Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NORMILITO R. CAGATIN,
Petitioner,

- *versus* -

MAGSAYSAY MARITIME CORPORATION and C.S.C.S. INTERNATIONAL NV,
Respondents.

G.R. No. 175795

Present:

VELASCO, JR., *J., Chairperson*,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

June 22, 2015

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* assailing the Court of Appeals' Decision[1] dated July 21, 2006 and Resolution[2] dated December 5, 2006which affirmed the dismissal of petitioner's complaint by the National Labor Relations Commission (*NLRC*).

The facts of the case follow.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Andres B. Reyes, Jr. and Estela M. Perlas-Bernabe (now a member of this Court), concurring; *rollo*, pp. 24-33.

[2] *Id.* at 35.

On March 16, 2001, respondent Magsaysay Maritime Corporation (*Magsaysay Maritime*) employed petitioner Normilito R. Cagatin (*Cagatin*) in behalf of its foreign principal, C.S.C.S. International NV (*C.S.C.S.*), for the position of Cabin Steward on board the vessel Costa Atlantica, under a Contract of Employment of even date. The POEA-approved contract was for a period of seven (7) months, with a basic salary of $298.00 per month.[3]

On April 24, 2001, petitioner left the Philippines and commenced work at the ship Costa Atlantica. However, on May 27, 2001, he was assigned to work at another ship, Costa Tropicale, which was then on drydock. There, he performed tasks such as cleaning the ship and lifting objects like furniture, steel vaults and others for almost two months or until mid-July 2001. Thereafter, after the ship had sailed and petitioner started performing his official duty as Cabin Steward, he felt what he described as a "crackle" or a slip in his back or spinal bone, which was followed by an intense pain in the lower back and an inability to bend. The next morning, he was unable to stand up due to the intense pain in his lower back. He was brought to the clinic and was given shots of a painkiller for about three days, after which, he resumed work.[4]

Upon disembarkation in Italy, he underwent a medical examination and an X-ray procedure. Then, on July 28, 2001, he was told by the doctor that he could no longer continue working in the vessel. Thus, on that date, petitioner was signed off the ship and, on August 1, 2001, he returned to the Philippines.[5]

In the Philippines, he immediately reported to respondent Magsaysay Maritime, which referred him to the hospital Medical Center Manila and the company-designated physician Dr. Nicomedes Cruz. Petitioner underwent a Magnetic Resonance Imaging (*MRI*) of the lumbosacral spine.[6]

The findings were as follows:

> FINDINGS:
> The lumbar lordosis is straightened.
> There is a small focal central disc protrusion at L5-S1 interspace level, associated with an annular fissure formation.
> This indents slightly on the thecal sac.
> The disc per se shows decreased 12-signals indicating dessication.
> A small broad annular bulge is also seen at L4-L5 interspace.

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3 *Id.* at 10, 99-100.
4 *Id.* at 10-11.
5 *Id.* at 11, 100.
6 *Id.* at 100.

> There is no evident intradural lesion.
> The conus medullaris and caudal roots are intact.
> The spinal canal, lateral recesses and neural foramina are not narrowed.
> The ligamentum flavum is not hypertrophic.
> The rest of the intervertebral discs, vertebral bodies, posterior elements and facet joints are normal.
> The pre- and paraspinal soft tissues are clear.
>
> IMPRESSION:
> Small central disc protrusion, with annular fissure formation, L5-S1.
> Disc annular bulge, L4-L5.
> Straightened lumbar lordosis.
> No evident untradular abnormality.[7]

Dr. Cruz diagnosed petitioner as suffering from "small central disc protrusion with annular fissure formation L5S1; disc annular bulge L4L5." Thereafter, petitioner was referred to specialists, while Dr. Cruz continued to see and treat petitioner until January 15, 2002.[8]

Meanwhile, on January 10, 2002, Dr. Cruz reported that the results of petitioner's "EMG-NCV" was "Normal,"[9] as detailed below:

> PHYSICAL/NEUROLOGIC EXAMINATION
>
> Ambulatory, nicrdauton_ks: intact
> Mmt: (B) ue: 5/5
> (B) le: 5/5
> Sensory: no deficit
> Reflexes: #
> Straight leg raising test: negative
> xxx
> RESULTS
> NCS
> H-reflex studies do not show significant side to side difference and when compared to computed values
>
> EMG
> All muscles tested were silent at rest
>
> INTERPRETATION
> Present EMG-NCV findings essentially normal.[10]

On the same date, Dr. Cruz further reported that:

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7 *Id.* at 100-101. (Underscoring omitted)
8 *Id.* at 101.
9 *Id.*
10 *Id.* at 102.

> The patient has no low back pain and radiculopathy. The range of motion of his trunk is full. He has improved tolerance to prolonged sitting, standing and walking. His lifting capacity has improved to 40 kilos. EMG-NCV is normal. He was advised to continue his physical therapy and occupational therapy.
>
> DIAGNOSIS:
> Small central disc protrusion with annular fissure formation L5S1
> Disc annular bulge L4L5
>
> He is advised to come back on January 18, 2002.[11]

On January 15, 2002, Dr. Cruz declared petitioner as fit to work and executed an affidavit to such effect.[12] The medical report of January 15, 2002 stated:

> The patient has no low back pain and radiculopathy. The range of motion of his trunk is full. He has good tolerance to prolonged sitting, standing and walking. His trunk muscle strength is good. He was evaluated by our orthopedic surgeon and rehabilitation medicine specialist who allowed him to resume his previous activities.
>
> DIAGNOSIS:
> Small central disc protrusion with annular fissure formation L5S1
> Disc annular bulge L4L5
>
> He is fit to work effective today, January 15, 2002.[13]

Almost seven months later, or on August 6, 2002, petitioner went to another physician, Dr. Enrique Collantes, Jr., for another opinion. Dr. Collantes examined petitioner and, thereafter, made the finding that petitioner was "no longer fit to work at sea" in a vessel, which contradicts the earlier finding of Dr. Cruz. Dr. Collantes gave petitioner a disability grading of 8 (33.59%) for his injury.[14]

The Medical Report of Dr. Collantes, dated August 9, 2002, in part, states:

> Symptoms apparently started since April 15, 2001 after lifting a bed cabin as part of his daily routine, after which, he heard and felt a click at his lower back followed by pain. He had to lie down and rest thereafter, to relieve him of the said pain. He consulted the medical house officer where he was given analgesics that relieved him of his pain temporarily. However, the pain recurred and persisted, this time radiating to his left buttock and thigh up to the lateral part of his left leg and foot. He was

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11 CA *rollo*, p. 85.
12 *Rollo*, p. 103; *id*. at 114-115.
13 *Id*. at 65; *id*. at 86.
14 *Rollo*, p. 12.

> referred to an orthopedic surgeon in Venezia, Italy, where he was diagnosed to have a slipped disc at the lumbar spine. He was repatriated to the Philippines on July 28, 2001 and reported at Medical Center Manila under Dr. Nicomedes Cruz for his further evaluation and management. An MRI was requested and revealed central disc protrusion at L5-S1 level and was referred to the physical therapist. The therapist subjected him to a regimen that lasted from August 1, 2001 to January 2002 and was given a certificate that stated he was "fit to work." The patient objected to this decision and sought my orthopedic opinion on August 6, 2002.
>
> On physical examination, the patient was ambulatory, with no limp nor abnormal listing. On inspection, there was muscle atrophy at the left gluteal, quadriceps and gastrocnemius muscles. There was weakness, grade 4/5, on flexion and extension of the left hip, knee and ankle. The dorsiflexion of the toe of his left foot was weak. There was no sensory deficit noted. There was tenderness on palpation over the lower lumbar paravertebral muscles with weakness of the abdominal muscles causing him difficulty in lifting his body from a lying position. Straight leg-raising test was (+) at 50 degrees elevation at the left.
>
> DIAGNOSIS: HERNIATED NUCLEUS PULPOSUS, L5-S1, WITH NEUROPATHY
>
> Based on the clinical course and present physical findings, I am recommending a partial permanent disability with POEA Schedule of Disability Grading of Grade 8, 33.59%, that is, moderate rigidity of 2/3 loss of motion or lifting power of the trunk. The period of healing remains undetermined. The patient is now unfit to go back to work at sea at whatever capacity.[15]

And in a Justification of Impediment Grade 8 (33.59%) report of the same date, also prepared by Dr. Collantes, it was also stated, in part:

> x x x x
>
> In persons who continue with symptoms for longer than 1 year, the results of surgical intervention are not as good as relieving leg pain as in patients who undergo surgery within 3 months from the onset of sciatica. There could have occurred an irreversible neurologic damage, intraneural fibrosis, or altered behavioral patterns to the patient. This relates to the irreversible effect of chronic ischemic compression in normal neurophysiology. The more prolonged the pressure in the spinal nerve, the more intense the compression, the less likely is the return to function.
>
> It has been well documented that long standing pain leads to depression. With depression, the patient develops an element of hostility toward pain and his relationship to the sociologic environment, thus, giving poor result after surgery.
>
> Because of such delay, I have explained to the patient its deleterious effect on his life and his future as a seaman. I have advised him to seek

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15 *Id.* at 66.

> permanent modifications in his lifestyle and nature of work. With a concomitant neurologic deficit secondary to a stroke, the patient is declared PERMANENTLY UNFIT TO RETURN TO SEA DUTY IN WHATEVER CAPACITY.[16]

Thus, petitioner filed his Complaint[17] before the NLRC claiming for Disability Benefits and damages from respondents.

On June 18, 2003, Labor Arbiter Hatima Jambaro-Franco promulgated a Decision[18] in favor of petitioner as complainant. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Magsaysay Maritime Corporation and C.S.C.S. International NV to pay complainant Normilito R. Cagatin the amount of SIXTEEN THOUSAND SEVEN HUNDRED NINETY-FIVE US DOLLARS (US$16,795.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefit.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[19]

The Labor Arbiter found that Dr. Cruz's recommendation that petitioner was "fit to work" was without basis, as petitioner was still experiencing back pain. The arbiter defined "fit to work" as the employee being in the same condition he was in at the time he boarded the vessel. The Labor Arbiter found that such was not the case with petitioner.[20]

On appeal to the NLRC, the latter tribunal, in a Decision[21] promulgated on January 29, 2004, overturned the Labor Arbiter's decision. It held:

> WHEREFORE, the assailed decision of 18 June 2003 is REVERSED and SET ASIDE. Accordingly, respondents-appellants are ordered *in solidum* to pay the complainant-appellee his sickness allowance for one hundred twenty (120) days.
>
> SO ORDERED.[22]

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16 *Id.* at 67.
17 CA *rollo*, pp. 87-91.
18 *Rollo*, pp. 36-41.
19 *Id.* at 41.
20 *Id.* at 40.
21 Penned by Commissioner Ernesto C. Verceles, with Presiding Commissioner Lourdes C. Javier concurring and Commissioner Tito F. Genilo taking no part; *id*. at 42-49.
22 *Id.* at 49.

The NLRC held that the power and authority to assess and declare a seafarer's disability or report him as fit to work is vested solely on the company-designated physician.[23] It added that in order for such an employee to claim disability benefits, he must first be assessed and declared by the company-designated physician as suffering from permanent disability, either total or partial, caused by an injury or illness during his term of employment.[24] It held that the findings of the company-designated physician, and not that of the employee's private physician, are those which are accorded respect and judicial weight in the absence of bad faith, malice or fraud.[25]

The motion for reconsideration filed by petitioner was similarly denied by the NLRC, which also deleted the award of sickness allowance for one hundred twenty (120) days.[26]

Petitioner assailed the NLRC's decision and resolution on a petition for *certiorari* with the Court of Appeals, but the latter court, in its Decision[27] dated July 21, 2006, dismissed the same and affirmed the findings of the commission. The CA noted that the report of petitioner's physician came seven (7) months after he was declared fit to work, thus, raising the possibility that his condition may have been caused by other factors.[28] It also stated that it is the company-designated physician who must proclaim that a seaman suffered a permanent disability, per the POEA Standard Employment Contract.[29] Further, it held that the doctor who actually diagnosed the extent of disability of a claimant and attended to him throughout the duration of his illness prevails over one who had merely examined the claimant upon his recovery for determining disability benefits.[30] The dispositive portion of the CA decision states:

> **WHEREFORE**, the petition is **DISMISSED**. The Resolutions dated January 29, 2004 and April 28, 2005 of the NLRC in NLRC OFW CN (M) 02-08-2121-00 are **AFFIRMED**.
>
> **SO ORDERED**.[31]

A motion for reconsideration filed by petitioner on the above decision was likewise denied for lack of merit.[32]

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23 *Id.* at 47, citing POEA Standard Employment Contract for Seafarers, Sec. 20(B) par. 3.
24 *Id.*
25 *Id.* at 48.
26 Resolution dated April 28, 2005; *id*. at 54-56.
27 *Rollo*, pp. 24-33.
28 *Id.* at 32.
29 *Id.*
30 *Id.* at 32-33.
31 *Id.* at 33. (Emphasis in the original)
32 Resolution dated December 5, 2006, *id*. at 35.

Thus, the petitioner filed the present petition for review.

Petitioner requests this Court to resolve the following issues:

> I.
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT GAVE WEIGHT TO THE JANUARY 15, 2002 REPORT OF THE RESPONDENT'S COMPANY-DESIGNATED PHYSICIAN DESPITE ITS MANIFEST PARTIALITY AND (ITS BEING) TAINTED WITH BAD FAITH IN FAVOR OF RESPONDENTS AS IT WAS CONTRARY TO AN EARLIER REPORT OF THE SAME COMPANY-DESIGNATED PHYSICIAN DATED JANUARY 10, 2002. THUS, THE DECISION OF THE HONORABLE COURT OF APPEALS IS NOT IN ACCORD WITH THE LAW AND JURISPRUDENCE.
>
> II.
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO RECOGNIZE THAT THE ACTUAL CAUSE OF THE INJURIES SUSTAINED BY PETITIONER WAS THE BREACH OF HIS CONTRACT WHEN HE WAS REASSIGNED TO ANOTHER SHIP AND MADE TO WORK NOT IN ACCORDANCE WITH THE TERMS OF HIS CONTRACT.

Upon examination, the only issue up for this Court's resolution is: whether or not petitioner is entitled to disability benefits as recommended by his chosen physician, contrary to the finding that he was “fit to work” as earlier reported by his employer's company-designated physician.

Petitioner argues that there was malice, bad faith and abuse when the company-designated physician, Dr. Cruz, declared him “fit to work.”[33] He claims that just during his last consultation with Dr. Cruz on January 10, 2002, he was told to continue with his physical therapy and occupational therapy and to return on January 18, 2002. However, even before that appointed date, he was already declared “fit to work” on January 15, 2002. Petitioner argues that the reports of January 10, 2002 and January 15, 2002 are conflicting and show the bias, malice and disfavor against him of the company-designated physician.[34] Petitioner also denies having voluntarily submitted himself for examination on January 15, 2002, or three days earlier than the scheduled date.[35] He also blames for his injuries the breach of his employment contract when he was made to work in another ship and was assigned tasks that were more hazardous than the job specified in his contract.[36]

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33 *Rollo*, p. 16.
34 *Id.* at 17.
35 *Id.* at 18.
36 *Id.* at 20.

Respondents counter that the findings of Dr. Collantes, petitioner's chosen physician, were made without the benefit of any objective diagnostic or laboratory test.[37] In reaction to Dr. Collantes' findings, respondents aver that their company-designated physician, Dr. Cruz, also stated that it is unknown what transpired between the time Dr. Cruz declared petitioner as "fit to work" on January 15, 2002 and the time Dr. Collantes found petitioner to have "partial permanent disability" on August 9, 2002.[38] In the face of Dr. Collantes' contrary but belated findings, respondents cite Dr. Cruz's assessment that petitioner has no "neurologic deficit" and maintain that this objective finding carries more weight than the subjective complaints of the petitioner.[39] Respondents also cite jurisprudence stating that the findings of the doctor who actually diagnosed and treated the claimant during his illness prevails over that of one who merely examined the claimant later.[40] They also contend that petitioner is raising the issue of breach of his employment contract only for the first time in this petition and, even if such issue may be raised and entertained, breach of contract would not entitle petitioner to permanent disability benefits.[41] Respondents also deny petitioner's assertion that Dr. Cruz did not examine him on January 15, 2002, stating that the records reveal otherwise.[42]

The Court resolves to deny the petition.

At first glance, it is obvious that the petition prays for this Court to conduct a re-examination of the facts and evidence on record, a task which is not the Supreme Court's, but the NLRC's and the Court of Appeals' function to perform. Basic is the rule that this Court is not a trier of facts and this rule applies with greater force in labor cases.[43] Questions of fact are for the labor tribunals to resolve.[44] It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact.[45]

There are recognized exceptions to the above rule, however, such as when the findings of the Labor Arbiter conflict with those of the NLRC and the CA,[46] as in the case at bar. Given such a situation, this Court is compelled to examine the evidence on record to determine whether petitioner is indeed entitled to disability benefits.

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37 *Id.* at 103-104.
38 *Id.* at 104; CA *rollo*, p. 117.
39 *Id.*; *id.*
40 *Rollo*, p. 115.
41 *Id.* at 127-129.
42 *Id.* at 126-127.
43 *Magsaysay Maritime Services v. Laurel*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, 236.
44 *Nahas v. Olarte*, G.R. No. 169247, June 2, 2014.
45 *Famanila v. Court of Appeals*, 531 Phil. 470, 476 (2006).
46 *Magsaysay Maritime Services v. Laurel*, *supra* note 43, at 236; *Andrada v. Agemar Manning Agency Inc*., G.R. No. 194758, October 24, 2012, 684 SCRA 587, 597.

We find in the negative.

In labor cases, as in all cases which require the presentation and weighing of evidence, the basic rule is that the burden of evidence lies with the party who asserts the affirmative of an issue.[47] In particular, in a case of claims for disability benefits, the *onus probandi* falls on the seafarer as claimant to establish his claim with the right quantum of evidence; it cannot rest on speculations, presumptions or conjectures.[48] Such party has the burden of proving the said assertion with the quantum of evidence required by law which, in a case such as this of a claim for disability benefits arising from one's employment as a seafarer, is substantial evidence.[49] Substantial evidence is not one that establishes certainty beyond reasonable doubt, but only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," even if other minds, equally reasonable, might conceivably opine otherwise.[50] It is more than a mere scintilla of evidence.[51]

It is against this standard that petitioner's assertion that he was declared "permanently unfit to return to sea duty in whatever capacity" must be measured, especially since petitioner levels such assertion against an earlier finding by the company-designated physician that he was "fit to work." Likewise, he accuses respondents of bad faith in declaring him fit to work. Both assertions need substantive proof.

Petitioner fails to discharge this burden.

Petitioner failed to meet the standard of substantial evidence when he not only failed to present his own physician's report, that of Dr. Collantes, with supporting tests and examinations which would have objectively established his supposed permanent disability, but he was also unable to substantiate his claim of "bad faith, malice and abuse" or "manifest partiality" on the findings of the company-designated physician, Dr. Cruz.

To illustrate, it is on record that Dr. Cruz's earlier finding was supported by tests and opinions of experts. Dr. Cruz has stated in his report and affidavit that petitioner's treatment was conducted not just by him alone, but by his other "colleagues who specialize in orthopedic surgery and rehabilitation medicine."[52] Then, as stated in Dr. Cruz's January 15, 2002 report, it was these same experts who "evaluated and allowed" petitioner to

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47 *General Milling Corporation-Independent Labor Union v. General Milling Corporation*, 667 Phil. 371, 393 (2011)

48 *Gabunas, Sr. v. Scanmar Maritime Services Inc.*, 653 Phil. 457, 466 (2010); *Andrada v. Agemar Manning Agency Inc., supra* note 46, at 601.

49 *Cootauco v. MMS Phil Maritime Services Inc.*, 629 Phil. 506, 519 (2010).

50 *Mitsubishi Motors Phils. Corp. v. Simon*, 574 Phil. 687, 695 (2008).

51 *Id.*

52 *CA rollo*, p. 114.

resume his previous activities.[53] Also, Dr. Cruz's findings are supported by the latest results of an EMG-NCV test, which was "normal."[54] Dr. Cruz then personally found that petitioner had "no low back pain and radiculopathy;" had a "full" range of motion in his trunk; had "improved tolerance to prolonged sitting, standing and walking;" and had "improved lifting capacity to 40 kilos."[55] Petitioner never immediately protested such findings. He also does not deny that he was seen and treated by orthopedic surgeons and rehabilitation specialists who worked along with Dr. Cruz, or that he went through an EMG-NCV test.

In contrast, petitioner presents the report of his own physician, Dr. Collantes, who examined him almost seven (7) months after he was declared "fit to work" by Dr. Cruz. The Court finds, however, that this later report by petitioner's chosen doctor is not as reliable as that of the company-designated physician.

As respondents contend, it is unknown "what transpired between January 15, 2002 (when petitioner was declared "fit to work" by the company-designated physician) and August 9, 2002 (when he was declared "unfit to work at sea" by his own physician).[56] It was petitioner's duty as claimant to enlighten the labor tribunals as well as the courts as to what transpired in these seven (7) months. Not having performed this duty, the Court agrees with the Court of Appeals that this non-disclosure should be interpreted against petitioner. The withholding of information as to what happened in the months between the time he was declared "fit to work" up to the time he was declared otherwise, or "unfit to work at sea," opens petitioner's claims to much speculation and conjecture, which makes the grant of his claims for disability benefits untenable.

This lack of forthrightness on the part of petitioner impels this Court to favor the earlier report of the company-designated physician, Dr. Cruz, over that of petitioner's chosen physician, Dr. Collantes. There are other cogent reasons, however. *First*, it is obvious in the report of Dr. Collantes that he only saw petitioner once, or on August 6, 2002, while Dr. Cruz and his team examined and treated petitioner several times, for a period of five (5) months. *Second*, Dr. Collantes did not perform any sort of diagnostic test or examination on petitioner, unlike Dr. Cruz before him. It has been held in cases of disability benefits claims that in the absence of adequate tests and reasonable findings to support the same, a doctor's assessment should not be

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53 *Rollo*, p. 65; *id.* at 86.

54 *Id.* at 64; *id.* at 85. According to the United States National Library of Medicine, National Institutes of Health, nerve conduction velocity (NCV) is a test to see how fast electrical signals move through a nerve. On the other hand, electromyography (EMG) is a test used to diagnose nerve damage or destruction. Abnormal results are often due to nerve damage or destruction, although in some cases the results may be normal even if there is nerve damage. Source: http://www.nlm.nih.gov/medlineplus/ency/article/003927.htm, last accessed April 28, 2015, 10:30 AM.

55 CA *rollo*, pp. 121-123.

56 *Id.* at 117.

taken at face value.[57] Diagnostic tests and/or procedures as would adequately refute the normal results of those administered to the petitioner by the company-designated physicians are necessary for his claims to be sustained.[58] And finally, Dr. Collantes' report states that "with a concomitant neurologic deficit *secondary to a stroke*, the patient is declared permanently unfit to return to sea duty in whatever capacity."[59] The statement indicates that petitioner has an additional medical condition (a stroke)[60] which he never claimed to have suffered during his employment with respondents but, presumably, has been incurred in the interim of his being declared "fit to work" by Dr. Cruz and his examination by Dr. Collantes. Thus, not being work-related, it cannot be made the liability of respondents. And, more importantly, Dr. Collantes worded his assessment in such a way that it appears that petitioner was being declared unfit to work as seafarer, not due to his back injury, but because of his "neurologic deficit secondary to a stroke." Such finding draws this Court to conclude that Dr. Collantes' report cannot be a suitable basis for awarding petitioner his disability claims.

But petitioner also claims that as late as January 10, 2002, he was still being advised to continue with his physical therapy and occupational therapy, although his diagnostic tests were already yielding "normal" results. Petitioner asserts that this contradicts the report five days later, on January 15, 2002, that he was "fit to work."

This cannot be sustained. The Court agrees with respondents' explanation that the January 10, 2002 report was indicative of petitioner then being about to be declared "fit to work," since the report states that his EMG-NCV was already "normal" and that he had "no low back pain and radiculopathy."[61] The report also stated that petitioner had a range of motion in his trunk that was "full;" that he had an "improved tolerance to prolonged sitting, standing and walking;" and that he had an "improved lifting capacity to 40 kilos."[62] Respondents maintain that the advice to continue physical and occupational therapy was only up to petitioner's next visit on January 18, 2002. Therefore, according to respondents, since it was petitioner himself who reported back three (3) days earlier on January 15, 2002, and with no more low back pain and radiculopathy, he was naturally allowed by the orthopedic surgeon and rehabilitation medicine specialist to resume his

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57 *Andrada v. Agemar Manning Agency Inc., supra* note 46, at 601.

58 *Id.*

59 *Rollo*, p. 67. (Italics supplied)

60 Strokes happen when blood flow to the brain stops. Within minutes, brain cells begin to die. There are two kinds of stroke. The more common kind, called ischemic stroke, is caused by a blood clot that blocks or plugs a blood vessel in the brain. The other kind, called hemorrhagic stroke, is caused by a blood vessel that breaks and bleeds into the brain. "Mini-strokes" or transient ischemic attacks (TIAs), occur when the blood supply to the brain is briefly interrupted. Source: http://www.nlm.nih.gov/medlineplus/stroke.html, last accessed: April 28, 2015, 10:58 AM.

61 Radiculopathy is a pinched nerve in the spine. It occurs when surrounding bones, cartilage, muscle, or tendons deteriorate or are injured. The trauma causes these tissues to change position so that they exert extra pressure on the nerve roots in the spinal cord. Source: http://www.healthline.com/health/radiculopathy#Overview1, last accessed: April 28, 2015, 1:00 PM.

62 CA *rollo*, pp. 121-123.

previous activities and was declared "fit to work."[63] This explanation appears more feasible than petitioner's bare claim that the two reports were contradictory.

Also, the Court does not accept petitioner's allegation that he did not report voluntarily for evaluation three (3) days earlier than scheduled, or on January 15, 2002. Such denial by petitioner is bare and contradicted by the evidence on record. The Sworn Affidavit of Dr. Cruz states that he treated petitioner up to January 15, 2002.[64] Also, petitioner does not claim that he returned to Dr. Cruz on January 18, 2002, as originally instructed. If indeed he did not report three (3) days early on January 15, 2002, then he had no reason not to report on January 18, 2002, the original schedule. Petitioner discloses nothing about any events after January 15, 2002, however. Additionally, if he disagreed with Dr. Cruz's report, then he should have immediately protested the same, or he should have immediately sought a second opinion from another physician. But he did neither. With such gaps in petitioner's claims compared with the adequate explanations by respondents, the Court resolves to rule for the latter.

Absent anything on record as to what transpired in the immediate days, weeks and months following the company-designated physician's assessment, the NLRC and the Court of Appeals were correct to rely on the presumed regularity of the findings of the said company-designated physician, as opposed to the belated and subjective report of petitioner's own doctor.

The allegation of petitioner that the allegedly contradicting reports of Dr. Cruz were the result of respondents' malice, bad faith and abuse is not supported by him with substantial evidence. It is consistently held that good faith is always presumed and he who alleges the contrary on his opponent has the burden of proving that the latter acted in bad faith, with malice, or with ill motive.[65] Mere allegation is not equivalent to proof.[66] Although strict rules of evidence are not applicable in claims for compensation and disability benefits, the seafarer must still prove his claim with substantial evidence, otherwise, injustice will be done to his employer.[67] Other than petitioner's bare allegations, nothing on record supports his assertion of malice and bad faith.

The relations between the parties and the procedure that is followed in case of a conflict in medical findings during claims for disability benefits is

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63 *Id.*

64 *Rollo*, p. 103; *id*. at 114-115.

65 *Far East Bank and Trust Company v. Pacilan, Jr*., 503 Phil. 334, 343-344 (2005).

66 *Rivera v. Roman*, 507 Phil. 274, 285 (2005).

67 *Panganiban v. Tara Trading Shipmanagement Inc.*, 647 Phil. 675, 690-691 (2010); *Andrada v. Agemar Manning Agency Inc., supra* note 46, at 601.

governed by the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels* (also known as POEA Standard Employment Contract [*POEA-SEC*]) under POEA Memorandum Circular No. 9, dated June 14, 2000. It states:

> 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 work-related 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 repatriate.
>
> 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 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 postemployment 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.
>
> 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.

Under the above provision, it is the findings and evaluations of the company-designated physician which should form the basis of the seafarer's disability claim.[68] It is this physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to be followed to contest his findings.[69] But the assessment of the company-designated physician is not final, binding or conclusive on anyone, including the seafarer, the labor tribunals, or the courts, since the seafarer may seek a second opinion and consult a doctor of his choice regarding his ailment or

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68 *Andrada v. Agemar Manning Agency Inc., supra* note 46, at 598.

69 *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 316.

injury.[70] If the physician chosen by the seafarer disagrees with the assessment of the company-designated physician, the company and the seafarer may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them.

Petitioner's failure to comply with the requirement under the POEA-SEC to have the conflicting assessments of his disability determined by a third doctor also militates against his claim.[71] It is held that without such a binding third opinion, the original certification of the company-designated physician that the claimant was "fit to work" should stand.[72]

And in jurisprudence interpreting the aforequoted provision of the POEA-SEC, a temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.[73] The 240-day period is meant to harmonize the provision of the POEA-SEC above with the provisions of the Rules and Regulations Implementing Book IV of the Labor Code, specifically Rule X, Section 2, on disability benefits.[74] Where before it was held that permanent disability is the inability of a seafarer to perform his work for more than 120 days, regardless of whether or not he loses the use of any part of his body,[75] now the rule is that if the injury or sickness still requires medical attendance beyond 120 days, the company-designated physician has, including the initial 120 days, up to a maximum of 240 days to declare either fitness to work or permanent disability, beyond which and with or without any declaration, the disability is considered total and permanent.[76]

In the case at bar, the declaration by Dr. Cruz that petitioner was "fit to work" went beyond the 120-day period;[77] however, as the reason therefor was that petitioner still required additional medical treatment, his declaration as "fit to work" was made within the maximum 240 days which therefore forestalls the automatic classification of petitioner's injury as total and permanent and, thus, entitled to the pertinent disability benefits.

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70 *Wallem Maritime Services Inc. v. Tanawan*, G.R. No. 160444, August 29, 2012, 679 SCRA 255, 267.

71 *Philippine Hammonia Ship Agency Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53, 65-68; *Ayungo v. Beamko Shipmanagement Corp.*, G.R. No. 203161, February 26, 2014, 717 SCRA 538, 551.

72 *Id.*

73 *Vergara v. Hammonia Maritime Services Inc.*, 588 Phil. 895, 913 (2008).

74 *Id.*

75 *Crystal Shipping Inc. v. Natividad*, 510 Phil. 332, 340 (2005).

76 *Kestrel Shipping Co., Inc. v. Munar*, G.R. No. 198501, January 30, 2013, 689 SCRA 795, 809-810.

77 One hundred seventy (170) days had passed since petitioner's repatriation on August 1, 2001 up to January 15, 2002, the date he was declared "fit to work."

Lastly, no merit may be attributed to petitioner's contention that his injuries were due to the breach of his employment contract when he was made to work in another ship and assigned tasks that were more hazardous than the job specified in his contract.

First, breach of contract as a cause of action was never raised by petitioner in the labor tribunals and the appellate court below and, consequently, not one among the Labor Arbiter, the NLRC nor the CA addressed the same in their respective decisions. It is only being raised for the first time in the petition. Thus, this Court, likewise, will not discuss the same in respect of the well-settled rule, which also applies in labor cases, that issues not raised below cannot be raised for the first time on appeal; such points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by the reviewing court, as they cannot be raised for the first time at that late stage.[78]

Second, even if such issue on the alleged breach of contract may be resolved, this Court finds no evidence of such breach. First, the transfer of a seafarer to another vessel is not proscribed but allowed by the parties' contract, which is the POEA-SEC. The following provision of the POEA-SEC states:

> Section 15. *Transfer Clause*. The seafarer agrees to be transferred at any port to any vessel owned or operated, manned or managed by the same employer, provided it is accredited to the same manning agent and provided further that the position of the seafarer and the rate of his wages and terms of service are in no way inferior and the total period of employment shall not exceed that originally agreed upon.
>
> Any form of transfer shall be documented and made available when necessary.

And, secondly, petitioner himself provides no description in the record of what his official and actual designated tasks are as a “Cabin Steward.” Therefore, there is simply no basis to his accusation that he was assigned tasks that were “more hazardous” than the job specified in his contract. With no description at all of what the job of Cabin Steward entails, there is simply no point of determining whether the tasks he was actually ordered to do were more hazardous than that of a Cabin Steward. Whenever there is an allegation of breach of contract, the burden of proving such lies on the party who asserts the same.[79] In the case at bar, that burden has not been discharged.

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78 *Genesis Transport Service, Inc., et al. v. Unyon Ng Malayang Manggagawa ng Genesis Transport, et al.*, 631 Phil. 350, 359 (2010).

79 *Mendoza v. David*, 484 Phil. 128, 144 (2004).

As a final note, the Court is wary of the principle that provisions of the POEA-SEC must be applied with liberality in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect.[80] However, on several occasions[81] when disability claims anchored on such contract were based on flimsy grounds and unfounded allegations, the Court never hesitated to deny the same. Claims for compensation based on surmises cannot be allowed; liberal construction is not a license to disregard the evidence on record or to misapply the laws.[82] This Court abides by the principle that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[83]

WHEREFORE, the petition is **DENIED**. The assailed July 21, 2006 Decision and the December 5, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 90529 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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80 *Coastal Safeway Marine Services Inc. v. Esguerra*, G.R. No. 185352, August 10, 2011.

81 *Id., Ison v. Crewserve Inc.*, G.R. No. 173951, April 16, 2012, 669 SCRA 481; *Sy v. Philippine Transmarine Carriers Inc.*, G.R. No. 191740, February 11, 2013, 690 SCRA202; *Crewlink, Inc. v. Teringtering*, G.R. No. 166803, October 11, 2012, 684 SCRA 12; *Panganiban v. Tara Trading Shipmanagement Inc., supra* note 67; *Andrada v. Agemar Manning Agency Inc., supra* note 46.

82 *Philman Marine Agency Inc. v. Cabanban*, G.R. No. 186509, July 29, 2013, 702 SCRA 467.

83 *Crew and Ship Management International Inc. v. Soria*, G.R. No. 175491, December 10, 2012, 687 SCRA 491; *Panganiban v. Tara Trading Shipmanagement Inc., supra* note 67.

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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