Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ABOSTA SHIPMANAGEMENT CORPORATION, PANSTAR SHIPPING CO., LTD., AND/OR GAUDENCIO MORALES, *Petitioners,*	**G.R. No. 215111**
	Present:
	LEONARDO-DE CASTRO, *Acting Chairperson,**
	PERALTA,**
- versus-	DEL CASTILLO,
	JARDELEZA, *and*
	GESMUNDO,*** *JJ.*
RODEL D. DELOS REYES, *Respondent.*	Promulgated: JUN 20 2018

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DECISION

DEL CASTILLO, *J.*:

In case of conflicting medical assessments, the assessment of the company-designated physician prevails unless a third party doctor is sought by the parties.[1]

Before us is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the March 26, 2014 Decision[3] and the October 28, 2014 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 127545.

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* Per Special Order No. 2559 dated May 11, 2018.

** Designated as additional member per October 18, 2017 raffle vice J. Tijam who recused due to prior participation in the Court of Appeals.

*** Per Special Order No. 2560 dated May 11, 2018.

1 *INC Navigation Co. Philippines, Inc. v. Rosales*, 744 Phil. 774, 786-789 (2014).

2 *Rollo*, pp. 26-67.

3 Id. at 69-76; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam (now Supreme Court Associate Justice) and Priscilla J. Baltazar-Padilla.

4 Id. at 107-108.

Factual Antecedents

Petitioner Abosta Shipmanagement Corp. (Abosta) is a duly licensed manning agency while petitioner Panstar Shipping, Co., Ltd. (Panstar) is a foreign principal agency based in Korea.[5] Petitioner Gaudencio Morales, on the other hand, is an officer of petitioner Abosta.[6]

On March 30, 2010, petitioner Abosta employed respondent Rodel D. Delos Reyes as a bosun on board the vessel MV Stellar Daisy for a period of nine months.[7] Before boarding the vessel, respondent underwent a Pre-Employment Medical Examination and was declared fit to work.[8]

Sometime in July 2010, respondent complained of pain in his groin while performing his duties.[9] He received treatment in Korea and was diagnosed with Inguinal Hernia.[10]

On August 1, 2010, respondent was repatriated and medically examined by the company-designated physician.[11]

On August 23, 2010, upon recommendation of the company-designated physician, respondent underwent right inginual herniorrhaphy with mesh imposition.[12]

On August 25, 2010, respondent was discharged from the hospital and was paid two months sickness allowance.[13]

On September 2, 2010,[14] respondent was declared fit to work by the company-designated physician.[15]

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5 Id. at 194
6 Id. at 28.
7 Id. at 29 and 69.
8 Id.
9 Id. at 70.
10 Id.
11 Id.
12 Id.
13 Id.
14 November 4, 2010 per the National Labor Relations Commission, see CA *rollo*, p. 36.
15 Id.

On July 19, 2011, respondent consulted Dr. Li-Ann Lara- Orencia (Dr. Orencia), who found him to be permanently unfit to work and suffering from a Grade 1 disability.[16] In the Medical Certificate,[17] she stated that:

> Assessment: Hernia is an occupational disease that is characterized by a distention revealed after exposure to heavy work (stress hernia). Hernias are attributed, more or less correctly, to a wide variety of jobs. These most frequently incriminated include heavy manual work, including lifting and carrying and moving heavy objects, especially when these jobs are incidental to the main occupation. However, even a slight effort may suffice to produce hernia. Stress hernia or accidental hernia is the immediate result of a violent effort made while the body is badly positioned; it is a surgical emergency with dramatic symptoms. Studies show that recurrence of the condition is present in about 10% of the cases and avoidance of lifting heavy objects is recommended. This prevents the patient from returning to his former work as Bosun which requires much physical exertion, lifting and carrying heavy loads and other physically stressful tasks. Patient's Hernia is compensable at Grade 1 – total permanent disability.[18]

Thus, on July 20, 2011, respondent filed a Complaint[19] for Disability Benefits, Damages and Attorney's fees.

The Ruling of the Labor Arbiter

On December 29, 2011, the Labor Arbiter rendered a Decision[20] dismissing the complaint for lack of merit. The Labor Arbiter gave more credence to the medical assessment of the company-designated physician as it was based on several months of treatment as against the medical assessment of the independent physician, Dr. Orencia, which was issued almost a year after respondent was repatriated.[21]

The Ruling of the National Labor Relations Commission

Respondent appealed the dismissal of the Complaint.

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16 Id.
17 Id. at 58.
18 Id.
19 Id. at 24-26.
20 Id. at 27-34; penned by Labor Arbiter Geobel A. Bartolabac.
21 Id. at 28-33.

On June 29, 2012, the National Labor Relations Commission (NLRC) issued a Decision[22] affirming the dismissal of the Complaint since it found no error on the part of the Labor Arbiter in giving credence to the medical assessment of the company-designated physician. It ruled that the assessment of the company-designated physician prevailed considering that respondent failed to seek the opinion of a third doctor as provided in the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).[23]

Respondent moved for reconsideration but the NLRC denied the same in its August 30, 2012 Resolution.[24]

The Ruling of the Court of Appeals

Unfazed, respondent elevated the matter to the Court of Appeals (CA) *via* a Petition for *Certiorari*[25] under Rule 65 of the Rules of Court.

On March 26, 2014, the CA reversed and set aside the Decision and Resolution of the NLRC. The CA found respondent entitled to total and permanent disability compensation since his illness rendered him unfit to resume his duties as bosun, which requires physical exertion, lifting, and carrying heavy objects.[26] In arriving at such conclusion, the CA gave more credence to the medical assessment of Dr. Orencia that persons with such illness were advised to avoid lifting heavy objects as there was the possibility of the illness recurring.[27] Thus, the CA ordered petitioners Abosta and Panstar to jointly and severally pay respondent total and permanent disability benefits of US$60,000.00 plus ten percent (10%) of the amount as attorney's fees.[28]

Petitioners sought reconsideration but the same was unavailing.

Hence, petitioners filed the instant Petition.

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22 Id. at 35-41; penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G. Panganiban-Ortiguerra and Nieves V. Vivar-De Castro.

23 Id. at 39-40.

24 Id. at 42-44.

25 Id. at 3-23

26 *Rollo*, pp. 73-74.

27 Id.

28 Id. at 75.

Petitioners' Arguments

Petitioners contend that respondent was not entitled to total and permanent disability benefit as he failed to present any credible medical evidence to prove that he suffered a Grade 1 disability.[29] They insist that the Medical Report of Dr. Orencia was not based on her own diagnosis but on mere studies done on other patients.[30] They likewise point out that Dr. Orencia was not qualified to diagnose respondent as she specialized in Family and Occupational Medicine.[31] Moreover, as between Dr. Orencia and the company-designated physician, the CA should have given more credence to the medical assessment of the latter as under prevailing jurisprudence, medical assessments of the company-designated physician are given more weight and credence considering his/her personal knowledge of the actual medical condition, having closely monitored and treated the seafarer's illness.[32] Thus, the CA should not have doubted the credibility of the fit-to-work assessment of the company-designated physician, and instead, should have relied on the assessment that respondent was fit to work. Petitioners likewise assail the award of attorney's fees for lack of factual basis since there was no evidence that they acted in bad faith.[33]

Respondent's Argument

Respondent, on the other hand, counters that the medical assessment of the company-designated physician was not final and conclusive especially when it was disputed by the medical assessment of an independent physician.[34] He argues that disability should not be understood on its medical significance but on the loss of employment.[35] Moreover, total disability does not require that the employee be absolutely disabled as it simply means the disablement of an employee to pursue his usual work and earn therefrom.[36] Thus, he maintains that his disability was total and permanent because as a result of his illness, he could no longer be rehired as a bosun.[37] As to the award of attorney's fees, respondent claims that it was proper as he was compelled to litigate.[38]

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29 Id. at 166-170.
30 Id.
31 Id.
32 Id. at 181-186.
33 Id. at 186-188.
34 Id. at 207-209.
35 Id. at 205.
36 Id. at 205-206.
37 Id. at 205-207.
38 Id. at 212-213.

Our Ruling

The Petition is meritorious.

It was undisputed that the illness of respondent, Inguinal Hernia, was an occupational disease, and thus, compensable under Section 32-A (14) of the 2000 POEA SEC.[39] In fact, because of his illness, petitioner Abosta paid him two months sickness allowance and shouldered all the medical expenses of his treatment.

The only question in this case was whether respondent was likewise entitled to total and permanent disability compensation.

We rule in the negative.

There is total disability when employee is unable "to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do."[40] On the other hand, there is permanent disability when the worker is unable "to perform his or her 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 or her body."[41]

In this case, respondent was repatriated for medical treatment. Upon the advice of the company-designated physician, respondent underwent right inginual herniorrhaphy with mesh imposition. Two months after his surgery or within the 120-day period, he was declared fit to work by the company-designated physician.

The CA, however, rejected the fit-to-work assessment of the company-designated physician, and instead, declared respondent entitled to total and permanent disability benefits. The CA reasoned that respondent's illness

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39 14. Hernia. All of the following conditions must be met:
a. The hernia should be of recent origin;
b. Its appearance was accompanied by pain, discoloration and evidence of a tearing of the tissues;
c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment;
d. A protrusion of mass should appear in the area immediately following the alleged strain.

40 *Tamin v. Magsaysay Maritime Corporation*, G.R. No. 220608, August 31, 2016, 802 SCRA 111, 125.

41 Id. at 124.

prevented him from pursuing his job as a bosun since, according to Dr. Orencia, there was a possibility that his illness might recur if he resumed his work lifting heavy objects. The CA also said that the failure of petitioners to reemploy respondent as a bosun proved that, contrary to the declaration of the company-designated physician, respondent was not fit to work.

We do not agree.

Section 20 (B) (3) of the 2000 POEA-SEC provides that:

> 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 it exceed one hundred twenty (120) days.
>
> x x x x
>
> 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.

In *Marlow Navigation Philippines, Inc. v. Osias*,[42] the Court declared that –

> Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.
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> In *Carcedo,* the Court held that '[[t]o definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.'
>
> In this case, Osias' doctor of choice, Dr. Orencia, issued a medical certificate which conflicted with the assessment of the company-designated physician. Dr. Orencia opined that the osteoarthritis of Osias prevented him from returning to his work. Osias, however, never signified his intention to resolve the

[42] 773 Phil. 428 (2015).

> disagreement with petitioners by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. *Ergo*, he is not entitled to permanent and total disability benefits.[43]

Respondent failed to refer the conflicting medical assessments to a third doctor.

Similarly, in this case, respondent, after consulting with Dr. Orencia, who happened to be the same doctor in *Marlow*, failed to refer the conflicting medical assessments to a third doctor. In fact, after consulting with Dr. Orencia, respondent immediately filed the instant complaint without first notifying petitioners. For this reason alone, the CA should not have given any credence to the Medical Report of Dr. Orencia. The Court has consistently ruled that in case of conflicting medical assessments, referral to a third doctor is mandatory; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail.[44]

Moreover, we find it significant to note that medical assessment of the company-designated physician is more reliable considering that it was based on the treatment and medical evaluation done on respondent, which showed that the treatment or surgery undergone by respondent was successful, while Dr. Orencia's medical assessment merely quoted the medical definition of hernia and some studies on the possibility of recurrence of the illness. Under prevailing jurisprudence, "the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records."[45]

WHEREFORE, the Petition is hereby **GRANTED**. The assailed March 26, 2014 Decision and the October 28, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 127545 are hereby **REVERSED** and **SET ASIDE**. Respondent's Complaint for Disability Benefits, Damages, and Attorney's fees is **DISMISSED**.

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43 Id. at 446.

44 *INC Navigation Co. Philippines, Inc. v. Rosales*, supra note 1.

45 Id. at 789.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

DIOSDADO M. PERALTA
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice