Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

AVIOR MARINE, INC., CARINA MARINE N.V., and/or EDNA L. RANARA,
Petitioners,

\- *versus* -

ARNALDO R. TURREDA,
Respondent.

G.R. No. 250806

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:

SEP 29 2021

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RESOLUTION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated August 16, 2019 and the Resolution[3] dated November 27, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 157335. The CA affirmed the Decision[4] dated May 21, 2018 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-000308-18 finding Arnaldo R. Turreda (respondent) entitled to total and permanent disability benefits.

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[1] *Rollo*, pp. 3-51.
[2] *Id.* at 57-66; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Marie Christine Azcarraga-Jacob and Germano Francisco D. Legaspi, concurring.
[3] *Id.* at 68-69.
[4] CA *rollo*, pp. 64-71; penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez and Commissioner Cecilio Alejandro C. Villanueva, concurring.

The Antecedents

Avior Marine, Inc. (Avior Marine) is a domestic corporation engaged in the recruitment and placement of seafarers for employment on board ocean-going vessels. Carina Marine N.V. and Edna L. Ranara are its local agents (collectively, petitioners).[5]

On December 16, 2015, petitioners hired respondent as Chief Cook under a nine-month contract with a basic monthly salary of US$725.00. After undergoing a pre-employment medical examination, he was declared fit for sea duties and thereafter boarded the vessel Water Phoenix.[6]

Sometime in the first week of June 2016, respondent experienced episodes of headache causing him severe pain. He immediately reported his condition to the ship captain who recommended that he be examined in Ecuador. The attending doctor diagnosed him to be suffering from migraine and gave him analgesics. On June 14, 2016, he was examined in Puerto Bolivar and declared not fit for sea duties causing his repatriation.[7]

On June 19, 2016, respondent arrived in the Philippines and immediately reported to the company-assigned clinic under the supervision of Dr. George Y. Hernandez, the company-designated physician. Respondent underwent a chest x-ray and an electrocardiogram (ECG), and was also prescribed with various medications such as Losartan, Amlodipine, Afrovastatin, Celicoxib, and Febuxostat.[8]

On July 11, 2016, respondent underwent a two-dimensional ECG and a treadmill stress test, and was diagnosed to be suffering from sinus bradycardia and aortic valve sclerosis. However, despite the results of these tests, the company-designated physician issued a certificate of fitness to work to respondent the very next day, or on July 12, 2016, without issuing any other document stating that his illness has already been resolved.[9]

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5 *Rollo*, p. 9.
6 *Id.* at 58.
7 See Report of Medical Examination dated June 14, 2016, CA *rollo*, p. 126.
8 *Rollo*, p. 58.
9 *Id.*

As symptoms persisted, respondent consulted his doctor of choice, Dr. Efren R. Vicaldo (Dr. Vicaldo) in February 2017 and was advised to undergo another two-dimensional ECG.[10] Dr. Vicaldo diagnosed respondent to be suffering from hypertensive cardiovascular disease, mitral regurgitation, and migraine headache, and certified him as unfit to resume work as a seaman in any capacity.[11]

Meanwhile, petitioners did not redeploy respondent to his former post despite the certification of fitness to work from the company-designated physician. This prompted him to apply with other manning agencies, but he remained unemployed due to his medical condition.[12] Consequently, respondent filed a disability complaint against petitioners.

On May 27, 2017, respondent notified petitioners of his willingness to refer the case to a third doctor, but petitioners did not set into motion the process of choosing a third doctor. Petitioners stressed that respondent failed to present evidence that he was totally and permanently disabled, and that the opinion of his doctor of choice cannot prevail over the evaluation of the company-designated physician.[13]

In his position paper, respondent averred that his illness is deemed work-related in the absence of any contrary evidence from petitioners. He argued that because he was certified as fit to work during his pre-employment medical examination, the illness he suffered on board the Water Phoenix is work-related or at least aggravated by his employment.[14]

For their part, petitioners asserted that the medical assessment of the company-designated physician should prevail over the medical opinion of respondent's doctor of choice who only examined him once. According to petitioners, respondent did not present any evidence of his total and permanent disability, and failed to follow the procedure in disputing the assessment of the company-designated physician as he requested for the third-doctor referral when the case was already initiated before the Labor Arbiter.[15]

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[10] *Id.* at 59.
[11] See Medical Evaluation of Patient/Seaman Arnaldo R. Turreda dated March 9, 2017, CA *rollo*, pp. 266-267.
[12] *Rollo*, p. 59.
[13] *Id.*
[14] *Id.*
[15] *Id.* at 60.

Ruling of the Labor Arbiter

In the Decision[16] dated February 12, 2018, the Labor Arbiter dismissed respondent's complaint for lack of merit[17] and ruled as follows: *first*, there was no basis for respondent's claim for total and permanent disability benefits because he had already been cleared of his migraine, which caused his repatriation; *second*, his hypertensive cardiovascular disease was neither work-related nor aggravated by his work conditions, and was likewise not the cause of his medical repatriation; and *third*, respondent's claim is dubious as he sought the opinion of his doctor of choice only after eight months from the issuance of the company-designated physician's fitness to work certification.[18]

Aggrieved, respondent appealed to the NLRC.

Ruling of the NLRC

In the Decision[19] dated May 21, 2018, the NLRC granted the appeal of respondent, holding that he is entitled to total and permanent disability benefits in the amount of US$60,000.00, plus 10% thereof as attorney's fees, *viz.*:

> WHEREFORE, complainant's appeal is GRANTED. The decision dated February 12, 2018 is VACATED and SET ASIDE. Respondents Avior Marine, Inc., and/or the foreign principal, Carina Marine N.V[.] are ordered to pay complainant Arnaldo R. Turreda, jointly and severally, the amount of US$60,000 or its Philippine peso equivalent at the time of actual payment, as 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.[20]

The NLRC pointed out that the company-designated physician only examined respondent twice on June 22, 2016 and on July 12,

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[16] CA *rollo*, pp. 72-84; penned by Labor Arbiter Elias H. Salinas.
[17] *Id.* at 84.
[18] *Rollo*, p. 60.
[19] CA *rollo*, pp. 64-71.
[20] *Id.* at 70.

2016, and aside from the unsigned medical reports of the company-designated physician, petitioners failed to attach the copies of the laboratory results, chemical examinations, and specialist's report of respondent's medical examinations.[21] In addition, the NLRC also observed that the company-designated physician hastily declared respondent as fit to work three weeks after respondent was advised to continue with his medications.[22]

With the foregoing findings, the NLRC ruled that there was no conclusive and definite medical assessment of respondent's condition, thereby transforming it into a permanent and total disability.[23]

Ruling of the CA

In the assailed Decision[24] dated August 16, 2019, the CA agreed with the NLRC that respondent is entitled to total and permanent disability benefits, explaining as follows:

> In this case, the unsigned Final Report issued on July 12, 2016 or on the 25th day after respondent's repatriation on June 17, 2016, by the company-designated physician stated that *"Our Cardiologist said that Mr. Turreda has Hypertension Stage 1, controlled, Hyperuricemia and Dyslipidemia. Mr. Turreda was instructed to take the following medications: ..."* and that respondent was declared *"fit to return to work as of today 12 July 2016."* Considering that respondent was diagnosed with *Hypertension Stage 1, controlled, Hyperuricemia and Dyslipidemia* and was advised to continue medications, his medical condition was deemed uncertain, thus, the assessment made by the company-designated physician was not considered final; it was also of doubtful quality as it did not bear the signature of the company-designated physician. x x x Without a valid final and definitive assessment from the company-designated physician, respondent's temporary and total disability, by operation of law, became permanent and total.[25]

Petitioners filed their Motion for Reconsideration,[26] but the CA denied it in the assailed Resolution[27] dated November 27, 2019.

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[21] *Id.* at 68-69.
[22] *Id.* at 69.
[23] *Rollo*, p. 61.
[24] *Id.* at 57-66.
[25] *Id.* at 63.
[26] *Id.* at 71-89.
[27] *Id.* at 68-69.

Hence, the petition.

Issues

1) Whether the illness suffered by respondent on board the vessel Water Phoenix is work-related or aggravated by his employment.

2) Whether the medical assessment given by the company-designated physician is complete and definitive.

The Court's Ruling

The petition is patently without merit.

Any disability caused by an occupational disease is deemed work-related.

Under the 2000 Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC), a work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."

In *Bautista v. Elburg Shipmanagement Philippines, Inc., et al.*,[28] the Court explained that hypertensive cardiovascular disease is considered as an *occupational disease* under Section 32(A)(11) of the POEA-SEC, but only *if* it was contracted under *any* of the following circumstances:

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

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[28] 767 Phil. 488 (2015).

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

(c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.[29]

Thus, for hypertensive cardiovascular disease to constitute as an occupational disease for which the seafarer may claim compensation, he must show proof that he developed the disease under any of the three conditions listed above.

In this case, petitioners aver that respondent's illness was a simple migraine, which was the chief cause of his repatriation.[30] However, to the Court, had respondent only suffered a simple migraine aboard the vessel, petitioners would not have recommended his immediate medical repatriation. That he also suffered from hypertensive cardiovascular disease while on board the Water Phoenix is clearly established by the fact that upon his arrival in the Philippines, the company-designated physician subjected him to a chest x-ray and an ECG right away, and then prescribed Losartan, Amlodipine, and Atorvastatin, which are used to treat high blood pressure and prevent heart disease, heart attacks, and strokes. Later on, respondent was subjected to a two-dimensional ECG and a treadmill stress test, revealing that he was suffering from sinus bradycardia and aortic valve sclerosis. In particular, aortic valve sclerosis is "defined as calcification and thickening of a trileaflet aortic valve in the absence of obstruction of ventricular flow."[31] It is, in itself, "a potential marker of coexisting coronary disease,"[32] and "an antecedent to clinically significant aortic valve obstruction."[33]

Based on the peculiar circumstances in this case, it appears that respondent's medical condition was *asymptomatic* considering that he

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[29] *Id.* at 498.

[30] *Rollo*, pp. 59-60.

[31] Prasad Y, Bhalodkar NC. "Aortic sclerosis – a marker of coronary atherosclerosis. Clin Cardiol. 2004, accessed at <https://pubmed.ncbi.nlm.nih.gov/15628107> (last accessed on August 10, 2021).

[32] *Id.*

[33] Nightingale, A K, and J D Horowitz. "Aortic sclerosis: not an innocent murmur but a marker of increased cardiovascular risk." *Heart (British Cardiac Society)* Vol. 91,11 (2005), accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1769170> (last accessed on August 10, 2021).

exhibited no signs and symptoms of any cardiac injury prior to his deployment on board the Water Phoenix. As a matter of fact, he was declared fit for sea duty without any issues following his pre-employment medical examination. Simply put, absent any showing that respondent had a *pre-existing* cardiovascular ailment prior to his embarkation, the reasonable presumption is that he had acquired his hypertensive cardiovascular disease in the course of his employment in view of Section 32(A)(11)(c) of the POEA-SEC, which recognizes a "causal relationship" between said disease and the seafarer's job, and qualifies the same as an occupational disease.[34]

"A party in whose favor the legal presumption exists may rely on and invoke such legal presumption to establish a fact in issue. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created thereby which, if no contrary proof is offered, will prevail."[35] In the case, petitioners failed to introduce any countervailing evidence that would otherwise overcome the disputable presumption of compensability of respondent's hypertensive cardiovascular disease.

The submission to a third doctor must be jointly agreed upon by the employer and the seafarer.

In cases of complaints for disability benefits, the POEA-SEC is the law between the parties and its provisions bind both the employer and the seafarer.[36] Section 20(A)(3) of the POEA-SEC provides that "[i]f 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," and "[t]he third doctor's decision shall be final and binding on both parties."[37] Indubitably, the parties may jointly refer the varying assessments of the company-designated physician and the seafarer's doctor of choice to a third doctor, whose decision shall bind the parties.

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[34] *Bautista v. Elburg Shipmanagement Philippines, Inc. et al.*, *supra* note 28 at 499.

[35] *Id.*

[36] *Seacrest Maritime Management, Inc., et al. v. Roderos*, 839 Phil. 750, 762 (2018), citing *Jebsen Maritime, Inc., et al. v. Rapiz*, 803 Phil. 266, 274 (2017), further citing *Magsaysay Maritime Corp., et al. v. Simbajon*, 738 Phil. 824, 835-846 (2014).

[37] *Flores v. Maersk-Filipinas Crewing, Inc.*, G.R. No. 225609 (Notice), September 14, 2016.

In *INC Navigation Co. Philippines, Inc., et al. v. Rosales*,[38] this Court clarified that "when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision."[39] It further explained that:

> x x x [The employee] bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. *Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor* who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.[40] (Italics supplied.)

In this regard, the Court in *Ilustricino v. NYK-FIL Ship Management, Inc., et al.*[41] highlighted the significance of the response and/or action of the employer on the request of the seafarer for the referral of the contradictory assessments on his medical condition by the company-designated doctor and his physician of choice, to wit:

> x x x *Accordingly, upon being notified of petitioner's intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the respondents.* This, they failed to do so, and petitioner cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is not binding.[42] (Italics supplied)

Here, no agreement to refer the case to a third doctor was arrived at by petitioners and respondent. As readily admitted by petitioners, respondent informed them of the different medical assessment given by his doctor of choice and requested that the case be referred to a third doctor.[43] However, because respondent allegedly made the request when the case had already been instituted before the Labor Arbiter, petitioners did not set into motion the process of choosing a third doctor to settle the different medical assessments.[44]

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38 744 Phil. 774, 788 (2014).
39 *Id.*, citing *Bahia Shipping Services, Inc., et al. v. Constantino*, 738 Phil. 564, 575 (2014).
40 *Id.*
41 834 Phil. 693 (2018).
42 *Id.* at 707.
43 *Rollo*, p. 16.
44 *Id.* at 119-120.

However, it is immaterial that respondent challenged the assessment of the company-designated physician and requested for a third-doctor referral when the case was already pending before the Labor Arbiter. After all, "[t]he POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals."[45] As petitioners and respondent did not appoint a third doctor whose decision would bind them, the Court now proceeds to evaluate and weigh the merits of the medical report issued by the company-designated physician.[46]

There must be a final, complete, and definitive disability assessment by the company-designated physician supported by medical reports and records.

It is settled that a final, complete, and definitive disability assessment is important in order to truly reflect the extent of the illness or injuries of the seafarer and his capacity to resume his sea duties.[47] To be *conclusive*, the medical assessment or report of the company-designated physician should be *complete* and *definite* to provide the appropriate disability benefits to seafarers.[48] Moreover, "there must be sufficient bases to support the assessment."[49] In other words, the company-designated physician's findings must not be *merely provisional*, *incomplete*, *doubtful*, or *clearly biased in favor of an employer*.[50]

In particular, "[c]lear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer."[51]

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[45] *Ilustricimo v. NYK-FIL Ship Management, Inc., et al.*, *supra* note 41 at 707.

[46] See *Dalusong v. Eagle Clare Shipping Phils., Inc., et al.* 742 Phil. 377, 386 (2014).

[47] *Wilhelmsen-Smithbell Manning, Inc. v. Aleman*, G.R. No. 239740 (Notice), January 8, 2020, citing *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.

[48] *Id.*, citing *Orient Hope Agencies, Inc., et al. v. Jara*, 832 Phil. 380, 399-400 (2018).

[49] *Orient Hope Agencies, Inc., et al. v. Jara*, 832 Phil. 380, 400 (2018).

[50] *Id.* at 400-401.

[51] *Escabusa v. Veritas Maritime Corp.*, G.R. No. 223732 (Notice), January 16, 2019, citing *Nonay v. Bahia Shipping Services, Inc., et al.*, 781 Phil. 197, 228 (2016).

Such is manifest in the case, given the company-designated physician's undue haste in issuing a certificate of fitness to work to respondent on July 12, 2016—just three weeks after advising him to continue with his medication for high blood pressure, and only a day after subjecting him to tests, diagnosing him with hypertension, dyslipidemia, and hyperuricemia, and determining that he was suffering from sinus bradycardia and aortic valve sclerosis. Worse, while the company-designated physician certified respondent's fitness to work, the former did *not* issue any document stating that the latter's health problems had already been resolved.

The Court also notes that the medical reports of the company-designated physician were *unsigned*, and petitioners conveniently failed to attach thereto copies of the laboratory results, chemical examinations, and specialist's report of respondent's purported examinations.

To the Court, this is hardly the final, definite, and conclusive assessment of fitness to return to work required by law from a company-designated physician.[52] It is therefore by operation of law that respondent is deemed totally and permanently disabled, and thus, entitled to the benefits corresponding thereto.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 16, 2019 and the Resolution dated November 27, 2019 of the Court of Appeals in CA-G.R. SP No. 157335 are hereby **AFFIRMED**.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

[52] *Sharpe Sea Personnel, Inc., et al. v. Mahunay*, 820 Phil. 306, 326 (2017), citing *Sunit v. OSM Maritime Services, Inc., et al.*, 806 Phil. 505, 517 (2017)

RAMON PAUL L. HERNANDO
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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

ESTELA M. PERLAS-BERNABE
Senior 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 Resolution 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