



Republic of the Philippines
Supreme Court
 Baguio City

SECOND DIVISION

**THE HEIRS OF THE LATE
 DELFIN DELA CRUZ, represented
 by his SPOUSE, CARMELITA
 DELA CRUZ,**

Petitioners,

- versus -

**PHILIPPINE TRANSMARINE
 CARRIERS, INC., represented by
 MR. CARLOS C. SALINAS
 and/or TECTO BELGIUM N.V.,**

Respondents.

G.R. No. 196357

Present:

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA, *and*
 LEONEN, *JJ.*

Promulgated:
 APR 20 2015

X ----- X

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the June 18, 2010 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 105930 dismissing the petition for *certiorari* filed therewith and affirming the January 23, 2007 Decision³ of the National Labor Relations Commission (NLRC) in OFW (M) 03-12-3155-00 (CA No. 046453-05). Said NLRC Decision reversed and set aside the Labor Arbiter's May 30, 2005 Decision⁴ which, in turn, granted the late Delfin Dela Cruz's (Delfin) claims for sickness allowance and disability benefits filed against respondents Philippine Transmarine Carriers, Inc. and/or Tecto Belgium N.V. (respondents). Also assailed in this petition is the CA's March 29, 2011 Resolution⁵ denying the Motion for Reconsideration⁶ filed by the heirs of Delfin (petitioners).

¹ *Rollo*, pp. 29-57.

² *CA rollo*, pp. 271-284; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Ramon R. Garcia and Manuel M. Barrios.

³ *Id.* at 42-48; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Angelita A. Gacutan.

⁴ *Id.* at 170-176; penned by Labor Arbiter Ramon Valentin C. Reyes.

⁵ *Id.* at 309-310.

⁶ *Id.* at 288-301.

Factual Antecedents

The facts, as summarized by the CA in its assailed Decision, are as follows:

The late Delfin Dela Cruz was contracted for the position of [Oiler] by x xx Philippine Transmarine Carriers[,] Inc., a local manning agent for and in behalf of the latter's principal, Tecto Belgium N.V.[,] under the following terms and conditions as provided for in the Contract of Employment:

Duration of contract	-	9 months
Position	-	OILER
Basic Monthly Salary	-	\$535.00 per month
Hours of Work	-	44 hours per week
Overtime	-	\$298/month fixed overtime - US\$3.50/hour after 85 hours
Vacation Leave w/ Pay	-	8 days/month with Seniority Bonus US\$7.50/month
Point of Hire	-	Manila, Philippines

As required by law and by the employment contract, [Delfin] underwent a Pre-Employment Medical Examination (PEME) and was declared Fit for Sea Service. [His] work includes observing routine watch, taking records of pressure of temperature of all working apparatus, obeying all orders and commands of the engineers, and maintaining cleanliness of machinery and engine room.

[Delfin] left the Philippines on 16 August 2000 and immediately embarked the vessel "Lady Hilde" on 17 August 2000. While on board, he felt gradual chest pains and pain [in] his upper abdominal region. On 26 [June] 2001, while performing his regular duties, he was hit by a metal board on his back. He, thereafter, requested medical attention and was given medications and advised to be given light duties for the rest of the week. Upon the vessel's arrival at a convenient port on 16 August 2001, his contract expired and [he] was signed off from the vessel. He xxx reported to xxx [respondents] as required. He also sought medical assistance but was not [extended] such.

On 13 November 2003, [Delfin] went to De Los Santos Medical Center for proper medical attention[.] [There,] he underwent X-Ray and MRI of the [Thoracic] Spine. Afterwards, he was not employed by xxx [respondents] because he was already incapacitated to engage in his customary work. He filed his claim for sickness allowance from the same manning agency but the same was not [granted].

His [condition] deteriorated[.] [Thereafter, he was] admitted at St. Luke's Medical Center, where he was diagnosed to be suffering from [malignant] peripheral nerve sheath tumor [MPNST]. He shouldered his medical expenses x xx.

On 4 December 2003, he filed a complaint before the NLRC to claim payment for sickness allowance and disability compensation. x xx

[Respondents] filed [a] Motion to Dismiss on the ground of prescription, the claim having [been] filed beyond one year from the date of the termination of the contract. [Delfin] countered x x x that the applicable prescription period is 3 years, according to the POEA Standard Employment Contract. The parties, thereafter, submitted their position papers. [Delfin] claimed [for] medical reimbursement and sickness allowance, permanent disability compensation, and damages and attorney's fees.

[Delfin], on one hand, asseverated in his complaint that he is entitled to sickness allowance because of the incident when he was hit by a metal board on his back, which required medical attention. Furthermore, [Delfin] averred that he is entitled [to] sickness allowance because his inability to work and perform his usual occupation after he acquired the sickness while on board, lasted for more than 120 days. This is also the basis of his claim for permanent disability compensation. [Delfin] also claimed that attorney's fees should be paid for the expenses he incurred due to the filing of the suit and that moral damages may be paid as well for injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation.

[Respondents], on the other hand, averred that the medical condition of [Delfin] was not acquired or suffered during the term of his employment, that said medical condition is not work-related, and[,] therefore, the said illness is not compensable under the POEA Standard Employment Contract. Furthermore, [respondents] asseverated that more than two years had elapsed from the time of the termination of [Delfin's] employment in August 2001 up to the time the claim was filed in November 2003, and thus the illness was not acquired during the period of employment. [Respondents] also argued that the company[-]designated physician neither issued any certification as regards the medical condition of [Delfin] nor conducted a post[-]employment medical examination, after he was discharged from the vessel in August 2001.

On 6 May 2005, [Delfin] passed away. x xx⁷

Ruling of the Labor Arbiter (LA)

Ultimately, the LA rendered a Decision⁸ dated May 30, 2005 in favor of Delfin. The LA opined that Delfin contracted his illness during the period of his employment with respondents and that such illness is a compensable occupational disease. Hence, Delfin is entitled to his claims. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered ordering respondents, jointly and severally, to pay complainant DELFIN C. DELA CRUZ, SIXTY THOUSAND US DOLLARS (US\$60,000.00) representing total permanent disability compensation, sickness allowance of US\$2,140.00 or its equivalent in local currency at the time of actual payment plus ten percent (10%) of the total monetary award by way of attorney's fees.

⁷ Id. at 272-275.

⁸ Id. at 170-176.

All other claims are dismissed for lack of merit.

SO ORDERED.⁹

Ruling of the National Labor Relations Commission

On appeal, the NLRC, in a Decision¹⁰ handed down on January 23, 2007, reversed the Decision of the LA. It found Delfin's claims to be barred by prescription for having been filed beyond the reglementary period of one year from the termination of the employment contract. The NLRC also found no evidence that would establish a causal connection between Delfin's ailment and his working conditions.

Petitioners moved for reconsideration but the same was denied in the NLRC's March 30, 2007 Resolution.¹¹

Ruling of the Court of Appeals

Aggrieved yet undeterred, petitioners filed a Petition for *Certiorari*¹² with the CA.

In its June 18, 2010 Decision,¹³ the CA held that Delfin's Complaint was filed well within the reglementary period of three years from the date the cause of action arose, as provided for in Section 30 of the Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA SEC). Nonetheless, the CA sustained the NLRC's pronouncement that petitioners are not entitled to disability compensation as they failed to establish that Delfin's illness was work-related. According to the CA, Delfin's illness, which is known as Malignant Peripheral Nerve Sheath Tumor (MPNST), is a type of soft tissue sarcoma that develops in cells that form a protective sheath (covering) around peripheral nerves. Peripheral nerves are those that radiate from the brain and spinal cord and stimulate the muscles. However, aside from the June 26, 2001 incident where Delfin was hit by a metal board on his back, there was no other reported incident that would reasonably connect Delfin's ailment to his working condition. Petitioners could only offer their allegations that Delfin experienced chest pains without, however, presenting proofs in support thereof. The CA also found notable that it was only on November 13, 2003 or two years after the termination of his contract and repatriation when Delfin went to Delos Santos Medical Center

⁹ Id. at 175-176.

¹⁰ Id. at 42-48.

¹¹ Id. at 54-56.

¹² Id. at 2-29.

¹³ Id. at 271-284.

for medical check-up and underwent chest x-ray and MRI of the thoracic spine. The findings of said hospital conformed to the diagnosis of St. Luke's Medical Center that Delfin has MPNST.

With regard to petitioners' claim for sickness allowance, the CA denied the same considering that Delfin's contract with respondents had long expired. It likewise denied petitioners' claim for attorney's fees, moral damages and exemplary damages as there is no proof that respondents committed bad faith in denying Delfin's claims.

The CA's assailed Decision bears the following dispositive portion:

WHEREFORE, the petition is DISMISSED. The Decision dated 23 January 2007 by the NLRC is AFFIRMED.

SO ORDERED.¹⁴

Petitioners filed a Motion for Reconsideration.¹⁵ This was denied by the CA in its March 29, 2011 Resolution.¹⁶

Thus, the present Petition for Review on *Certiorari*.

Issues

- I. Whether xxx [petitioners are] entitled to permanent disability benefits and sickness allowance;
- II. Whether xxx [petitioners are] entitled to attorney's fees and damages.¹⁷

Our Ruling

The petition lacks merit.

¹⁴ Id. at 283.

¹⁵ Id. at 288-301.

¹⁶ Id. at 309-310.

¹⁷ *Rollo*, p. 222.

A Petition filed under Rule 45 shall raise only questions of law. But when the findings of the labor tribunals and the CA are in conflict with each other, the Court may make its own examination of the evidence on record.

The issues petitioners brought before this Court pertain to questions of fact since they basically seek to determine if the illness responsible for Delfin's disability was acquired by him during the course of his employment as to entitle petitioners to permanent disability benefits, sickness allowance, attorney's fees and damages.

As a general rule, this Court does not review questions of facts in a petition filed under Rule 45 of the Rules of Court as only questions of law can be raised in such petition.¹⁸ However, this rule is not absolute and without exceptions. In case the factual findings of the tribunals or courts below are in conflict with each other, this Court may make its own examination and evaluation of the evidence on record.¹⁹ Here, the LA found that petitioners ought to be awarded permanent disability benefits, sickness allowance, attorney's fees and damages; the NLRC and the CA, on the other hand, ruled otherwise. Hence, the Court is constrained to examine the evidence on record.

The 1996 POEA SEC concerning permanent disability claims and sickness allowance applies to this case.

The Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels as contained in Department Order No. 04 and Memorandum Circular No. 09, both Series of 2000,²⁰ initially took effect on June 25, 2000. This, at first blush, must be strictly and faithfully observed in this case. However, the POEA had likewise issued Memorandum Circular No. 11, series of 2000 (Memorandum Circular 11-00), concerning, among others, compensation and benefits for injury and illness, viz:

In view of the Temporary Restraining Order [TRO] issued by the Supreme Court in a Resolution dated 11 September 2000 on the implementation of certain amendments of the Revised Terms and Conditions Governing the Employment of Filipino Seafarers on board Ocean-Going Vessels as contained in DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both Series of 2000, please be

¹⁸ *Heirs of Antonio Feraren v. Court of Appeals (Former 12th Division)*, G.R. No. 159328, October 5, 2011, 658 SCRA 569, 574.

¹⁹ *Asian Terminals, Inc. v. Simon Enterprises, Inc.*, G.R. No. 177116, February 27, 2013, 692 SCRA 87, 96.

²⁰ *CA rollo*, p. 117-126.

advised of the following:

1. **Section 20, Paragraphs (A), (B) and (D) of the former Standard Terms and Conditions Governing the Employment of Filipino Seafarers on board Ocean-Going Vessels, as provided in DOLE Department Order No. 33, and POEA Memorandum Circular No. 55, both Series of 1996 shall apply in lieu of Section 20 (A), (B) and (D) of the Revised Version;** (Emphasis supplied)

It must be noted that: 1) the above TRO was lifted only on June 5, 2002; 2) Delfin's contract with respondents was entered into on August 8, 2000; 3) he embarked on Lady Hilde on August 17, 2000; and 4) was repatriated on August 16, 2001. Thus, as the TRO was in effect at the time of Delfin's employment with respondents, it follows that it is the 1996 POEA SEC provisions concerning permanent disability claims and sickness allowance which should apply, and not those of the 2000 POEA SEC.²¹

Petitioners are not entitled to permanent disability benefits and sickness allowance.

Section 20 (B) of the 1996 POEA SEC reads as follows:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS:

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

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. 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

²¹ *Coastal Safeway Marine Services, Inc. v. Delgado*, 577 Phil. 459, 466-467 (2008); reiterated in *Quizora v. Denholm Crew Management (Philippines) Inc.*, G.R. No. 185412, November 16, 2011, 660 SCRA 309, 318-319.

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.

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. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

4. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his 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. (Emphasis supplied)

The above provision demonstrates that the 1996 POEA SEC covers *all* injuries or illnesses *occurring in the lifetime of the employment contract*.²² The seafarer only has to prove that his injury or illness was acquired during the term of employment to support his claim for disability benefits and sickness allowance.²³ Verily, his injury or illness need not be shown to be work-related to be compensable under said employment contract.²⁴

However, the Court also reiterates the rule that “whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence”²⁵ or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.”²⁶ Absent a showing thereof, any decision set forth will only be based on unsubstantiated allegations. Accordingly, the Court cannot grant a claim for disability benefits without adequate substantiation for to

²² *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 685.

This is in stark contrast to the 2000 POEA SEC which explicitly requires that the injury or illness ought to be work-related in order for a claim for disability benefits to be granted. Section 20 (B) of the 2000 POEA-SEC reads:

SECTION 20. COMPENSATION AND BENEFITS

B. 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 xx

²³ *Id.* at 686.

²⁴ *Id.* at 685.

²⁵ *Manota v. Avantgarde Shipping Corporation*, G.R. No. 179607, July 24, 2013, 702 SCRA 61, 70.

²⁶ *Id.* at 70-71.

do so will offend due process.²⁷ The foregoing jurisprudential principle effectively shows that the burden of proving entitlement to disability benefits lies on petitioners.²⁸ Thus, they must establish that Delfin suffered or contracted his injury or illness which resulted in his disability during the term of the employment contract. An examination of the records, however, shows that petitioners failed to discharge such burden.

The 1996 POEA SEC clearly provides that a seafarer must submit himself to a post-employment medical examination within three days from his arrival in the Philippines (mandatory reporting requirement) so that his claim for disability and sickness allowance can prosper.²⁹ The only exception to this rule is when the seafarer is physically incapacitated to do so, but there must be a written notice to the agency within the same period of three days for the seaman to be considered to have complied with the requirement.³⁰ Otherwise, he forfeits his right to claim his disability benefits and sickness allowance.³¹ In *Manota v. Avantgarde Shipping Corporation*,³² the Court explained the rationale behind the three-day period requirement, thus:

The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease x xx was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

x x x x

x x x Moreover, the post-employment medical examination within 3 days from x xx arrival is required in order to ascertain [the seafarer's] physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.

Here, petitioners claim that Delfin went to respondents to comply with the mandatory reporting requirement and to seek medical assistance but his request for medical evaluation was unheeded. Petitioners, however, failed to support this.³³ In *Career Philippines Shipmanagement, Inc. v. Serna*,³⁴ the Court upheld the

²⁷ Id. at 71.

²⁸ Id.

²⁹ See Section 20(B) of the 1996 POEA SEC cited earlier.

³⁰ Id.

³¹ Id.

³² Supra note 25 at 72-73.

Although *Manota* involves 1989 POEA SEC, said rationale is also applicable here as the 1996 revised version contains the same pertinent provisions as the 1989 POEA SEC.

³³ See *Jebesen's Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 681-682, citing *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 543-544.

³⁴ Supra note 22 at 689-690.

seafarer's claim that he complied with the mandatory reporting requirement and sought medical assistance from his agency, thus:

We see no reason to disturb the lower tribunals' finding. **While Serna's verified claim with respect to his July 14, 1999 visit to the petitioner's office may be seen by some as a bare allegation, we note that the petitioners' corresponding denial is itself also a bare allegation that, worse, is unsupported by other evidence on record. In contrast, the events that transpired after the July 14, 1999 visit, as extensively discussed by the CA above, effectively served to corroborate Serna's claim on the visit's purpose, i.e., to seek medical assistance.** Under these circumstances, we find no grave abuse of discretion on the part of the NLRC when it affirmed the labor arbiter ruling and gave credence to Serna on this point. Under the evidentiary rules, a positive assertion is generally entitled to more weight than a plain denial. (Emphasis supplied)

There, Serna (the seafarer) claimed that he reported to his employer's office on July 14, 1999, or two days after his repatriation, to submit himself to the mandatory reporting requirement. The Court found his allegation credible in light of the fact that despite the nonchalant instruction given to him by his agency to wait for a referral to the company-designated physicians, Serna took it upon himself to seek medical assistance and submit to a check-up with his personal physician to find out what was wrong with him. Indeed, about two weeks from the time he reported for the mandatory reporting requirement and was told to wait for a referral, Serna's check-up with his private physician revealed that he was suffering from toxic goiter. Several days later, he submitted to a medical examination conducted by the company-designated physician who diagnosed him with atrial fibrillation and declared him unfit to work. Still, Serna did not stop there. He continued with his medical treatment with his personal physician and even asked for a second opinion from another doctor who concurred with the toxic goiter diagnosis of his first personal physician. Further, he was examined by a third doctor who found that he had a history of goiter with thrototoxicos since 1999. He was also diagnosed with thyrotoxic heart disease, chronic atrial fibrillation and hypertensive cardiovascular disease. Ultimately, Serna was given a disability rating of Grade 3 classified as permanent medical unfitness which entitled him to 100% compensation as provided for under the collective bargaining agreement. Verily, the above steps taken by Serna helped establish his claim that he complied with the mandatory reporting requirement and that he sought medical assistance from his employer, and further, that he did so within the period required by law. His having been vigilant in asserting his rights to medical assistance tended to show the same.

Unfortunately in this case, petitioners failed to show the steps supposedly undertaken by Delfin to comply with the mandatory reporting requirement. To the Court's mind, this lapse on petitioners' part only demonstrates that Delfin did not comply with what was incumbent upon him. The reasonable conclusion,

therefore, is that at the time of his repatriation, Delfin was not suffering from any physical disability requiring immediate medical attendance. Otherwise, and even if his request for medical assistance went unheeded, he would have submitted himself for check-up with his personal physician. After all, the injury complained of by Delfin was a serious one and it would seem illogical for him to just suffer in silence and bear the pain for a considerable length of time. Moreover, while the rule on mandatory reporting requirement is not absolute as a seafarer may show that he was physically incapable to comply with the same by submitting a written notice to the agency within the same three-day period, nowhere in the records does it show that Delfin submitted any such notice. Clearly, petitioners failed to show that Delfin complied with the mandatory reporting requirement. Thus, he is deemed to have forfeited his right to claim disability benefits and sickness allowance.

Even assuming that there was compliance with the mandatory reporting requirement, other factors that strongly militate against the granting of petitioners' claims exist in this case.

First, while petitioners did present a medical certificate dated June 26, 2001 which was issued while Delfin was still employed with respondents, nothing therein shows that the incident subject thereof has something to do or is related to MPNST – the injury or illness which caused Delfin's disability. Specifically, said certificate pertains to a blow on Delfin's **back** caused by a metal board and for which he complained of "persistent pain in the **chest and upper abdominal region.**" For this, Delfin was advised to undertake only "light duties for [the] rest of [the] week" and that "if not settled[,] will need reassess[ment]." On the other hand, the injury that showed up in his chest x-ray and MRI for which he claimed compensation pertains to a different portion of his body, i.e., a **fracture in one of his ribs.**³⁵ Besides, if indeed there is truth to petitioners' assertion that Delfin continued to experience pain after he was hit by a metal board on his back, then why did he not request for reassessment as advised or submit himself to the mandatory reporting requirement after he was repatriated? What is glaring instead is that against all these, petitioners only offered their bare allegation that Delfin's medical condition did not improve thereafter.

Second, while Delfin averred that he experienced on-and-off pain even prior to the June 26, 2001 incident, there exists no record thereof. On the contrary, Delfin himself claimed that despite the pain, he "remained calm and unbothered

³⁵ It is widely known that the most common cause of rib fractures or injuries is a direct blow to the chest (see http://www.emedicinehealth.com/fractured_rib_health/article_em.htm, last accessed on April 14, 2015). However, although it is possible to suffer rib fractures as a result of a blow to the **upper** back (see <http://www.physioadvisor.com.au/10661750/rib-fracture-broken-rib-physioadvisor.htm>; last accessed on April 14, 2015), it must be pointed out that petitioners were unable to expound on how the rib fracture came to be and connect it to the blow suffered by Delfin. For instance, petitioners could have shown that the blow was sustained at the upper back, not the lower portion thereof, and that it was strong enough to cause the fracture to Delfin's rib. This petitioners did not do.

by the same.”³⁶

Third, it is also interesting to note that although petitioners did submit Delfin’s chest x-ray and MRI results³⁷ revealing a fracture in one of his ribs, it must be emphasized that these findings were issued more than two years after his repatriation. Worse still, the Clinical Abstract submitted by petitioner was undated³⁸ such that it cannot be determined when the said document was released. Be that as it may, it can be safely concluded that the said clinical abstract was issued in or after 2004 since it contained a detailed history of Delfin’s illness starting from his having been diagnosed with MPNST in 2003, and an enumeration of his documented episodes of pathologic fractures occurring in May 2002, December 2003 and April 2004. These only highlight the fact that a considerable period of time had passed from Delfin’s repatriation in August 2001 up to the time that he started to suffer pathologic fractures in May 2002. Thus, it cannot be said that Delfin’s rib fracture subject of the above-mentioned chest x-ray and MRI was caused by the blow on his back of the metal sheet that fell on him as petitioners would want to impress upon this Court. On the other hand, what is more likely under the circumstances is that the fracture came about after his repatriation. For one, the report contained in Delfin’s clinical abstract is telling, *viz*:

Patient is a diagnosed case of Malignant Peripheral Nerve Sheath Tumor. (2003 SLMC)[.] He also had several episodes of pathologic fractures: x xx

Sixteen hours prior to admission, while in bed, trying to change position, patient suddenly heard a cracking [sound], which was followed by shooting pain on the left thigh, intermittent, localized, aggravated by movement, with no alleviating factors. x x x (Emphases supplied)³⁹

Notably, MPNST, of which Delfin was diagnosed with more than two years after his repatriation, causes pathologic fractures.⁴⁰ And since Delfin is prone to pathologic fractures because of MPNST, it is quite possible that any wrong movement of his body may cause fracture similar to what happened to him as narrated in the clinical report. As to the cause of MPNST, again, it bears stating at

³⁶ As stated in Delfin’s Position Paper, *CA rollo*, p. 72.

³⁷ Both dated November 13, 2003, *id.* at 92 and 93, respectively.

³⁸ *Id.* at 150-153.

³⁹ *Id.* at 150.

⁴⁰ In an article entitled, “Evaluation of the Risk of Pathologic Fractures Secondary to Metastatic Bone Disease (see <http://www.bonetumor.org/evaluation-pathologic-fracture-risk-due-tumor>; last accessed on April 14, 2015),” it was discussed that:

Unlike fractures of normal bone, **pathologic fractures occur during normal activity or minor trauma due to weakening of the bone by disease. Conditions associated with pathologic fractures include underlying** metabolic disorders, primary benign tumors, and **primary and metastatic malignant tumors.** (Emphasis supplied.)

We note that Delfin’s Death Certificate, *CA rollo*, p. 162, lists “bone cancer” as the immediate cause of his death; while “multiple organ failure [due] to Malignant Peripheral Nerve Sheath Tumor” and “Malignant Peripheral Nerve Sheath Tumor” were the antecedent and underlying causes, respectively, thereof.

this point that petitioners failed to show that the same has any connection with the accident figured in by Delfin while he was on board the vessel.

Fourth, the Court notes that Delfin's Position Paper filed with the Labor Arbiter contained vague and ambiguous allegations of two purported compensable illnesses, *viz:*

The record of the case will reveal that complainant is suffering from two (2) compensable sicknesses, one (1) affecting his abdomen and two (2) affecting his back down to his legs.⁴¹

However, in the Rejoinder later filed by him with the same tribunal, he drastically changed such theory by claiming that he instead suffers from MPNST.⁴² "It has been held that a party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception."⁴³

Lastly, this Court deems it proper to reiterate its ruling in *Quizora v. Denholm Crew Management (Philippines), Inc.*⁴⁴ on the relevance of the seafarer's passing his PEME *vis-a-vis* the probability of his having acquired his injury or illness during the period of employment, thus:

The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. **In short, the "fit to work" declaration in the respondent's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.** Thus we held in *NYK-FIL Ship Management, Inc. v. NLRC*:

While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory. (Emphases supplied)

Hence, the fact that Delfin passed his PEME is of no moment in this case.

⁴¹ CA *rollo*, p. 79.

⁴² Id. at 145-146.

⁴³ *Nahas v. Olarte*, G.R. No. 169247, June 2, 2014.

⁴⁴ *Supra* note 21 at 321-322; citing *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 378-379.

Based on the foregoing, the Court holds that the NLRC and the CA correctly disallowed petitioners' claim for permanent disability benefits and sickness allowance.

Petitioner is neither entitled to attorney's fees and damages.

The claim for attorney's fees cannot, likewise, be allowed. The Court has consistently held that attorney's fees cannot be recovered as part of damages based on the policy that no premium should be placed on the right to litigate. Suffice it to say that the authority of the court to award attorney's fees under Article 2208 of the Civil Code requires factual, legal, and equitable grounds. They cannot be awarded absent a showing of bad faith in a party's tenacity in pursuing his case even if his belief in his stance is specious. Verily, being compelled to litigate with third persons or to incur expenses to protect one's rights is not a sufficient reason for granting attorney's fees.⁴⁵ As can be seen from our discussions above, petitioners were not able to prove that respondents acted in bad faith in refusing to acknowledge their claims. This Court, thus, deems it inappropriate to award attorney's fees.

As a final note, it must be mentioned that the Court respects and upholds the principle of liberality in construing the POEA-SEC in favor of the seafarer. Nonetheless, it cannot grant claims for compensation based on mere conjectures. Indeed, liberal construction neither warrants the blithe disregard of the evidence on record nor the misapplication of our laws.⁴⁶

WHEREFORE, the Petition is hereby **DENIED**. The June 18, 2010 Decision and March 29, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 105930 are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

⁴⁵ *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. Nos. 176439 and 176718, January 15, 2014, 713 SCRA 455,472-473.

⁴⁶ *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*, G.R. No. 186509, July 29, 2013, 702 SCRA 467, 494.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice




JOSE C. MENDOZA
Associate Justice



MARVIC M. V. F. LEONEN
Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO
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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

