Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ANGELITO S. MAGNO, Petitioner,	**G.R. No. 245857**
- versus -	Present:
CAREER PHILIPPINES SHIPMANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT, LTD., AND VERLOU CARMELINO, Respondents.	LEONEN, *Acting Chief Justice*,* LAZARO-JAVIER, *Working Chairperson*,** M. LOPEZ, J. LOPEZ, KHO, JR., *JJ.*
	Promulgated: JUN 2 6 2023

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D E C I S I O N

KHO, JR., *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 26, 2018 and the Resolution[3] dated March 7, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 148968. The assailed CA rulings reversed the Decision[4] dated August 30, 2016 and the Resolution[5] dated October 27, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC OFW (M) 03-000219-16 granting the claim for permanent and total disability benefits of petitioner Angelito S. Magno (Magno).

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* Per Special Order No. 2989 dated June 24, 2023.

** Per Special Order No. 2993 dated June 26, 2023

1 Dated April 15, 2019 *Rollo* pp. 26–79.

2 *Id.* at 8-16. Penned by Associate Justice Rosmari D. Carandang (ret. member of the Court), with the concurrence of Associate Justices Jane Aurora C. Lantion and Zenaida T. Galapate-Laguilles, Third Division, Court of Appeals, Manila.

3 *Id.* at 18-19. Penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Zenaida T. Galapate-Laguilles and Geraldine C. Fiel-Macaraig, Former Third Division, Court of Appeals, Manila.

4 *Id.* at 323-340. Penned by Commissioner Leonard Vinz G. Ignacio, with Presiding Commissioner Grace M. Venus and Commissioner Bernardino B. Julve concurring.

5 *Id.* at 400-404.

The Facts

Career Philippines Shipmanagement, Inc. (Career Philippines), for and on behalf of its principal, Columbia Shipmanagement, Ltd. (Columbia), hired Magno as an "Able Seaman" for MV Cape Flint under a nine-month contract, with basic salary of USD 568.00 per month. Before deployment, Magno underwent a pre-employment medical examination and was found "fit for sea duty."[6]

Sometime in October 2014, while doing maintenance work, securing lashing materials, and lifting gearboxes, Magno experienced pain in his back and knees which were swollen. Magno reported his condition to the captain. Eventually, Magno was **repatriated to the Philippines on November 10, 2015** for further medical treatment.[7]

Upon arrival, Magno was immediately referred by Career Philippines to the NGC Medical Specialist Clinic, Inc. for treatment and rehabilitation. After initial diagnostic tests, Dr. Nicomedes Cruz (Dr. Cruz), the company-designated physician, diagnosed him with "*t/c Lumbosacral strain, right knee arthritis.*"[8] The MRI subsequently conducted on Magno's lumbosacral spine and right knee revealed the following findings:

> "Disc Bulge L3-L4, L4-L5, L5-S1
> Disc Protrusion L4-L5
> T/C Medial Meniscocapsular Separation vs Inflammation
> Partial tear, Medial Collateral Ligament and LCL
> Complex
> Knee Joint Synovitis
> Musculoskeletal Strain."[9]

Magno was thereafter recommended to undergo physical therapy and to continue taking his medications. Since the pain on Magno's back and right knee continued to persist, Dr. Cruz recommended that Magno undergo "*Arthroscopy, partial medial and lateral meniscectomy, chondroplasty*" during the latter's check-up on December 5, 2014. On January 14, 2015, Magno was admitted at Manila Doctors Hospital where he underwent operation.[10]

After further evaluation and medical treatment, Dr. Cruz issued a **Medical Report dated April 10, 2015 addressed to Margarita M. Villarante** (Villarante)**, Finance Manager of Career Philippines**, stating the following:

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6 *Id.* at 9.
7 *Id.* at 9 and 215.
8 *Id.* at 9.
9 *See* Medical Report dated November 27, 2014; *id.* at 160–161. *See* also MRI Report dated November 19, 2014, *id.* at 123–127.
10 *Id.* at 10.

DATE : April 10, 2015

ATTENTION **: Margarita M. Villarante**
Finance Manager
Career Philippines Shipmanagement, Inc.

PATIENT : ANGELITO MAGNO

. . . .

DIAGNOSIS: Herniated Nucleus Pulposus, L4-L5
Degenerative Osteoarthritis, Gouty Arthritis, Right Knee
S/P Diagnostic Arthroscopy, Debridement, Right Knee (January 14, 2015)
S/P HLA Infiltration, right knee (March 17, 2015)

1. The herniated nucleus pulposus L4-L5 is not work related. The osteoarthritis of the right knee is work related under item # 21 – Osteoarthritis of the Lists of Occupational Diseases of the Amended POEA Contract.
2. The patient will incur residual disability.
3. The prognosis is also guarded.
4. **The applicable combined disability based on the POEA Schedule of Disability Grading is**
   a. **Grade 11 – Slight rigidity or two thirds (2/3) loss of motion or lifting power of the trunk.**
   b. **Grade 10 – Stretching leg of the ligaments of a knee resulting in instability of the joint.**[11] (Emphasis supplied)

Immediately thereafter, Magno's treatment was terminated. Upon inquiry, Magno was simply informed that he was assessed with partial disability but was not furnished with a copy of Dr. Cruz's Medical Report. As he was still suffering from pain in his back and knee, Magno consulted Dr. Manuel Fidel M. Magtira (Dr. Magtira) of the Department of Orthopaedic Surgery and Traumatology, Armed Forces of the Philippines Medical Center for an independent assessment of his medical condition. Dr. Magtira's findings[12] in his **Medical Report dated July 7, 2015** revealed the following:

Result of MRI of the lumbosacral spine done at Banawe Diagnostic MRI Center, INC. dated: July 3, 2015.

IMPRESSION:

1. L4-L5 – diffuse disk bulge along with ligamentum flavum hypertrophy causing compression of the anterior thecal sac, mild spinal canal stenosis and bilateral severe neural foraminal stenosis.
2. L5-S1 – mild diffuse disk bulge causing bilateral moderate neural foraminal stenosis.
3. Beginning disk desiccation or dehydration at L4-L5 and L5-S1.

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[11] *Id.* at 10 & 167.
[12] *Id.* at 128–130.

> 4. No evident intradural lesion.
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> Result of MRI of the right knee done at Banawe Diagnostic MRI Center, INC. dated: July 3, 2015.
>
> IMPRESSION:
>
> 1. Minimal joint effusion.
> 2. Mild degenerative osteoarthritic changes.
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> Mr. Magno continues to experience back and knee pain. His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has difficult[sic] running, and climbing up or going down the stairs. The demands of a Seaman's work are heavy. Mr. Magno has lost his pre injury capacity and is not capable of working at his previous occupation. He is now permanent disable.
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> . . . .
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> Prolonged relief is less likely if no permanent modification in the patient's activities is made. He should therefore refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. He is now therefore **permanently UNFIT TO WORK in any capacity at his previous occupation. Having him resume his regular duties will only lead to frequent absences from illness, underperformance, and lost time at work**. It is also necessary that in order to avoid the risk of a more serious disability, Mr. Magno should permanently modify his activities and lifestyle.[13] (Emphasis supplied)

Due to the conflicting findings and evaluation of the company-designated physician and Dr. Magtira, **Magno, through a Letter dated July 13, 2015 sent by his counsel, requested from Career Philippines for a copy of his medical records and referral to a third doctor for resolution of the disability benefits due him,**[14] **but to no avail**. Thus, on **August 18, 2015**,[15] Magno filed before the NLRC a complaint for payment of total and permanent disability benefits, sick leave pay, sickness allowance, and medical expenses, as well as moral and exemplary damages, and attorney's fees against respondents Career Philippines, Columbia, and Verlou Carmelino as President of Career Philippines (Carmelino; collectively, respondents). Magno argued that he is entitled to permanent and total disability benefits since his medical condition remained unresolved for more than 240 days and he was unable to acquire gainful employment because of his illness.[16]

In defense,[17] respondents argued that *first,* Carmelino was improperly impleaded; *second,* Magno is not entitled to permanent and total disability benefits based on the final assessment given by the company-designated

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13 *Id.* at 11. *See* also *id.* at 128–130.
14 *See* Letter dated July 13, 2015, *id.* at 131. *See* also Position Paper, *id.* at 100–101 & 110–114.
15 *Id.* at 212.
16 *Id.* at 11.
17 *See* Position paper; *id.* at 139–157.

physician; *third,* Magno failed to comply with the third-doctor conflict resolution procedure under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), thereby rendering the company-designated physician's assessment final and binding on the parties; and *last,* Magno is not entitled to damages and attorney's fees.

During the mandatory conference, **Magno reiterated his request for copy of his medical records, including the final assessment of the company-designated physician, as well as referral to a third doctor, but the same remained unheeded.**[18]

The LA Ruling

In a Decision[19] dated February 15, 2016, the Labor Arbiter (LA) granted Magno's complaint and accordingly, ordered respondents, jointly and severally, to pay Magno total and permanent disability benefits in the amount of USD 60,000.00, or its peso equivalent at the time of payment, plus 10% attorney's fees.[20]

The LA ruled that Magno is entitled to total and permanent disability benefits because at the time of the filing of his complaint, more than 120 days had already elapsed from his repatriation, and he remained incapable of being employed as an able seaman. Moreover, while a third doctor's opinion was not resorted to in this case, which would generally render the company-designated physician's assessment controlling, the LA held that the same is merely directory.[21]

Unsatisfied with the LA's ruling, respondents appealed[22] before the NLRC.

The NLRC Ruling

In a Decision[23] dated August 30, 2016, the NLRC affirmed with modification the LA's ruling, dropping Carmelino as party-respondent. The NLRC ruled that the assessment of the company-designated physician is not final, binding, or conclusive on the seafarer, nor on the labor tribunals or the courts. Seafarers are entitled to secure a second opinion from their chosen physician and in case of conflict between the two doctors' findings, the same shall be referred to a third doctor to settle the conflicting assessments. Moreover, the NLRC highlighted that what the POEA-SEC compensates is

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18 *Id.* at 101.
19 *Id.* at 212–223. Penned by Labor Arbiter Jonalyn M. Gutierrez.
20 *Id.* at 223.
21 *Id.* at 222.
22 *Id.* at 225–244.
23 *Id.* at 323–340.

not the injury, but rather the incapacity of the seafarer to work resulting in the impairment of the latter's earning capacity.[24]

In this case, the NLRC noted that Magno's request from respondents for referral to a third doctor remained unheeded. As such, the conflicting assessments remained unresolved. Since Magno can no longer perform the work for which he is trained or is accustomed to, thus permanently impairing his earning capacity, he is entitled to permanent and total disability benefits.[25]

Undeterred, respondents moved for reconsideration while Magno moved for partial reconsideration, both of which were denied in a Resolution[26] dated October 27, 2016. Determined, respondents elevated the case before the CA via a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Ruling

In a Decision[27] dated January 26, 2018, the CA granted the *certiorari* petition before it. Consequently, the CA reversed and set aside the NLRC ruling, ordering respondents to pay Magno, instead, the amount of USD 17,540.00 representing his permanent and partial disability benefits under the POEA-SEC, and attorney's fees equivalent to 10% of the total monetary award.[28]

According to the CA, even if Magno's medical condition remained unresolved after the maximum 240-day period of medical treatment, the latter is not automatically entitled to permanent and total disability benefits for to do so would disregard the Schedule of Disability Compensation under the POEA-SEC. Instead, the assessment should take into consideration the nature and severity of the work-related injuries in order to arrive at a disability grading that is commensurate to the gravity of the injuries sustained and consistent with the POEA-SEC schedule.[29]

In this regard, the CA noted that within the maximum 240-day period, Dr. Cruz, the company-designated physician, issued the appropriate disability rating based on the medical records available and results obtained therefrom. Thus, as between the findings of Dr. Cruz who examined Magno throughout his medical treatment, and those of Dr. Magtira, Magno's chosen physician, who merely examined the latter once, the former's Grade 11 assessment for Magno's spinal injury and Grade 10 assessment for his right knee injury shall prevail. As such, the CA ruled that Magno is entitled to disability benefits in

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24 *Id.* at 334–337.
25 *Id.* at 334–337.
26 *Id.* at 400–404.
27 *Id.* at 8–16.
28 *Id.* at 15–16.
29 *Id.* at 13.

the total amount of USD 17,540.00.[30]

Finally, the CA found no reason to hold respondent Carmelino solidarily liable in the payment of the monetary award.[31]

Aggrieved, Magno moved for reconsideration but was denied in a Resolution[32] dated March 7, 2019. Hence, Magno filed the instant Petition for Review on *Certiorari*.

The Issue Before the Court

The issue before the Court is whether the CA committed reversible error in reversing the NLRC ruling granting Magno total and permanent disability benefits.

Primarily, Magno argues that respondents violated his right to due process when they refused and failed to furnish him a copy of Dr. Cruz's Final Assessment at the time of the discontinuation of his medical treatment despite his requests. In fact, the Final Assessment which respondents attached to their Position Paper shows that it was a mere "internal communication" between the former and the company-designated physician.[33] He argues that the company-designated physician must not only state or claim that the illness is not work-related or that the seafarer is fit for sea duties. Rather, the company-designated physician must justify the assessment using the medical findings gathered during the seafarer's treatment.[34]

Additionally, Magno argues that contrary to the CA's ruling, his medical assessment must not be based only on the Schedule of Disability under Section 32 of the POEA-SEC but should be based on the different provisions of the Labor Code, jurisprudence, and the Amended Rules on Employee Compensation (AREC).[35]

Further, Magno contends that the findings of the company-designated physician are not final and binding and the seafarer has the right to seek a second, even a third doctor's opinion, which he had done in this case. Respondents' refusal to refer the conflicting medical assessments in this case effectively removed any primacy which the findings of the company-designated physician may have had.[36]

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30 *See id.* at 14–15.
31 *See id.* at 15.
32 *Id.* at 18–19.
33 *Id.* at 46–49. *See* also *id.* at 59–61.
34 *Id.* at 55–58. *See* also *id.* at 62–65.
35 *Id.* at 49–50.
36 *Id.* at 50–52.

Moreover, Magno maintains that he is entitled to total and permanent disability benefits considering that despite the medical treatments, his medical condition remained unresolved for more than 240 days precluding him from returning to his occupation as Able Seaman.[37] As such, his disability is not only permanent but total.[38]

Finally, Magno highlights respondents' refusal to refer the conflicting findings of the company-designated physician and his chosen physician to a third doctor for conflict resolution despite his repeated requests. Case law provides that it is the duty of the company to activate the third doctor procedure once the seafarer challenges the assessment of the company-designated physician and signified his intent to resort to the conflict resolution procedure. Respondents' failure to discharge their burden in this case breached their obligations under the POEA-SEC and thus, rendering the assessment of his chosen physician binding on the parties.[39]

In their Comment,[40] respondents reiterate that Magno is not entitled to total and permanent disability benefits since, as assessed by the company-designated physician, Magno is suffering only from a Grade 10 and Grade 11 disability under the Schedule of Disabilities of the POEA-SEC. In this regard, they emphasize that the company-designated physician's assessment resulted from extensive treatment of Magno, in contrast with those of the latter's physician which resulted from a one-day assessment only.[41]

Further, respondents argue that they complied with all their contractual obligations under the POEA-SEC and duly offered Magno the amount corresponding to the disability grade given him by the company-designated physician but which he refused.[42]

Finally, respondents assert that Magno's non-compliance with the third-doctor conflict resolution procedure mandated by the POEA-SEC rendered the company-designated physician's assessment final and binding on the parties.[43] They claim that contrary to his assertions, Magno never informed them of the contrary findings of his chosen physician and in fact refused to present his doctor's medical assessment even during the mandatory conferences before the LA and simply insisted on claiming full disability benefits.[44]

In his Reply,[45] Magno essentially reiterates his arguments in the

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37 *Id.* at 52–55.
38 *Id.* at 58.
39 *Id.* at 70–76.
40 *Id.* at 488–504.
41 *Id.* at 493–498.
42 *See id.*
43 *Id.* at 499–502.
44 *See id.* at 489, 491, and 501–502.
45 *Id.* at 508–535.

petition, but emphasizes that respondents' failure to furnish him copies of the medical reports and final assessment of the company-designated physician, as well as their refusal to initiate the third-doctor conflict resolution procedure in this case, after his repeated requests, rendered the second doctor's assessment final and binding on them.[46] In relation thereto, he claimed that contrary to respondents' claim, he sent them a letter request, which they received on July 13, 2015, copy of which he attached to his Position Paper.[47]

Thereafter, complying with the Court's Resolution[48] dated November 10, 2021, the parties filed their respective Memoranda[49] essentially reiterating their arguments.

The Court's Ruling

The petition is meritorious.

At the outset, the Court emphasizes that the review in this Rule 45 petition of the CA's ruling in a labor case brought before it via Rule 65 petition carries a distinct approach. In a Rule 45 review, the Court examines the legal correctness of the CA's decision, in contrast with the review of jurisdictional errors under Rule 65. In ruling for legal correctness, the Court views the CA's decision in the same context that it viewed the petition for *certiorari* before it, that is, from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC's decision.[50]

Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[51] "In labor cases, grave abuse of discretion may be [ascribed] to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so

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46 *Id.* at 512–514 and 525–534

47 *See id.* at 512–513. Note, however, that what Magno attached as Annex "F" in his Position Paper was copy of the MRI Result (*see id.* at 100). *See* also *id.* at 127.

48 *Id.* at 539–540.

49 Magno's Memorandum dated February 15, 2022, *id.* at 584–626; respondents' Memorandum dated February 2, 2022, *id.* at 554–578.

50 *See Career Phils. Shipmanagement, Inc. v. Tiquio*, 853 Phil. 724, 735–736 (2019) [Per J. Perlas-Bernabe, Second Division], *citing Montoya v. Trammed Manila Corporation*, 613 Phil. 696, 707 (2009) [Per J. Brion, Second Division].

51 *See CF Sharp Crew Management, Inc. v. Taok*, 691 Phil. 521, 536 (2012) [Per J. B. Reyes, Second Division].

declare, and accordingly, dismiss the *certiorari* petition."[52]

Moreover, it must be reiterated that only questions of law may be raised in a petition under Rule 45 of the Rules of Court, the Court being not a trier of facts. This rule notwithstanding, the Court relaxes its application where, as in this case, there is a variance between the findings of the LA, as affirmed by the NLRC, on the one hand, and the CA, on the other hand.[53] Thus, the Court deems it necessary to re-assess these conflicting findings for the just resolution of the case.

With the foregoing standards in mind, the Court finds that the CA erroneously ascribed grave abuse of discretion on the part of the NLRC in granting Magno's claim for permanent and total disability benefits. Consequently, the Court finds it proper to reinstate the NLRC's Decision.

It is basic that a seafarer's entitlement to disability benefits is a matter governed not only by medical findings, but also by law and contract.[54] By law, the pertinent statutory provisions are Articles 197 to 199[55] (formerly Articles

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[52] *See Philippine Pizza, Inc. v. Cayetano*, 839 Phil. 381, 389 (2018) [Per J. Perlas-Bernabe, Second Division], citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 188 (2016) [Per J. Perlas-Bernabe, First Division].

[53] *OSG Ship Management Manila, Inc. v. Monje*, 820 Phil. 142, 151 (2017) [Per J. Reyes, Jr., Second Division]. The other exceptions to the rule are:

1. when the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
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 facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;
11. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
12. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[54] *See Career Phils. Shipmanagement, Inc. v. Tiquio*, 853 Phil. 724, 736 (2019) [Per J. Perlas-Bernabe, Second Division]; and *CF Sharp Crew Management, Inc. v. Taok*, 691 Phil. 521, 533 (2012) [Per J. B. Reyes, Second Division].

[55] Article 197. Temporary Total Disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than Ten Pesos nor more than Ninety Pesos, nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

. . . .

Article 198. Permanent Total Disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: Provided, That the monthly

191 to 193) of the Labor Code, as amended,[56] in relation to Section 2(b),[57] Rule VII and Section 2(*a*),[58] Rule X of the AREC. Under Article 198(c)(1) of the Labor Code, the disability **shall be deemed total and permanent when the "[t]emporary total disability [lasts] continuously for more than one hundred twenty days**, except as otherwise provided for in the [AREC]." Under the AREC, Section 2(b), Rule VII, in relation to Section 2, Rule X, thereof provides that **the disability is total and permanent if, as a result of the injury or sickness, the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except where the injury or illness still requires medical attendance beyond 120 days but not to exceed 240 days.** Meanwhile, by contract, pertinent are: (*a*) the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; (*b*) the Collective Bargaining Agreement (CBA), if any; and (*c*) the employment agreement between the seafarer and his employer.[59]

In this respect, the Court notes that Magno's contract of employment with respondents was executed in 2018. As such, the 2010 POEA-SEC governs the procedure for his claim for disability benefits, to wit:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

. . . .

(c) 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 for in the Rules;

. . . .

Article 199. Permanent Partial Disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability.

. . . .

[56] *See* Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[57] SECTION 2. Disability. . . .

(b) **A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days**, except as otherwise provided for in Rule X of these Rules.

[58] Section 2. *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 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.

. . . .

[59] *See Career Phils. Shipmanagement, Inc. v. Tiquio*, 853 Phil. 724 (2019) [Per J. Perlas-Bernabe, Second Division].

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

. . . .

2. [I]f 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. . . .

   . . . .

   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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

   . . . .

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

   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.

   . . . . (Emphasis supplied)

Thus, under Section 20(A) of the POEA-SEC, the employer shall be liable for disability benefits only when *(i)* the seafarer suffers a work-related injury or illness, and *(ii)* the illness or injury existed during the term of the seafarer's employment contract. The POEA-SEC defines work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[60] With respect to illnesses not listed under Section 32-A, Section 20(A)(4) of the POEA-SEC provides for a disputable presumption of work-relation such that all illnesses or injury that occurs during the period of the employment are presumed work-related.

Correlatively, the legal presumption of work-relation also automatically triggers the obligation of the employers under Section 20(A) of the POEA-SEC to provide seafarers medical assistance and benefits, in case of permanent disability, based on the gradings provided under its Section 32. Thus, in *Pelagio v. Philippine Transmarine Carriers, Inc.*[61] (*Pelagio*), the Court, through Associate Justice Estela M. Perlas-Bernabe, reiterated the following guidelines that govern seafarers' claims for permanent and total disability benefits:

> 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**;
>
> 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
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> 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**.[62] (Emphases and underscoring supplied)

Verily, *Pelagio* categorically instructs that "the company-designated physician is required to issue a **final and definite assessment** of the seafarer's disability rating within the aforesaid 120/240-day period; otherwise, the opinions of the company-designated and the independent physicians are **rendered irrelevant** because the seafarer is already conclusively presumed to be suffering from a [work-related] permanent and total disability, and thus,

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60 *See* Item 16 of the Definition of Terms of the POEA–SEC.

61 848 Phil. 808 (2019) [Second Division].

62 *Id* at 817, *citing Jebsens Maritime, Inc. v. Rapiz*, 803 Phil. 266, 273 (2017) [Per J. Perlas-Bernabe, First Division].

is entitled to the benefits corresponding thereto."[63]

In this respect, the Court emphasizes that in order to be conclusive, the final and definite disability assessment should not only inform seafarers of their fitness or non-fitness to resume their duties, as well as the perceived level or rating of their disability, or whether such illness is work-related.[64] Said final and definite assessment must also no longer require any further action on the part of the company-designated physician and is issued after he or she has exhausted all possible treatment options within the periods allowed by law.[65] More importantly, **it should sufficiently explain and justify a finding of non-work-relation that could preclude the seafarer's claim for disability benefits.**[66]

Further, case law provides that the obligation of the company-designated physician to issue a final and definite assessment carries the correlative obligation to ***fully and properly inform and explain to the seafarer his or her findings and assessment***. This requirement of proper notice is necessary considering the process laid down in Section 20(A) of the POEA-SEC which the seafarers, the employers, and the latter's agents must comply with, failing at which could adversely affect the non-compliant party. Thus, in *Gere v. Anglo-Eastern Crew Management Phils. Inc.*,[67] the Court, through Associate Justice Jose C. Reyes, Jr., held that the "**the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to [the seafarer] by any other means sanctioned by present rules**"[68] failing at which, the company-designated physician fails to comply with the due process requirement and consequently, with the foregoing guidelines.

In this case, it is undisputed that Magno's disability occurred during the term of his employment contract with respondents. The controversy lies on the issuance—or non-issuance—of a final and definite assessment of his disability within the prescribed period, and the parties' compliance—or noncompliance—with the third-doctor conflict resolution procedure.

To recall, respondents assert that the company-designated physician timely issued a final and definite assessment of Magno's disability which was rated at Grade 11 and Grade 10 under the Schedule of Disabilities of the

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63 *Id.* 817–818; citations omitted.

64 *See Salas v. Transmed Manila Corporation*, 874 Phil. 201 (2020) [Per J. Perlas-Bernabe, Second Division], *citing Ampo-on v. Reinier Pacific International Shipping, Inc.*, 853 Phil. 483 (2019) [Per J. Perlas-Bernabe, Second Division]. *See* also *Abundo v. Magsaysay Maritime Corporation*, 866 Phil. 334 (2019) [Per J. Inting, Second Division]; and *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 178–190 (2015) [Per SAJ Carpio, Second Division].

65 *See Jebsens Maritime, Inc. v. Mirasol*, 803 Phil. 266, 271–276 (2017). *See* also *Abundo v. Magsaysay Maritime Corporation, id.*

66 *See Salas v. Transmed Manila Corporation*, 874 Phil. 201 (2020) [Per J. Perlas-Bernabe, Second Division]; *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 178–190 (2015) [Per SAJ Carpio, Second Division]; and *Abundo v. Magsaysay Maritime Corporation, id.*

67 830 Phil. 695 (2018) [Second Division].

68 *Id.* at 706.

POEA-SEC. They likewise insist that Magno failed to comply with the third-doctor conflict resolution procedure and as such, the company-designated physician's final assessment must prevail.

In contrast, however, Magno maintained that respondents ***have not informed him of this medical assessment and in fact refused to furnish him copy of his medical records***. He likewise stressed that notwithstanding his requests, respondents refused to refer the conflicting medical assessments to a third doctor for a final and binding resolution.

The Court finds insufficient the evidence presented by respondents to prove that they informed Magno within the prescribed periods of the company-designated physician's final and definite assessment of the latter's disability. Indeed, other than the April 10, 2015 Medical Report issued by Dr. Cruz, **there is nothing in the records which show that the findings therein were fully and properly explained to Magno. Neither did respondents present evidence establishing that they personally served Magno with a copy of the April 10, 2015 Medical Report or that they sent him a copy thereof by any other means sanctioned by the rules**. Consequently, pursuant to case law, the failure of respondents to provide Magno with a copy of Dr. Cruz's final and definite assessment results in their failure to comply with their obligations under the POEA-SEC.

Moreover, the Court notes that the April 10, 2015 Medical Report issued by Dr. Cruz was not meant to inform and explain to Magno the former's assessment of his disability. Rather, it was clearly addressed to Villarante, Career Philippines' Finance Manager and thus intended for respondents' consideration only. In fact, **all of the medical reports issued by Dr. Cruz were specifically addressed to Villarante only to apprise respondents of the status of Magno's treatment, with no indication that copies thereof were duly furnished to the latter** as matters stand, ***respondents failed to sufficiently establish that they duly informed and explained to Magno the findings and assessment of the company-designated physician within the prescribed periods***. Under these circumstances, the Court is constrained to conclude that no final and definite assessment was issued regarding Magno's disability rendering the same permanent and total by operation of law.[69] To reiterate, **the company-designated physician must issue a medical certificate, which must be duly furnished to and explained to the seafarer, failing at which, he/she fails to comply with the due process requirement and consequently, with the guidelines laid down by the Court**.[70]

Viewed in these lights, the Court therefore finds that the CA seriously erred in reversing the NLRC's ruling. ***There being no final and definite assessment of Magno's fitness to work or permanent disability within the***

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[69] *See Jebsens Maritime, Inc. v. Mirasol*, 803 Phil. 266, 271–276 (2017). *See* also *Abundo v. Magsaysay Maritime Corporation*, 866 Phil. 334 (2019) [Per J. Inting, Second Division].

[70] *See Gere v. Anglo–Eastern Crew Management Phils. Inc.*, 830 Phil. 695, 706 (2018).

prescribed periods by the company-designated physician that was provided to Magno, his disability has, by operation of law, become total and permanent. As such, Magno is entitled to the corresponding disability benefits under the POEA-SEC.

Corollary to the foregoing, the absence of a final and definite assessment in this case rendered it unnecessary for Magno to refer the findings of the company-designated physician to another physician of his choice. Case law settles that the third-doctor conflict resolution procedure begins **only from the moment the seafarer is properly notified of the final and definite assessment of the company-designated physician**.[71] Absent such ***final and definite assessment within the prescribed periods, Magno's disability was, by operation of law, rendered total and permanent***.[72] As such, the issue with respect to the parties' compliance—or non-compliance—with the third-doctor conflict resolution procedure need not be resolved in view of the result just reached.

At any rate, the totality of the evidence convinces the Court that Magno is suffering from permanent disability rendering him unfit to work in any capacity as seafarer. Significantly, both the Medical Reports issued by Dr. Cruz and Dr. Magtira did not declare Magno "fit to resume sea duties," evidently in recognition of the fact that notwithstanding the treatments and operation that Magno underwent, he still suffers from pain and residual disability. The April 10, 2015 Medical Report issued by Dr. Cruz is explicit as it stated that the "**patient will incur residual disability**" with no apparent clear prediction concerning the improvement of Magno's condition as it declared that "prognosis is also guarded."

On the other hand, the July 7, 2015 Medical Report issued by Dr. Magtira categorically stated that "***Mr. Magno continues to experience back and knee pain***. *His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has difficult[sic] running, and climbing up or going down the stairs." And that "****Mr. Magno has lost his pre injury capacity*** . . . ."[73]

Further, there appears to be noted similarities between the results of the MRI conducted on Magno's lumbosacral spine and right knee on November 19, 2014 at the Manila Doctors Hospital[74]—while he was undergoing treatment with the company-designated physician—and on July 3, 2015 at the Banawe Diagnostic MRI Center, Inc.[75]—upon Magno's consultation with Dr. Magtira. These MRI results comparably show:

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71 *See Benhur Shipping Corporation v. Riego*, G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division]; and *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 178–190 (2015).

72 *See id.*

73 *Rollo*, p. 129.

74 *See id.* at 123–127.

75 *See* Dr. Magtira's Medical Report dated July 7, 2015, *id.* at 128–129.

	November 19, 2014 MRI Results	July 3, 2015 MRI Results
Lumbosacral spine	1. At L4-5, Mild disc dessication. Broad based disc bulge. Central disc protrusion measuring 2.5 x 13mm. Moderate bilateral ligamentum flavum and facet hypertrophy. Moderate central canal stenosis and thecal sac compression. Associated mass effect on the bilateral traversing nerve root. Mild bilateral neuroforaminal stenosis. 2. At L5-S1. Mild disc desiccation. Broad based mild disc bulge. Tiny right lateral disc annular tear. Mild bilateral facet hypertrophy. 3. At L3-4. Mild disc desiccation. Mild broad based disc bulge. 4. Small anterior osteophytes at L2-3, L3-4 and L4-5. 5. Probable small right renal cyst, as partially seen.[76]	1. L4-L5 – diffuse disk bulge along with ligamentum flavum hypertrophy causing compression of the anterior thecal sac, mild spinal canal stenosis and bilateral severe neural foraminal stenosis. 2. L5-S1 – mild diffuse disk bulge causing bilateral moderate neural foraminal stenosis. 3. Beginning disk desiccation or dehydration at L4-L5 and L5-S1. 4. No evident intradural lesion.[77]
Right knee	1. Minimal joint effusion. 2. Mild degenerative osteoarthritic changes.[78]	1. Minimal joint effusion. 2. Mild degenerative osteoarthritic changes.[79]

In *Benhur Shipping Corporation v. Riego*,[80] the Court ruled that "the tribunals and courts are empowered to conduct its own assessment to resolve the conflicting medical opinions of the company-designated physician and the seafarer's chosen physician based on the totality of evidence. The employer simply cannot invoke the conclusiveness of the company-designated physician's medical opinion *vis-a-vis* the seafarer's chosen physician's medical opinion when it is because the employer's own inaction and neglect that the medical assessment was not referred to a third doctor."

Verily, the totality of the evidence and circumstances that point to Magno's continued disability in this case rendering him unable to return to his occupation as a seafarer constrains the Court to agree with the findings of the NLRC granting his claim for permanent and total disability benefits. It is

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76 *See id.* at 125.
77 *See id.* at 128–129.
78 *See id.* at 127.
79 *See id.* at 129.
80 G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division].

settled that in disability compensation, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity.[81] Magno's persistent back and knee pain in this case undoubtedly renders it highly improbable for him to perform his usual tasks as Able Seaman in any vessel. In turn, this improbability effectively renders him incapacitated from earning wages in the same kind of work or similar nature for which he was trained.

All told, the Court finds sufficient evidentiary and legal basis to support the NLRC's ruling granting Magno's claim for total and permanent disability benefits. Consequently, the CA grievously erred when it reversed the NLRC's ruling on an erroneous finding of grave abuse discretion.

Anent Magno's claim for attorney's fees, Article 2208(8) of the Civil Code provides that attorney's fees are recoverable in actions for indemnity under the workmen's compensation and employer's liability laws, as well as when the employer's act or omission has compelled the employee to incur expenses to protect his or her interest. Considering that Magno was forced to litigate to protect his right and interest under the POEA-SEC, the award of 10% attorney's fees by the LA was proper. Moreover, the Court agrees that, in line with prevailing jurisprudence, all monetary awards due to Magno shall earn legal interest at the rate of 6% per annum from finality of this Decision until fully paid.[82]

A final note. The Court reiterates that the third-doctor conflict resolution procedure is mandatory that must be observed by the ship owners, manning companies, and seafarers. All parties are thus reminded to strictly observe their respective obligations under the POEA-SEC. The failure of either party to observe the good faith compliance of the other will result in legal consequences for the non-compliant party.[83]

ACCORDINGLY, the Court resolves to **GRANT** the Petition for Review on *Certiorari.* The assailed Decision dated January 26, 2018 and the Resolution dated March 7, 2019 of the Court of Appeals in CA-G.R. SP No. 148968 are hereby **REVERSED and SET ASIDE**. The Decision dated August 30, 2016 and the Resolution dated October 27, 2016 of the National Labor Relations Commission in NLRC LAC OFW (M) 03-000219-16 are **REINSTATED**.

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81 *See Teodoro v. Teekay Shipping Philippines, Inc.*, 870 Phil. 339, 413 (2020) [Per J. Perlas-Bernabe, Second Division]; and *Magadia v. Elburg Shipmanagement Philippines, Inc.*, 867 Phil. 665 (2019) [Per J. Lazaro-Javier, First Division].

82 *See Lara's Gifts and Decors, Inc. v. Midtown Industrial Sales*, G.R. No. 225433, September 20, 2022 [Per J. Leonen, *En Banc*].

83 *See Benhur Shipping Corporation v. Riego*, G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division].

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Acting Chief Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice
Working Chairperson

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

MARVIC M.V.F. LEONEN
Acting Chief Justice