Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

C.F. SHARP CREW MANAGEMENT INC. AND/OR REEDEREI CLAUS-PETER OFFEN (GMBH & CO.),
Petitioners,

- *versus* -

ROBERTO B. DAGANATO
Respondent.

G.R. No. 243399

Present:

GESMUNDO, *C.J.,*
Chairperson
CAGUIOA,*
HERNANDO,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

JUL 06 2022

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DECISION

HERNANDO, *J.*:

On appeal[1] are the January 25, 2018 Decision[2] and the November 21, 2018 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 147111, which affirmed with modification the February 29, 2016 Decision[4] of the Panel of Voluntary Arbitrators (PVA), National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE) in Case No. AC-698 RCMB-NCR-MVA-143-14-10-2015, and found C.F. Sharp Crew Management, Inc. (CF Sharp) liable to pay respondent Roberto B. Daganato (respondent) the sum of USD 121,176.00 or its peso equivalent at the time of payment.

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* Designated additional Member per March 7, 2022 Raffle vice J. Zalameda who recused due to prior action in the Court of Appeals.

1 *Rollo*, pp. 3-29.

2 Id. at 31-41. Penned by Associate Justice Japar B. Dimaampao (now a Member of this Court) and concurred in by Associate Justices Rodil V. Zalameda (now a Member of this Court) and Renato C. Francisco.

3 Id. at 43-43-a.

4 CA *rollo*, pp. 31-39. Penned by Accredited Voluntary Arbitrators Jaime B. Montealegre (Chairman), and Romeo C. Cruz, Jr. (Member) and Raul T. Aquino (Member).

The Antecedents

CF Sharp is a domestic corporation engaged in the hiring and deployment of seafarers on board ocean-going vessels. Meanwhile, petitioner Reederei Claus-Peter Offen (GMBH & Co.) (Reederei), is the principal foreign employer of CF Sharp.[5] CF Sharp and Reederei shall be collectively referred to as petitioners.

On June 25, 2014, respondent signed a Contract of Employment[6] (Contract) with CF Sharp as Chief Cook for six months (+/-)1 on board the vessel *MV Vancouver Express*, owned by Reederei, with a total monthly salary of USD 1,805.00.[7] The contract expressly incorporated the provisions of the current ITF Collective Bargaining Agreement (CBA).[8] After undergoing pre-medical examination, respondent was declared fit to work.[9]

Thereafter, or on December 27, 2014, while carrying a heavy provision of food, respondent claimed that he suddenly slipped and fell causing mild to moderate pain on his lower back area.[10] The pain persisted and his condition worsened until he was medically repatriated on January 10, 2015.[11] He was referred to Cardinal Santos Medical Center where he was subjected to Magnetic Resonance Imaging (MRI) and Computed Tomography (CT) Scan of the Lumbar Spine.[12] Respondent's MRI results dated January 22, 2015[13] yielded the following impressions:

> 1. Mild L4-5 disc bulge, asymmetric to the right, abutting the traversing right L5 nerve root. No focal disc herniation at any level.
>
> 2. Mild bilateral L4-5 facet and ligamentum flavum hypertrophy with no associated spinal canal or foraminal narrowing.
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> 3. Diffuse heterogeneous vertebral marrow signal, of uncertain etiology.[14]

Meanwhile, respondent's CT scan results dated January 26, 2015[15] showed that he was suffering from

> MILD POSTERIOR DISC BULGE, L4-L5
> FACET HYPERTROPHY, L4-L5
> THORACOLUMBAR SPONDYLOSIS.[16]

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5 *Rollo*, p. 31.
6 CA *rollo*, pp. 100-102.
7 Id.
8 Id. at 102-125.
9 *Rollo*, p. 130.
10 Id.
11 Id.
12 Id.
13 CA *rollo*, p. 126.
14 Id.
15 Id. at 127.
16 Id.

Due to the aforesaid findings, respondent underwent physiotherapy but to no avail.[17] Thus, on February 3, 2015, respondent underwent bilateral polypectomy and endoscopic sinus surgery.[18] Sometime in March of 2015, respondent underwent spinal surgery and a series of physiotherapy.[19] However, despite the medical procedures and treatments, respondent claimed that he never regained the necessary fitness to resume seafaring duties.[20]

Respondent then sought the opinion of Dr. Manuel M. Magtira (Dr. Magtira) from the Department of Orthopaedic Surgery & Traumatology of the Armed Forces of the Philippines Medical Center. Based on the latest MRI conducted on respondent's lumbosacral spine on July 27, 2015,[21] it was shown that he was suffering from the following:

1. L4-L5 diffuse disk bulge with a central/right paracentral disk protrusion at L4-L5 along with bilateral facet joint hypertrophy causing bilateral moderate neutral foraminal stenosis.

2. Slight exaggerated lumbar lordosis.

3. No evident intradural lesion.[22]

Dr. Magtira made the following observations in his July 30, 2015 Medical Report:[23]

> **Mr. Daganato** continues to complain and suffer from back pain. The pain is made worse by prolonged standing and walking. He has difficulty climbing up and down the stairs. He has lost his pre-injury capacity and is **UNFIT** to work back at his previous occupation. **Mr. Daganato** is now **permanently disabled**.
>
> **Mr. Daganato** started having back problems in a workplace incident where he suffers severe lower back pain aboard the ship. He underwent series of surgery (*sic*) which he claimed has afforded him partial relief initially. However, up to the present time, the residual symptoms continue to bother him. This has restricted him in the active performance of his certain tasks.
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> Often, symptoms following surgery are relieved only to recur after a variable period. The causes may include insufficient removal of disc material and further extrusion, rupture of another disc, adhesions about the nerve root and formation of an osteophyte at the site of removal of bone. Even a successful disc removal therefore, does not guarantee a permanent cure as fibrosis can produce a dense constricting scar tissue, which is presumed to be a prime cause of recurrent symptoms.
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> x x x x

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17 *Rollo*, p. 131.
18 Id.
19 Id.
20 Id.
21 CA *rollo*, p. 130.
22 Id.
23 Id. at 128.

> Surgery can never stop the pathological process nor restore the back to its previous state. Similar poor results have been found with repeated attempts at surgical intervention for the relief of chronic low back pain. If long term relief is desired, continued mechanical stress of postural or occupational type must be avoided. Resuming his usual work which includes increased loading, twisting, or bending and extension of the back will further expose **Mr. Daganato** to dangers of enhancing his discomfort even more.
>
> Some restriction must be placed on **Mr. Daganato's** work activities. This is in order to prevent the impending late sequelae of his current condition. He presently does not have the physical capacity to return to the type of work he was performing at the time of his injury. He is therefore permanently ***UNFIT*** in any capacity to resume his sea duties as a seaman.[24]

Considering these medical findings, respondent sent CF Sharp a letter dated August 14, 2015[25] where he claimed for total and permanent disability benefits and expressed his willingness to undergo another examination to confirm his physical condition.[26] According to respondent, CF Sharp simply ignored his letter.[27] Thus, respondent was constrained to file a grievance before the Associated Marine Officer's and Seamen's Union of the Philippines (AMOSUP) which, however, did not yield a positive result.[28]

In view of the foregoing, respondent filed a Complaint[29] for total permanent disability benefits, medical reimbursement, moral and exemplary damages, and attorney's fees against petitioners before the NCMB, which was assigned to a PVA composed of Accredited Voluntary Arbitrators (AVA) Jaime B. Montealegre, Romero V. Cruz, Jr., and Raul T. Aquino, and docketed as AC-698-RCMB-NCR-MVA-143-14-10-2015.[30]

For their part, petitioners argued that respondent is disqualified to claim disability compensation under the CBA since respondent failed to present proof of the accident that occurred on board the vessel.[31] At most, respondent is only entitled to partial disability compensation of Grade 11 as assessed by the company-designated physician.[32] According to CF Sharp, under Section 32 of the Philippine Overseas Employment Administration Standard of Employment Contract (POEA-SEC), only diseases or injuries enumerated therein, including the occupational diseases and illnesses that were categorized as Grade 1 disability, will be entitled to full disability benefits.[33] Since respondent's

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[24] Id. at 128-129.
[25] Id. at 131.
[26] Id.
[27] *Rollo*, p. 133.
[28] Id.
[29] CA *rollo*, p. 31.
[30] Id.
[31] Id. at 33.
[32] Id.
[33] Id.

illness is not listed or categorized as Grade 1 disability, his claim for permanent total disability should be dismissed.[34]

Ruling of the Panel of Voluntary Arbitrators, National Conciliation and Mediation Board

In its February 29, 2016 Decision,[35] the PVA dismissed respondent's claims for damages but nonetheless granted his claims for total permanent disability benefits and attorney's fees, to wit:

> **WHEREFORE**, the foregoing premises being considered, respondent C.F. Sharp Crew Management, Inc. is hereby ordered to pay Roberto B. Daganato his permanent total disability benefits pursuant to the TCC IMEC IBF 2012 in the amount of USD 121,176.00 or its peso equivalent at the time of payment, and attorney's fees equivalent to ten percent of the award, or USD 12,117.60, all in the total amount of USD 133,293.60.
>
> All other claims are denied for lack of merit.
>
> **SO ORDERED.**[36] (Emphasis in the original)

Aggrieved, CF Sharp filed a Motion for Reconsideration[37] on June 16, 2016, which the PVA denied in its July 22, 2016 Resolution.[38]

The PVA held that it was incumbent upon petitioners to prove that no accident happened on the date alleged by respondent since they are in possession of accident reports, but none of this was presented.[39] The PVA explained that to require an accident/master's report as proof of accident in claims of this nature is tantamount to placing claims of seafarers for disability benefits under the CBA at the mercy of the employers, since the latter can simply instruct the vessels' officers to withhold information from the injured seafarers.[40] The PVA further held that when there is a CBA, it becomes the law or contract between the parties.[41] As such, Clause 25.1 of the CBA is applicable to respondent's claims.[42] The PVA likewise observed that respondent suffered from a total and permanent disability as he can no longer perform his customary job as a chief cook, which requires him to be in excellent physical condition.[43]

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[34] Id.
[35] Id. at 31-39. Penned by Accredited Voluntary Arbitrators Jaime B. Montealegre (Chairman), and Romeo C. Cruz, Jr. (Member) and Raul T. Aquino (Member).
[36] Id. at 39.
[37] Id. at 167-188.
[38] Id. at 40-41.
[39] Id. at 34.
[40] Id.
[41] Id. at 35.
[42] Id.
[43] Id. at 37-38.

The PVA also deemed justified respondent's claim for attorney's fees since he was compelled to prosecute his claim to protect and assert his rights.[44]

Ruling of the Court of Appeals

On August 19, 2016, petitioners filed a Petition for Review (with prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order)[45] under Rule 43 of the Rules of Court before the CA, reiterating the arguments they raised before the PVA. The appellate court, however, dismissed the appeal in its January 25, 2018 Decision,[46] and affirmed with modification the PVA Decision, to wit:

> **WHEREFORE**, the Decision dated 29 February 2016 of the Office of the Panel of Voluntary Arbitrators, National Conciliation and Mediation Board, National Capital Region, Department of Labor and Employment, in Case No. AC-698-RCMB-NCR-MVA-143-14-10-2015 is hereby **AFFIRMED with MODIFICATION** in that the award of attorney's fees in favor of private respondent Roberto Daganato representing ten percent (10%) of his total monetary award is **DELETED**.
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> **SO ORDERED**.[47]

Petitioners subsequently filed a Motion for Reconsideration[48] which was denied by the CA in its Resolution dated November 21, 2018.[49]

In so ruling, the CA held that considering that the accident report is in petitioners' possession, they failed to discharge the burden of proving that there was no accident involving respondent.[50] The CA further found respondent to have suffered a total and permanent disability, thereby entitling him to the full benefits under the CBA, since he was incapacitated to work for more than 120 days, and the company-designated physician failed to issue a certification as to respondent's disability and capacity to work within the 120-day period required under the rules.[51] The CA, nevertheless, deleted the award of attorney's fees.[52]

Thus, petitioners filed this instant Petition for Review on *Certiorari*[53] under Rule 45 of the Rules of Court arguing that the CA committed grave errors in finding respondent entitled to total and permanent disability benefits considering that: (a) the CBA is inapplicable there being no accident leading to

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[44] Id. at 39.
[45] Id. at 3-30.
[46] *Rollo*, pp. 31-41.
[47] Id. at 41.
[48] Id. at 44-56.
[49] Id. at 43-43-a.
[50] Id. at 36.
[51] Id. at 37-40.
[52] Id. at 40.
[53] Id. at 3-29.

respondent's medical condition; (b) the computation for a seafarer's disability benefits should be calculated on the basis of the POEA's Schedule of Disability; and, (c) assuming *arguendo* that the CBA is applicable, the award of USD 121,176.00 under the CBA is erroneous as the said amount is a compensation for Junior Officers and not for Ratings which respondent's position falls under.[54]

Issue

The sole issue to be resolved in this case is whether or not the CA committed a reversible error in affirming the PVA Decision which awarded total and permanent disability benefits to respondent Daganato.

Our Ruling

The petition is partly meritorious.

The Court has consistently held that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. The Court is not a trier of facts, and its jurisdiction is limited to errors of law.[55] This is especially true in this case where the findings of facts of the PVA were affirmed by the CA. At this juncture, therefore, it bears to stress that factual findings of the PVA, which were affirmed by the CA, are binding and will not be disturbed, absent any showing that they were made arbitrarily or were unsupported by substantial evidence.[56]

There is sufficient showing that respondent suffered an accident on board the vessel

Petitioners maintain that the CBA provisions are inapplicable as there was no accident,[57] and that respondent, having been given a Grade 11-*slight rigidity or 1/3 loss of lifting power of the trunk* rating by the company-designated physician, should only be entitled to USD 7,465.00 under the POEA-SEC.[58]

The PVA and the CA both found respondent to have suffered from an accident while he was carrying provisions of food on board the vessel on December 27, 2014. In so ruling, the CA and the PVA agreed that it was incumbent upon petitioners to prove that there was no accident given they are in possession of accident reports.[59] Petitioners, however, failed to do so.

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[54] Id. at 10.
[55] *Abosta Shipmanagement Corp. v. Segui*, G.R. No. 214906, January 16, 2019.
[56] *Marlow Navigation Phils., Inc. v. Quijano*, G.R. No. 234346, August 14, 2019.
[57] *Rollo*, pp. 10-13.
[58] Id. at 13-20.
[59] CA *rollo*, p. 34; *rollo*, p. 36.

We have no reason to deviate from the factual findings of the PVA and the CA. It cannot be doubted that seafarers are generally at the mercy of harsh and unpredictable conditions of the sea and the weather, and are continually exposed to risks and hazards of their chosen line of work. Being constantly away from their homes, they are reasonably expected to rely on the care and protection which their employers provide while on board. Employers, through their ship captains or officers, are thus expected to be on the lookout for accidents or mishaps, and prepare a report of the same. It is thus incumbent for petitioners to proffer evidence that will negate respondent's claims, considering that they are in possession of accident reports. While petitioners were able to submit the Sworn Certification of the Master of the Vessel dated September 10, 2015, attesting to the fact that there was no accident involving respondent, the same was submitted only in their Motion for Reconsideration of the PVA Decision.[60]

Nonetheless, even when this certification was submitted at the earliest instance, this would still not discount the possibility that respondent suffered an accident while on board the vessel since respondent's evidence and other factual circumstances must also be considered.

As correctly observed by the PVA and the CA, respondent was declared fit to work prior to his deployment as Chief Cook on June 25, 2014. It is safe to assume that respondent would not have been allowed to commence his work, specifically, for the chief cook position, which is a physically demanding job, if he was unfit for employment. This is also bolstered by petitioners' own admission that respondent "sought consult in Los Angeles, U.S.A. last February 2014 where x-ray was done showing normal results."[61] Prior to his deployment in June 2014, therefore, respondent was not suffering from any physical anomalies that would render him unfit for seafaring activities.

Respondent, a fully abled seafarer prior to boarding the vessel, suddenly complained of "low back pain, colds, nasal congestion, and headache" sometime in December of 2014,[62] a fact that was recognized by petitioners themselves.[63] This was affirmed by the Medical Examination Report dated January 9, 2015 submitted by petitioners which showed that respondent suffered from sinus infection and back pain.[64] Petitioners likewise recognized that respondent was seen by the company physician who diagnosed him with "Polysinusitis, nasal polyps, and lumbar strain,"[65] and was subjected to several surgeries to relieve his back pain and headache.[66] Respondent, on his part, presented the medical results showing his back injuries, and the medical opinion

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60 *Rollo*, p. 12.
61 Id. at 7; underscoring Ours.
62 Id.
63 Id.
64 Id. at 13.
65 Id.
66 Id.

prepared by his own doctor who declared him permanently ***UNFIT*** in any capacity to resume his sea duties as a seafarer.[67] All of these circumstances and substantial evidence taken together strongly indicate that respondent indeed met an accident while on board the vessel.

Respondent suffered total and permanent disability as a result of his accident on board the vessel; hence the CBA applies

The Court has recognized the application of the CBA over the POEA-SEC provisions on disability compensation when the same provide for better benefits to laborers.[68] This is so because a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer.[69]

Here, the parties' employment contract is clear that the current ITF Collective Agreement (ITF Berlin IMEC IBF Collective Bargaining Agreement CBA) shall be considered incorporated to, and shall form part of the contract.[70] Notably, petitioners do not question the existence of the CBA, or deny having signed the same.

In this light, Clause 25.1 of the parties' CBA provides compensation for permanent disability caused by accidents occurring on board, or when travelling from or to, the vessel, thus:

> Article 25: Disability
>
> 25.1 A seafarer who suffers [from] permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. [71]

Clause 25.2 of the same Article provides that the disability of the seafarer shall be determined by a doctor appointed by the Company.[72] If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union, and the decision of this doctor shall be final and binding on both parties.[73]

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[67] CA *rollo*, pp. 128-129.
[68] See *Teodoro v. Teekay Shipping Philippines, Inc.*, G.R. No. 244721, February 5, 2020.
[69] Id., citing *Centennial Transmarine, Inc. v. Sales*, G.R. No. 196455, July 8, 2019.
[70] CA *rollo*, p. 102.
[71] Id. at 113; underscoring supplied.
[72] Id.
[73] Id.

Meanwhile, Clause 25.4 of the said CBA states that a seafarer, whose disability is assessed by the Company-nominated doctor at 50% or more, shall be regarded as permanently unfit for further sea service in any capacity and shall be entitled to 100% compensation; on the other hand, any seafarer assessed at less than 50% disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to 100% compensation. Any disagreement as to the assessment or entitlement shall be resolved by a third doctor appointed in accordance with Clause 25.2.[74]

As borne by the records, the company-designated physician gave respondent a Grade 11-*slight rigidity or 1/3 loss of lifting power of the trunk* rating without any indication as to his capacity to work. On the other hand, respondent, armed with the certification by his own doctor that he was permanently disabled and no longer fit to return to work as a seafarer, informed petitioners through a letter dated August 14, 2015, that he is willing to undergo another examination by a third doctor. Notably, petitioners did not rebut or deny this letter request or present any proof that there was an effort on their part to nominate a third doctor.

As there was no final assessment on respondent's disability in accordance with Clause 25.2 of their CBA, the rules in determining what constitutes total and permanent disability under the Labor Code, as amended, its implementing rules and regulation (IRR), the POEA-SEC, and prevailing jurisprudence should be instructive.

Article 198(c)(1) of the Labor Code provides:

> The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;
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> x x x x (Underscoring Ours)

Meanwhile, Rule X, Section 2 of the Rules and Regulations implementing Title II, Book IV of the Labor Code states:

> *Period of entitlement.* — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time

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[74] Id.

> after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

These provisions are to be read hand in hand with the POEA-SEC, Section 20(3) of which states in part:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

The application of these rules was clearly explained by this Court in *Pastrana v. Bahia Shipping Services*[75] (*Pastrana*), citing *Vergara v. Hammonia Maritime Services, Inc.* (*Vergara*) *viz.*:[76]

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his 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 exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[77]

The Court likewise cited *Elburg Shipmanagement, Inc. v. Quiogue, Jr.*[78] (*Elburg*), which outlined the rules with respect to the period within which the company-designated physician must issue a final and definitive disability assessment, to wit:

> In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (rules) shall govern:
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> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

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[75] G.R. No. 227419, June 10, 2020.
[76] 588 Phil. 895, 912 (2008).
[77] *Pastrana v. Bahia Shipping Services*, supra.
[78] 765 Phil. 341 (2015).

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[79]

As the Court aptly observed in *Pastrana*, while *Elburg* states that the 120 or 240-day periods shall be reckoned "from the time the seafarer reported to [the company-designated physician]," subsequent cases[80] consistently counted said periods from the date of the seafarer's repatriation for medical treatment and this is true even in cases where the date of repatriation of the seafarer does not coincide with the date of his first consultation with the company-designated physician.[81]

This is also consistent with Section 20(A)(3) of the POEA-SEC, which provides for the repatriation of the seafarer in case of work-related illness or injury, and the obligation of the employer to give the seafarer sickness allowance from the time he signed off until he is declared fit to work, or the degree of his or her disability has been assessed, but not exceeding 120 days, *viz.*:

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:

x x x x

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

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[79] Id. at 362-363.

[80] See *Jebsens Maritime, Inc. v. Pasamba*, G.R. No. 220904, September 25, 2019; see also *Teekay Shipping Philippines, Inc. v. Ramoga, Jr.*, 824 Phil. 35, 44 (2018).

[81] Supra note 75.

> 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.

Thus, as held in *Pastrana*, the rules laid down in *Elburg* should be read as requiring the company-designated physician to issue a final and definitive disability assessment within 120 or 240 days from the date of the seafarer's repatriation.[82] Consistent with *Vergara* and *Elburg*, the extended period of 240 days must be justified, and it is the employer's burden to prove the need for such extension. Failure to issue such assessment within 120 or 240 days, as the case may be, will render the disability of the seafarer as permanent and total.

Applying the abovementioned rules, We find and so hold that respondent suffered from a total and permanent disability.

The records show that respondent was medically repatriated on January 10, 2015, contrary to petitioners' claim that respondent was repatriated due to a finished contract.[83] We agree with the PVA's observation[84] that respondent would not have been referred by petitioners for medical examination or allowed to undergo two major surgeries if his contract simply ended.

The company-designated physician, however, was able to issue a Certification declaring respondent with a disability rating of "Grade 11-*slight rigidity or 1/3 loss of lifting power of the trunk,*" only on June 15, 2015,[85] which is the **157th day** reckoned from the time respondent was medically repatriated, without any assessment or indication as to his capacity to resume to work, or any justification to extend the 120-day period. Clearly, respondent's disability has become total and permanent upon failure by the company-designated physician to issue a final and determinative assessment within the 120-day period required under the rules.

On the other hand, respondent's medical report dated July 30, 2015 clearly certifies that he is permanently disabled to resume his work as a seafarer.[86] As between the two medical findings, respondent's medical certificate clearly detailing the nature of his disability and extent of incapacity should prevail, and his entitlement to total and permanent disability benefits under the CBA, as unanimously found by the PVA and the CA, should be upheld.

Furthermore, jurisprudence dictates that permanent total disability means "disablement of an employee to earn wages in the same kind of work or work

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82 Id.
83 *Rollo*, p. 7.
84 CA *rollo*, p. 34.
85 Id. at 8.
86 CA *rollo*, p. 128.

of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do."[87] As aptly observed by the PVA and as affirmed by the CA, due to his injuries, respondent can no longer resume his seafaring activities or work as a chief cook as it requires him to be in excellent physical condition. As correctly observed, respondent's total and permanent disability is bolstered by the fact that he was no longer deployed back to work and can no longer earn based on the job for which he was customarily trained to do.[88] Perforce, respondent should be entitled to total and permanent disability benefits under the CBA.

Based on the CBA, respondent's position as a chief cook falls under "Ratings"

We find petitioners' claim that respondent should only be entitled to the benefits corresponding to "Ratings" as he is not a Junior Officer[89] impressed with merit.

A perusal of the CBA discloses that the scale of compensation for disability is classified into three groups, namely, ratings, junior officers, and senior officers, with the last group to compose of Master, Chief Officer, Chief Engineer, and 2nd Engineer.[90] No similar compositions were made with respect to the remaining two classifications. Meanwhile, based on the 1997 Philippine Merchant Marine Rules and Regulations, "ratings" are those members of the ship's crew other than the master or officers.[91] No evidence was presented by respondent to prove that his rank is that of a Junior Officer. Respondent likewise failed to deny or rebut petitioners' claim that his position falls under "Ratings."[92]

The Court can also be guided by the rulings in *Teodoro v. Teekay Shipping Philippines*,[93] as well as in *Marlow Navigation Phils., Inc. v. Quijano*,[94] where the CBA Degree of Disability Rate for Ratings was applied to the seafarers therein who were employed as chief cook, as respondent in this case.

Thus, consistent with these rulings, while respondent is entitled to total and permanent disability benefits, the Court deems it proper to adjust the award to correspond to his rank under the CBA. Allowing respondent to take home the

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87 *Barko International, Inc. v. Alcayno*, 733 Phil. 183, 193 (2014), 722 SCRA 197, citing *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 671 (2007).
88 CA *rollo*, p. 38.
89 *Rollo*, p. 20.
90 CA *rollo*, p. 120.
91 As amended by Memorandum Circular No. 148.
92 CA *rollo*, p. 142.
93 G.R. No. 244721, February 5, 2020.
94 G.R. No. 234346, August 14, 2019.

amount of USD 121,176.00 (the rate for Junior Officers), as opposed to USD 95,949.00 under Appendix 3 of their CBA for Ratings to which he belongs, would be unjust enrichment on his part and would clearly be unfair to petitioners.

Damages and Attorney's Fees

Anent respondent's claim for moral and exemplary damages and attorney's fees, the Court notes that respondent no longer questioned through appeal the PVA Decision dismissing his claim for damages, as well as, the CA Decision deleting the award of attorney's fees.

Nonetheless, the Court deems it proper to reinstate the award of attorney's fees consistent with *Abosta Shipmanagement Corp v. Segui*,[95] citing *Gomez v. Crossworld Marine Services, Inc.*,[96] which declared that "under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws." Such award is also justified since petitioners' act or omission has compelled respondent to incur expenses to protect his interest. Case law further states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."[97] Considering that respondent was clearly compelled to litigate to enforce what was rightfully due him under the CBA, the award of ten percent (10%) attorney's fees by the PVA was proper, and as such, must be reinstated.

Finally, in line with jurisprudence, the Court imposes on the monetary award for permanent and total disability benefits an interest at the legal rate of 6% per *annum* from the date of finality of this judgment until full satisfaction.[98]

WHEREFORE, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED.** The January 25, 2018 Decision and the November 21, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 147111 are **AFFIRMED** with **MODIFICATION** in that the award of USD 121,176.00 is **REDUCED** to USD 95,949.00, while the award of attorney's fees equivalent to ten percent (10%) of the award is **REINSTATED**. A legal interest at the rate of six percent (6%) per *annum* is also imposed on the monetary award for permanent and total disability benefits due Roberto B. Daganato, to be reckoned from the finality of this Decision until full satisfaction thereof.

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[95] G.R. No. 214906, January 16, 2019.

[96] *Gomez v. Crossworld Marine Services, Inc.*, 815 Phil. 401, 424 (2017).

[97] *Teodoro v. Teekay Shipping Philippines, Inc.*, supra note 68 citing *Deocariza v. Fleet Management Services, Philippines, Inc.*, 836 Phil. 1087, 1107 (2018).

[98] See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
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