 2016 in favor of Parce. The Labor Arbiter found Magsaysay and Princess Cruises liable to pay Parce full coverage of his disability benefits in the amount of US\$60,000.00 and attorney's fees equivalent to 10% of the monetary award. The Labor Arbiter also noted that Parce had complied with his obligation to initiate referral to a third doctor when he categorically stated that his own doctor declared him totally and permanently unfit for sea service in his July 2, 2015 letter to Magsaysay.

Further, the Labor Arbiter found that the medical report of the company-designated physician cannot be considered as equivalent to a fitness to work declaration there being no express declaration thereon. Thus, with the lapse of the 240 days from repatriation without a definite fitness to work assessment issued by the company-designated physician, the Labor Arbiter declared that Parce's disability is deemed total and permanent by operation of law. Accordingly, the Labor Arbiter decreed:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Magsaysay Maritime Corporation, and/or the foreign principal Princess Cruise Lines, Ltd., to pay Ruthgar T. Parce the Philippine

¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*

peso equivalent at the time of actual payment of SIXTY THOUSAND US DOLLARS (US\$60,000.00), representing total permanent disability benefits, plus ten percent (10%) thereof as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.¹⁸

Magsaysay elevated the case to the NLRC. In its Decision dated June 30, 2016 Decision, the NLRC affirmed the Labor Arbiter's disposition. The NLRC bared that nowhere in the Final Medical Report, dated April 27, 2015 and purportedly issued 127 days from disembarkation, did the company-designated physician declare Parce's fitness to resume sea duties.¹⁹ The NLRC noted that what was indicated in the said medical report was the physician's final diagnosis on Parce: "*rotator tendinitis, left; s/p local steroid injection, left shoulder (January 23, 2015 – Manila); s/p 6 sets of physical therapy (6) sessions each set.*" At the end of the report, the company-designated physician recommended: "*Maximally Medically Improved; Case Closed*".²⁰ In the absence of the company-designated physician's definite assessment on Parce's fitness or disability, and with the lapse of the 240-day period without such declaration, the NLRC concluded that Parce's disability has become total and permanent.²¹

The NLRC brushed aside Magsaysay's contention that Parce forfeited his claim to disability under the POEA-SEC when he failed to submit a medical report from his physician of choice to initiate referral to a third doctor. The NLRC found Parce's July 2, 2015 letter to Magsaysay where he requested for referral to third doctor as sufficient compliance with the third doctor requirement.²²

As Parce's disability is deemed total and permanent, the NLRC affirmed the award of US\$60,000.00 or its Philippine peso equivalent as well as the grant of attorney's fees.²³ Further, the NLRC found Sorwin Joy G. Rivera solidary liable with the corporate principals²⁴ pursuant to Section 10 of Republic Act No. 8042²⁵ otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995.

¹⁸ Labor Arbiter's Decision dated 29 March 2016, *id.* at 279.

¹⁹ NLRC Decision, *id.* at 338.

²⁰ *Id.* at 338-339.

²¹ *Id.*

²² *Id.* at 339-340.

²³ *Id.* at 340.

²⁴ *Id.*

²⁵ Section 10. *Money Claims.* – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

Magsaysay and Princess Cruises moved for reconsideration²⁶ but the same was subsequently denied.²⁷

Magsaysay and Princess Cruise appealed the NLRC's decision. On February 27, 2018, the CA issued a disposition which reversed the rulings of the labor tribunals. Essentially, the CA found as crucial Parce's failure to protest his medical assessment immediately and found dubious the two-month gap from Parce's termination of medical treatment and the filing of his labor complaint. According to the CA, Parce's failure to disclose what happened in those two months militates against his cause.²⁸

As follows is the decretal portion of the CA decision:

WHEREFORE, the Decision dated June 30, 2016 of the National Labor Relations Commission (NLRC)- 4th Division in NLRC LAC No. OFW-M-05-000392-16/NLRC-NCR-OFW Case No. (M) 08-10002-15 and Decision dated March 29, 2016 of the Labor Arbiter in NLRC NCR OFW Case No. (M) 08-10002-15 are hereby ANNULLED AND SET ASIDE.

The complaint of private respondent is hereby DISMISSED.

SO ORDERED.²⁹

Parce moved for reconsideration³⁰ but his motion was denied in the CA's August 8, 2018 Resolution.

On September 28, 2018, Parce filed a Petition for Review before this Court to which Magsaysay and Princess Cruises filed a Comment³¹. On December 27, 2019, Parce filed his Reply.³²

Petitioner Parce asserts that respondents Magsaysay and Princess Cruises refused to furnish him copies of his medical results and even the final assessment of the company-designated physician at the time when his medical treatment was discontinued and up to the expiration of the 240-day period of medical treatment.³³ He likewise insists that the final medical report issued by the company doctor is not a complete, final, and definite assessment as it lacks a categorical statement of his fitness to return to sea duties or declaration of his disability.³⁴ Parce also notes that petitioners refused to refer him for the mandatory third medical opinion under the conflict resolution provision of the

²⁶ Motion for Reconsideration, *rollo*, pp. 343-352.

²⁷ NLRC Resolution dated July 21, 2016, *id.* at 365-368.

²⁸ *Id.* at 17-18.

²⁹ *Id.* at 19-20.

³⁰ Private Respondent's Motion for Reconsideration (Re: Decision dated 27 February 2018), *id.* at 494-516

³¹ *Rollo*, pp. 545-561.

³² *Id.* at 585-607.

³³ *Petition*, *id.* at 41-43.

³⁴ *Id.* at 52-57.

POEA-SEC despite a written request, rendering his claim for disability total and permanent.³⁵

Respondent Magsaysay maintain that Parce was accorded extensive medical treatment and thereafter declared fit to resume sea voyage as embodied in the April 15, 2015 evaluation of the company doctor.³⁶ According to respondents, petitioner's complaint is premature because he failed to present a credible medical opinion from his own medical doctor before the filing of his complaint in court and during the mandatory conferences. Had he submitted a medical diagnosis of his condition from his doctor of choice, respondent could have activated the conflict resolution process and referred him to a third medical doctor for evaluation.³⁷

Issues

From the parties' arguments, the issues subject for resolution are: 1) whether or not the Final Medical Report dated April 15, 2015 issued by the company-designated physician is categorical, final, and complete; 2) whether or not the medical opinion of a seafarer's doctor of choice is a condition precedent to referral to a third doctor; and 3) whether or not petitioner Parce is entitled to total and permanent disability benefits.

Our Ruling

The Court grants the petition.

To begin with, the Court is not a trier of facts.³⁸ Only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court.³⁹ Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.⁴⁰ However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;

³⁵ *Id.* at 65-67.

³⁶ *Comment, rollo*, p. 549.

³⁷ *Id.* at 557-557.

³⁸ *Castillon et. al, v. Magsaysay Mitsui OSK Marine Inc .et al*, G.R. No. 234711, March 02, 2020.

³⁹ *Philippine Transmarine Carriers, Inc. v. Cristino*, 775 Phil. 108, 121 (2015), citing *Heirs of Pacencia Racaza v. Spouses A bay-A bay*, 687-Phil. 584, 590 (2012).

⁴⁰ *Id.*, citing *Merck Sharp and Dohme (Phils.) et. al. v. Robles et al.*, 620 Phil. 505, 512 (2009).

3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings 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 respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.⁴¹

The issue of Parce's compensability for his disability or none thereof is essentially a factual issue, however, as there is a divergence in the findings of the CA and the labor tribunals, We shall exercise Our discretionary power of review.

A seafarer's entitlement to disability benefits governed not only by the medical findings of the respective physicians of the parties, but, more importantly, by the applicable Philippine laws and by the contract between the parties. By law, the material statutory provisions are Articles 191 to 193 of the Labor Code. By contract, the seafarers and their employers are governed not only by their mutual agreements, but also by the provisions of the POEA-SEC⁴² which are deemed integrated in every employment contract.⁴³

Here, Parce's employment with the manning agencies is governed by the 2010 POEA-SEC as amended by POEA Memorandum Circular No. 10, series of 2010. On a seafarer's compensation and benefits after suffering from a work-related injury or illness, the last paragraph of Section 20(A)(3) of the 2010 POEA-SEC provides:

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:

⁴¹ *Reyes v. Global Beer Below Zero, Inc.*, 819 Phil 483, 494 (2017).

⁴² Memorandum Circular No. 10, s. 2010.

⁴³ *De Vera v. United Philippine Lines, Inc.*, G.R. No. 223246, June 26, 2019.

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship.
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
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.

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

In contrast, Section 20 (A) (6) of the 2010 POEA-SEC emphasizes that the seafarer's disability shall not be measured by the number of days the seafarer underwent treatment, *viz.*:

6. 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.

In *Chan v. Magsaysay Maritime Inc.*,⁴⁴ citing *Olidana v. Jebsens Maritime, Inc.*,⁴⁵ We have ruled that before the disability gradings under Section 32 may be considered, the same should be properly established and contained in a valid and timely medical report of a company-designated

⁴⁴ G.R. No. 239055, March 11, 2020.

⁴⁵ 772 Phil. 234, 245 (2015).

physician. Thus, the foremost consideration of the courts is to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein will not be seriously appreciated.⁴⁶

In the present case, there is no dispute that Parce sustained a shoulder injury while doing his routine work. As such, he was medically repatriated. Upon his arrival in Manila, he immediately sought treatment from the company-designated physician who diagnosed Parce of rotator tendinitis and recommended for his physical therapy sessions. However, on April 13, 2015, Parce was informed, albeit verbally, that he has already reached the maximum medical cure. Accordingly, Magsaysay immediately ordered the termination of his medical treatment and the discontinuance of his sickness allowance.

Magsaysay claims that its company-designated physician issued a final medical report on April 15, 2015. However, the final assessment was not shown to have been received by Parce. In fact, Magsaysay refused to heed Parce's request to be furnished with copies of all medical reports of the company-designated physician pertaining to his treatment.

In the case of *Salas v. Transmed Manila Corporation, et al.*,⁴⁷ We highlighted the need for a complete and definite medical assessment, thus:

The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed period necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. **To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored.** As the case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.

Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps-in to consider the latter's disability as total and permanent. (Emphasis Ours)

Here, the medical report issued by Magsaysay's company designated physician fell short of the requirements for a complete and definite assessment. Noticeably, the final medical assessment merely indicated that Parce has reached a maximum medical cure or improvement. The term maximum medical improvement is indicative that the patient's treatment

⁴⁶ *Supra* note 34.

⁴⁷ G.R. No. 247221, June 15, 2020.



through curative means has ended⁴⁸ but in no way equivalent to a categorical declaration of fitness to resume sea duty. If at all, maximum medical improvement just means the injured person has reached full recovery or has received maximum treatment but could no longer be healed even with further therapy. In both cases, a medical assessment with a pronouncement of maximum medical improvement must still be accompanied by a declaration of fitness to resume work duties or disability rating to be considered a valid medical report.

Also, the final medical report must be issued by the company-designated physician with a definitive declaration as to the capacity of the seafarer to return to work or at least a categorical and final degree of his or her disability.⁴⁹ This was Our declaration in *Abundo v. Magsaysay Maritime*⁵⁰. In the present case, however, the final assessment found in the record merely recited Parce's medical history but made no mention as to whether he is even capable of resuming work.

It is also trite to mention that the seafarer must be furnished a copy of the final medical report to properly contest and evaluate the medical assessment as stated in POEA-SEC, viz:

SECTION 20. COMPENSATION AND BENEFITS

xxx

B. Compensation and Benefits for Death

xxx

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

In *Gere v. Anglo-Eastern Crew Management Phils., Inc.*⁵¹ We struck down the medical report issued by the company doctor when it was shown that the seafarer was not notified and given an opportunity to evaluate his medical assessment. So, too, in *Chan v. Magsaysay*, when the seafarer's medical assessment was not relayed to him. We said in there that it is the issuance and the corresponding conveyance to the employee of the final medical assessment by the company-designated physician that triggers the application of Section 20(A)(3) of the 2010 POEA-SEC.⁵²

Thus, even if Parce consulted an independent physician regarding his injury and failed to furnish Magsaysay with a copy of his own doctor's medical assessment, the lack of a conclusive and definite assessment from Magsaysay's company-designated physician left Parce nothing to properly

⁴⁸ See *Teodoro v. Teekay Shipping Philippines*, G.R. No. 244721, February 5, 2020.

⁴⁹ *Abundo v. Magsaysay*, G.R. No. 222348, November 20, 2019.

⁵⁰ *Id.*

⁵¹ 830 Phil. 695 (2019).

⁵² *Suprap* note 34.

contest. Magsaysay cannot readily shift the burden to Parce to show his unfitness to return to work when its company-designated physician first failed to formally notify Parce of his medical condition after the lapse of the prescribed 120/240-day period as the case may be. Evidently, there is even no need for Parce to initiate the referral to a third doctor for him to be entitled to permanent disability benefits. It was by operation of law that Parce became permanently disabled.⁵³ As such, Parce is entitled to a disability pay of US60,000.00 or its peso equivalent.

With respect to the Parce's claim of attorney's fees, We find the same to be in order pursuant to Article 2208⁵⁴ of the New Civil Code as he was indeed compelled to litigate in pursuit of his claims for disability benefits. However, the claims for moral and exemplary damages are not warranted for lack of substantial evidence showing that Magsaysay and Princess Cruises acted with malice or in bad faith in refusing to grant his claim.

All told, this Court finds that the CA committed reversible error in granting Magsaysay and Princess Cruise's *certiorari* petition since the NLRC did not gravely abuse its discretion in awarding total and permanent disability benefits in favor of Parce.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 27, 2018 and the Resolution dated August 8, 2018 of the Court of Appeals in CA-G.R. SP No. 148328 are hereby **REVERSED** and **SET ASIDE**. The Decision dated June 30, 2016 and the Resolution dated August 31, 2016 of the National Labor Relations Commission in NLRC LAC No. OFW-M-05-000392-16 are **REINSTATED** in that Magsaysay Maritime Corporation and Princess Cruises Ltd. are jointly and severally liable to pay Ruthgar T. Parce permanent disability benefits in the amount of US \$60,000.00 at the prevailing rate of exchange at the time of payment, and attorney's fees amounting to ten percent (10%) of the total award. These awards shall earn legal interest of six percent (6%) *per annum* reckoned from the finality of this Decision until fully paid.

The deletion of the awards of moral and exemplary damages still stands.

⁵³ *Supra* note 38.

⁵⁴ Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) xxx

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

xxx

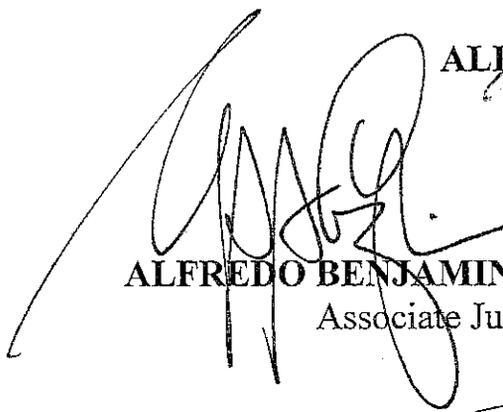
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SO ORDERED.


JHOSEP Y. LOPEZ
Associate Justice

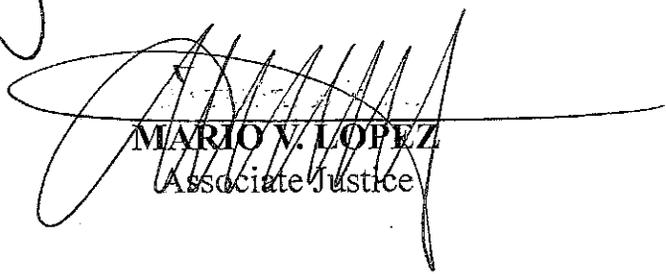
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

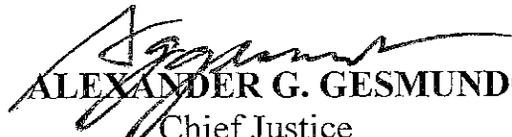

AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
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