



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

**RICKY B. TULABING,**  
Petitioner,

**G.R. No. 202113**

- versus -

**MST MARINE SERVICES (PHILS.),  
INC., TSM INTERNATIONAL  
LTD., and/or CAPT. ALFONSO R.  
DEL CASTILLO,**  
Respondents.

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**MST MARINE SERVICES (PHILS.),  
INC., TSM INTERNATIONAL  
LTD., and/or CAPT. ALFONSO R.  
DEL CASTILLO,**

**G.R. No. 202120**

Petitioners,

Present:

**CARPIO, J.,**  
*Chairperson,*  
**PERALTA,**  
**PERLAS-BERNABE,**  
**CAGUIOA, and**  
**REYES, JR., JJ.**

- versus -

**RICKY B. TULABING,**  
Respondent.

Promulgated:

**06 JUN 2018**

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**DECISION**

**REYES, JR., J.:**

Consolidated in this case are the petitions for review on *certiorari* under Rule 45 of the Rules of Court filed: (1) by Ricky B. Tulabing

*Reyes*

(Tulabing) against MST Marine Services (Phils.), Inc. (MST), TSM International Ltd. (TSM), and/or Capt. Alfonso R. Del Castillo (MST, et al.) in G.R. No. 202113; and (2) MST, et al. against Tulabing in G.R. No. 202120. The petitions seek to assail the Decision<sup>1</sup> dated September 12, 2011 and Resolution<sup>2</sup> dated May 23, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 117319.

### **The Antecedent Facts**

MST is a Philippine-registered manning agency engaged in the recruitment of seafarers for its foreign principal, TSM, a Norwegian shipping company.<sup>3</sup>

Tulabing is a seafarer formerly under the employ of TSM. His employment was covered by the Norwegian International Ship Register collective bargaining agreement (NIS-CBA), between the Norwegian Shipowners' Association (NSA), on the one hand, and the Associate Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and the Norwegian Seafarer's Union (NSU), on the other.<sup>4</sup>

On August 23, 2007, MST, in behalf of TSM, employed Tulabing as GP2 Wiper for the vessel M/T Champion. Covered by a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment, Tulabing's employment was for a period of nine months with a basic monthly salary of US\$454.00.<sup>5</sup>

On September 13, 2007, Tulabing embarked on his voyage on board M/T Champion and commenced the performance of his duties pursuant to his Contract.<sup>6</sup>

Sometime in January 2008, while engaged in the performance of his duties, he felt a sudden crack on his back which was followed by a severe pain and numbness of the left side of his body. He was referred to a physician in Brazil for medical evaluation and was given medicine. Initially, the medicine accorded Tulabing some relief from the pain but eventually his condition aggravated and radiated to his left shoulder and upper extremities.<sup>7</sup>

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<sup>1</sup> *Rollo* (G.R. No. 202113), pp. 30-44.

<sup>2</sup> *Id.* at 45-46.

<sup>3</sup> *Rollo* (G.R. No. 202120), p. 72.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



Subsequently, Tulabing complained of chest pain, hence, he was referred by the vessel master to Dr. J.J. Voorsluis (Dr. Voorsluis) of the Medical Centre for Seamen in Amsterdam, Netherlands for medical examination. Dr. Voorsluis diagnosed him of cervical neuralgia and prescribed him oral medication therefor. He was declared unfit to work for four days with the recommendation that should his medical condition fail to improve, he should be repatriated back to the Philippines.<sup>8</sup> On June 13, 2008, Tulabing was repatriated back to the Philippines.<sup>9</sup>

On June 17, 2008, Tulabing reported to Dr. Nicomedes Cruz (Dr. Cruz), the company-designated physician for medical evaluation. Dr. Cruz confirmed Dr. Voorsluis' diagnosis of Tulabing's cervical neuralgia and noted the persistence of his upper back pain which continued to radiate to his left shoulder and upper left extremities. Dr. Cruz issued a Medical Report, ordering an x-ray of Tulabing's cervical spine and his referral to an orthopedic surgeon for specialized examination, and directing him to return for further evaluation.<sup>10</sup>

On June 26, 2008, Dr. Cruz, following the orthopedic surgeon's evaluation of Tulabing's condition, issued a second Medical Report with the following diagnosis and directives, *viz.*:

The patient was seen by our orthopedic surgeon and noted the result of the cervical spine x-ray-

Cervical spondylosis C4C5 and C5C6 and Reversal of cervical lordosis. He recommends MRI of the cervical spine and advised referral to rehabilitation medicine for physical therapy.

DIAGNOSIS:

Cervical spondylosis C4C5 and C5C6  
Reversal of cervical lordosis

MEDICATION:

Moxen  
Trevoca

Advised to come back on July 03, 2008<sup>11</sup>

The result of Tulabing's Magnetic Resonance Imaging (MRI) indicated the following findings, *viz.*:

MULTI-LEVEL DISC DESSICATION WITH MILD REVERSAL OF  
THE NORMAL LORDOSIS

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<sup>8</sup> Id. at 72-73.

<sup>9</sup> Id. at 73.

<sup>10</sup> Id.

<sup>11</sup> Id.

*Meyer*

BROAD-BASED DISCS PROTRUSIONS FROM C3-C4 CUADAD TO C5-C6 CAUSING MINIMAL THECAL SAC INDENTATION AND BILATERAL NEURAL FORMINAL COMPROMISE.<sup>12</sup>

Tulabing underwent physical rehabilitation from October to December of 2008 under the medical attention of specialist Dr. Reynaldo Matias (Dr. Matias). Dr. Matias, who regularly submitted to Dr. Cruz his evaluations of Tulabing's condition, suggested that on the basis thereof Dr. Cruz give Tulabing a disability grading.<sup>13</sup>

On November 14, 2008, Dr. Cruz assessed Tulabing's condition as Grade 10 disability, *viz.*:<sup>14</sup>

Disability grading under the POEA schedule of disabilities is grade 10 - moderate stiffness or two thirds (2/3) loss of motion of the neck.

Tulabing, however, did not agree. He demanded from MST the payment of maximum disability compensation in the amount of US\$70,000.00 pursuant to Article 12 of the NIS-CBA which provides:<sup>15</sup>

ARTICLE 12

If a seafarer due to no fault of his own, suffers an occupational injury or an occupational disease while serving on board or while traveling to or from the vessel or Company's business or due to marine peril, and as a result his ability to work is permanently reduced, partially or totally, the Company shall pay him disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be maximum:

Radio Officers	
Chief Stewards, Electricians	
Electro Technicians	USD\$90,000.00
Ratings	USD\$70,000.00

MST denied Tulabing's claim and instead offered him compensation in the amount of US\$14,105.00. Tulabing refused the offer, insisting that his disability was permanent and total, hence, his entitlement to full compensation. In an attempt at an amicable settlement, the parties initially submitted the dispute to the AMOSUP pursuant to the grievance procedure specified in the NIS-CBA but no settlement was obtained thereat.<sup>16</sup>

<sup>12</sup> Id. at 74.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 75.

*Meyer*

On July 20, 2009, Tulabing filed with the National Labor Relations Commission (NLRC) a complaint against MST for payment of permanent total disability benefits of US\$70,000.00 pursuant to the NIS-CBA, reimbursement of medical expenses, and payment of moral and exemplary damages as well as attorney's fees. Tulabing claimed that his disability was of such nature that no amount of medication or therapy can restore him to his former physical condition and enable him to resume his customary work and that based on the medical findings, the severity of his disability rendered remote and uncertain the possibility of his future employment for overseas work.<sup>17</sup>

MST denied liability on the ground that under the provisions of his employment contract and the NIS-CBA, a seafarer is only entitled to claim maximum disability compensation of US\$70,000.00 if the company-designated physician declares him to be suffering from Grade 1 disability. They likewise denied liability for damages and attorney's fees, contending good faith and full compliance with their contractual obligations, *viz.*: (1) that Tulabing received full monetary provision for his medical expenses prior and subsequent to his repatriation; and (2) that Tulabing was offered a just disability settlement in the amount of US\$14,105.00 as sanctioned by the POEA-SEC and the NIS-CBA.<sup>18</sup>

On December 29, 2009, Labor Arbiter (LA) Catalino R. Laderas rendered a Decision<sup>19</sup> in favor of MST, ordering the latter to pay Tulabing the amount of US\$14,105.00 and attorney's fees equivalent to 10% of the amount adjudged.

Unsatisfied with the LA's award of disability compensation, Tulabing appealed to the NLRC, asserting his entitlement to the full permanent total disability compensation of \$70,000.00.<sup>20</sup>

During the pendency of his appeal, Tulabing consulted orthopedic surgeon Dr. Alan Leonardo Raymundo (Dr. Raymundo) of the Philippine Orthopedic Institute, Makati City. In a Medical Report dated June 15, 2010, Dr. Raymundo diagnosed Tulabing of cervical neuropraxia and declared him unfit for resumption of duty, *viz.*:

On physical examination, the patient can ambulate well without any support. Manual motor testing shows a 4/5 muscle power involving the area of the deltoids as well as all the muscle compartments of the upper and lower extremities on the left side. He has sensory deficits affecting the left side of the face and the entire left side of the body as well as the upper and lower extremities on the left. There is hyperreflexia of the deep tendon

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<sup>17</sup> Id.

<sup>18</sup> Id. at 76.

<sup>19</sup> Id.

<sup>20</sup> Id. at 77.

*Meyer*

reflexes. There is also noted atrophy of all the muscles on the left upper and left lower extremities.

DIAGNOSIS: CERVICAL NEUROPRAXIA

RECOMMENDATIONS:

With the present condition of the patient, he is not fit to return to his previous work duty.<sup>21</sup>

On August 16, 2010, the NLRC rendered its Decision, setting aside the LA's decision, *viz.*:

**WHEREFORE**, premises considered, the Decision dated 29 December 2009 is hereby SET ASIDE and a NEW ONE entered declaring the disability of [Tulabing] to be permanent total thereby ordering respondents jointly and severally liable to pay [Tulabing] the amount of SEVENTY THOUSAND (\$70,000.00) US DOLLARS or its peso equivalent at the time of actual payment representing his disability benefits, plus 10% attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>22</sup>

On September 21, 2010, MST moved for reconsideration but the same was denied by the NLRC. Undeterred, MST filed a petition for *certiorari* in the CA imputing grave abuse of discretion on the NLRC in awarding full disability benefits and attorney's fees to Tulabing.

On September 12, 2011, the CA rendered a Decision<sup>23</sup> affirming the earlier decision of the NLRC but modified the award of attorney's fees, *viz.*:

**WHEREFORE**, the petition for *certiorari* is **PARTLY GRANTED**. The August 16, 2010 Decision of public respondent NLRC is **AFFIRMED with MODIFICATION**, reducing the award of attorney's fees to US\$1,000.00.

SO ORDERED.<sup>24</sup>

Both parties filed their respective motions for reconsideration but the same were denied by the CA in its Resolution<sup>25</sup> dated May 23, 2012.

Hence, these consolidated petitions.

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<sup>21</sup> Id. at 77-78.

<sup>22</sup> Id. at 78.

<sup>23</sup> Id. at 71-85.

<sup>24</sup> Id. at 84.

<sup>25</sup> Id. at 113.

*Meyer*

### The Issues<sup>26</sup>

Tulabing seeks partial reversion of the assailed CA decision, specifically as to the amount of attorney's fees. He posits that the CA erred when it ruled that he is entitled only to US\$1,000.00 attorney's fees instead of the US\$7,000.00 previously awarded by the NLRC.

On the other hand, MST, et al. put forth the following grounds:

1. The CA committed serious reversible error of law in refusing to give weight and credence to the final assessment of the company-designated physician that Tulabing's disability is grade 10, in complete disregard of the ruling of the Court in *Magsaysay Maritime Corp., et al. v. NLRC (2<sup>nd</sup> Division), et al.*<sup>27</sup> and *Vergara v. Hammonia Maritime Services, Inc.*<sup>28</sup>
2. The CA committed serious reversible error of law in granting permanent disability benefits on the ground that Tulabing was unable to perform work for more than 120 days, in complete disregard of the ruling of the Court in *Magsaysay Maritime*<sup>29</sup> that this period is subject to the right of the employer to declare within 120 to 240 days the seafarer's final disability.
3. The CA committed serious reversible error for faulting MST, et al. in not re-deploying Tulabing, notwithstanding the employer's exercise of management prerogative as recognized in the case of *Rural Bank of Cantilan v. Julve*.<sup>30</sup>
4. The CA committed serious reversible error of law in awarding attorney's fees notwithstanding the lack of factual, legal and equitable bases as required in the case of *Briones v. Macabagdal*.<sup>31</sup>

### Ruling of the Court

The petition of MST, et al. is impressed with merit.

<sup>26</sup> Id. at 45-47; *rollo* (G.R. No. 202113), p. 22.

<sup>27</sup> 630 Phil. 352 (2010).

<sup>28</sup> 588 Phil. 895 (2008).

<sup>29</sup> *Supra* note 27.

<sup>30</sup> 545 Phil. 619 (2007).

<sup>31</sup> 640 Phil. 343 (2010).

*Meyer*

The pivotal issue that must be resolved in MST, et al.'s petition for review is whether or not Tulabing is entitled to the award of *full* disability benefits of US\$70,000.00, as previously held by the NLRC and affirmed by the CA. The issue raised by Tulabing in his petition, as to the amount of attorney's fees awarded, shall be discussed after the Court has ruled on the main issue.

In a long line of cases,<sup>32</sup> the Court has repeatedly ruled that a disability may be temporary or permanent, it may be partial or total. Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.

Article 192(c)(1)<sup>33</sup> of the Labor Code expressly provides that temporary total disability shall be deemed permanent and total if it lasts continuously for more than 120 days *except as otherwise provided in the Rules*. In the recent case of *TSM Shipping Phils., Inc. and/or DAMPSKIBSSELSKABET NORDEN A/S and/or Capt. Castillo v. Louie Patiño*,<sup>34</sup> the Court clarified that the "Rule" referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, which states:

Sec. 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. (Underlining and emphasis Ours)

Thus, by correlating and harmonizing the provisions of Article 192(c)(1) of the Labor Code and Section 2, Rule X of the Amended Rules on Employees' Compensation, the prevailing rule as it now

<sup>32</sup> *Olidana v. Jepsens Maritime, Inc.*, 772 Phil. 234 (2015); *Hanseatic Shipping Philippines Inc., et al. v. Ballon*, 769 Phil. 567 (2015); *Maersk Filipinas Crewing, Inc./Maersk Services Ltd., et al. v. Mesina*, 710 Phil. 531 (2013).

<sup>33</sup> (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;

<sup>34</sup> G.R. No. 210289, March 20, 2017.

*Reyes*



stands is that the 120-day initial period may be extended for the purpose of determining the seafarer's grade of disability. In recently decided cases<sup>35</sup> involving claims for disability benefits, the Court ruled that the company-designated physician must arrive at and issue a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. If the company-designated physician fails to give his assessment within the 120-day period but there is sufficient justification for the delay (e.g. the seafarer's condition required further medical treatment or on-going rehabilitation), the 120-day period shall be extended to 240 days. If the company-designated physician still fails to give a final assessment within the extended period and the seafarer's medical condition remains unresolved after the lapse of said period, the seafarer's disability shall be deemed permanent and total.

A perusal of the records reveals that from the period of June 17, 2008 up until the time the company-designated physician gave a final disability grading, Tulabing never consulted with another physician. Stated otherwise, the only assessment or grading that existed at that time was the grading given by Dr. Cruz, the company-designated physician. Since the disability grading was given by Dr. Cruz on November 14, 2008, or only 150 days after Tulabing's first medical evaluation from repatriation, it was well within the 240-day period.

Dr. Cruz's *second medical report* issued on June 26, 2008 which referred Tulabing to undergo physical rehabilitation, justified the extension of the 120-day period to an additional 31 days. That he was not able to give a disability grading during the 120-day period notwithstanding the fact that evaluations were made, only bolsters the conclusion that he was thorough in his assessment. It was not mere unjustified delay on his part since he referred Tulabing to undergo physical rehabilitation under the care of Dr. Matias who in turn submitted reports to him for further evaluation. That being said, it is not for this Court to question the evaluation and recommendations made by Dr. Cruz especially when it involves matters clearly falling within his field of expertise. Being the company-designated physician who observed, studied and evaluated Tulabing's medical condition from the time the latter was repatriated back to the Philippines up until the time he was undergoing physical rehabilitation, Dr. Cruz's assessment stands in the absence of evidence to the contrary.

The only instance when the assessment of a company-designated physician may be challenged is when the seafarer likewise consulted with his personal physician who issued a different assessment. The conflicting assessments shall be settled by referring the matter to a neutral third-party

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<sup>35</sup> *Paulino M. Aldaba v. Career Philippines Ship-Management, Inc., Columbia Shipmanagement Ltd., and/or Verlou Carmelino*, G.R. No. 218242, June 21, 2017; *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.*, 765 Phil. 341, 355 (2015); *Kestrel Shipping Co., Inc., et al. v. Munar*, 702 Phil. 717, 732-733 (2013).

*Mejia*

physician, whose assessment shall be final and binding. Section 20(B)(3) of the 2000 POEA-Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships (SEC)<sup>36</sup> provides:

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 x x x

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 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.

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.

It bears emphasizing that Tulabing only sought a *second* opinion and consulted Dr. Raymundo when the LA decided against his claim of full disability benefits. In fact, his appeal was already pending with the NLRC when such consultation was made. This move on Tulabing's part appears to be nothing but a mere afterthought given the length of time that has already passed since Dr. Cruz's final assessment. Dr. Raymundo issued the Medical Report only on June 15, 2010 or almost two years (728 days) from the date of Tulabing's first medical evaluation after his repatriation to the Philippines. Moreover, even if the Court were to consider the irrationally late assessment issued by Dr. Raymundo, the assessment of Dr. Cruz must still prevail for failure of the parties to refer the matter to a third-party physician, as required by the Rules<sup>37</sup> and jurisprudence.

<sup>36</sup> Note that there is already a 2010 POEA-SEC. The present case, however, is still governed by the 2000 POEA-SEC as the employment contract was entered into before 2010.

<sup>37</sup> Section 20(B)(3) of the 2000 POEA-SEC.

*Meyer*

In the case of *Crew and Ship Management International, Inc. v. Soria*,<sup>38</sup> the Court explained that the employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties.<sup>39</sup>

There is no question that Tulabing's disability was due to an injury he sustained while engaged in the performance of his work as MST's employee. Under the provisions of the parties' NIS-CBA, the maximum disability compensation that may be paid to an employee is US\$70,000.00. Award of this maximum amount, however, presupposes a disability grading of "1" or permanent and total disability. In the case at bench, the company-designated physician gave Tulabing a final and definite assessment of Grade 10 disability only.

Although the Court has always been vigilant in ensuring that the rights of seafarers are protected, it is likewise keen in upholding labor laws. The entitlement of an overseas seafarer to disability benefits is governed by (1) the law, (2) the employment contract, and (3) the medical findings of the company-designated physician.

In sum, the Court holds that the appellate court clearly erred when it awarded full disability benefits of US\$70,000.00 to Tulabing, in clear disregard of labor laws and settled jurisprudence on the matter.

Anent the issue raised by Tulabing, he avers that the CA erred when it modified the amount of attorney's fees previously awarded by the NLRC. The NLRC awarded him attorney's fees equivalent to 10% of US\$70,000.00. The CA thereafter reduced it to US\$1,000.00. Considering that Tulabing was forced to litigate and incur expenses to protect his right and interest, the Court finds it proper and reasonable to award him attorney's fees equivalent to 10% of the monetary award or US\$1,410.50.

**WHEREFORE**, premises considered, the Decision dated September 12, 2011 of the Court of Appeals in CA-G.R. SP No. 117319 is hereby **REVERSED and SET ASIDE**. The Decision dated December 29, 2009 of the Labor Arbiter is **REINSTATED**.

MST Marine Services (Phils.), Inc., TSM International Ltd. and/or Capt. Alfonso R. Del Castillo are ordered to pay, *jointly and severally*, Ricky B. Tulabing his disability compensation in the amount of

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<sup>38</sup> 700 Phil. 598 (2012).

<sup>39</sup> Id. at 609.

*Meyer*

US\$14,105.00 plus attorney's fees equivalent to ten percent (10%) of the judgment award.

**SO ORDERED.**

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

*Antonio Carpio*  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Estela M. Perlas-Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*Alfredo Benjamins S. Caguioa*  
**ALFREDO BENJAMINS S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

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.

*Antonio Carpio*  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. No. 296  
The Judiciary Act of 1948,  
as amended)