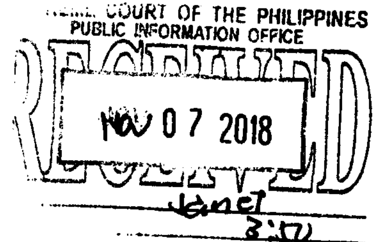
Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

PHILIPPINE HAMMONIA SHIP AGENCY, NARCISSUS L. DURAN, DORCHESTER MARITIME LIMITED,
Petitioners,

- *versus* -

FERDINAND Z. ISRAEL,
Respondent.

G.R. No. 200258

Present:

LEONARDO-DE CASTRO, *CJ.*, Chairperson,
BERSAMIN,*
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

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DECISION

LEONARDO-DE CASTRO, *CJ.*:

Assailed in this Petition for Review on *Certiorari* filed by petitioners Philippine Hammonia Ship Agency (PHSA), Narcissus L. Duran (Duran) and Dorchester Maritime Limited (DML) are: (1) the Decision[1] dated June 30, 2011of the Court of Appeals in CA-G.R. SP No. 111835, which affirmed the Decision[2] dated April 27, 2009 and Resolution[3] dated October 6, 2009 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 04-000311-08; and (2) the Resolution[4] dated January 17, 2012 of the appellate court in the same case, which denied the Motion for Reconsideration of petitioners.

The factual antecedents of the case are as follows:

Petitioner PHSA, the local manning agent, on behalf of petitioner DML, the foreign principal, hired respondent Ferdinand Z. Israel as a Bosun on board the vessel *NASR*. Dr. Leticia C. Abesamis of ClinicoMed, Inc.

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* On official business.

1 *Rollo*, pp. 57-67; penned by Associate Justice Stephen C. Cruz with Associate Justices Isaias P. Dicdican and Angelita A. Gacutan concurring.

2 Id. at 108-117; Presiding Commissioner Benedicto R. Palacol with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-de Castro concurring.

3 Id. at 104-106.

4 Id. at 69-70.

conducted the pre-employment medical examination (PEME) of respondent, and declared him "FIT FOR SEA SERVICE" on June 7, 2005.[5] The next day, June 8, 2005; respondent and Capt. Vicente A. Dayo, as representative of petitioner PHSA, signed the Contract of Employment,[6] with the following terms and conditions:

Duration of Contract:	09 months
Position:	BOSUN
Basic Monthly Salary:	$670.00 per month
Hours of Work:	44 Hrs./Wk.
Overtime:	$373.00/MO. OT: 4.39/Hr. after 85 Hrs.
Vacation Leave w/ Pay	$201.00/MO.
Point of Hire:	MANILA, PHILIPPINES

The Philippine Overseas Employment Administration (POEA) verified and approved respondent's Contract of Employment on June 10, 2005. On June 13, 2005, respondent boarded vessel *NASR*.[7]

While performing his duties on board vessel *NASR*, respondent accidentally fell from a height of 2 to 2.5 meters while he was conducting an inspection of the crew's maintenance work. Respondent's right arm and shoulder hit the deck first, absorbing the impact of his fall. Because of the persistent pain on his right shoulder, respondent was brought to the Orthopedic Department of Cedars-Jebel Ali International Hospital in Dubai where respondent was examined by Dr. Bahaa Khair El-Din (El-Din). Dr. El-Din diagnosed respondent with "supraspinatus tendonitis right shoulder," and recommended his repatriation.[8]

On September 11, 2005, respondent was repatriated to the Philippines. Respondent reported to petitioner PHSA, which referred him to company doctors Dr. Robert Lim (Lim) and Dr. Mylene Cruz-Balbon (Cruz-Balbon) of Marine Medical Services at the Metropolitan Medical Center. Upon the company doctors' advice, respondent underwent an x-ray examination on September 13, 2005, and a Magnetic Resonance Imaging (MRI) on October 3, 2005 of his right shoulder.[9] The x-ray examination did not show any bone or joint abnormality, but the MRI revealed that respondent had "1. Severe osteoarthritis of the right AC joint x x x, and 2. Mild supraspinatus tendonitis/tendinopathy."[10]

Since respondent lives in Misamis Oriental, Dr. Lim referred him to Dr. Grace Cid (Cid) of Polymedic Medical Center in Cagayan de Oro City. After a clinical evaluation, Dr. Cid diagnosed respondent with "Rotator Cuff Tear with Adhesive Capsulitis" for which respondent underwent physical therapy sessions from September 27, 2005 to January 28, 2006. Despite a

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5 Id. at 161.
6 Id. at 160.
7 Id. at 109
8 Id. at 162-163.
9 Id. at 170-171.
10 Id. at 185.

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remarkable improvement in the movement of respondent's right shoulder, Dr. Cid remarked that respondent continued to feel pain on his right shoulder. Dr. Cid then referred respondent back to Dr. Lim for final disposition on January 28, 2006.[11]

On January 31, 2006, Dr. Cruz-Balbon declared respondent "Fit to Resume Sea Duties."[12] However, petitioner PHSA refused to re-employ respondent because of his condition, or to pay him disability benefits.

On June 7, 2007, respondent filed a Complaint[13] against petitioners for disability compensation, moral and exemplary damages, and attorney's fees, which was docketed as NLRC NCR OFW No. 06-05669-07.

Respondent's Arguments

Respondent alleged that he continues to suffer pain on his right shoulder everytime he raises his right arm, making it difficult for him to perform simple tasks such as putting on or taking off his shirt. That despite the physical therapy sessions and improvement in his right shoulder, the pain on his right shoulder was not cured.[14]

Two physicians, whom respondent visited for a medical consultation and examination, confirmed that respondent is still suffering from an injury. Dr. Jose S. Pujalte, Jr. (Pujalte) of Cardinal Santos Medical Center, who wrote his findings on a medical prescription pad on July 3, 2007, stated that respondent has "impingement of the rotator cuff, [right] secondary to acromio-clavicular arthritis," which can be treated by an Acromioplasty and rotator cuff repair. Also, Dr. Renato B. Punas (Punas) issued a Medical Certificate dated September 7, 2007, declaring respondent "Unfit for Seaman duty" as he was suffering from "Severe Arthritis, Acromioclavicular joint, Right, Supraspinatus Tendinopathy, Shoulder Impingement secondary to Type I Acromion." Dr. Punas further commented that respondent's capacity to work is reduced by as much as 60%, which in effect prevents respondent from working as a seaman permanently.[15]

Respondent asserted that his disability is total and permanent as no manning agency or vessel owner would consider him for overseas employment because of the condition of his right shoulder, which is the same reason why petitioners refused to re-engage respondent's services. Respondent claimed that he should be compensated with disability benefits in the amount of US$60,000.00 pursuant to the POEA standard employment contract (POEA-SEC).[16]

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[11] Id. at 187.
[12] Id. at 164.
[13] Id. at 134-137.
[14] Id. at 175.
[15] Id. at 225-227.
[16] Id. at 176-177.

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Respondent alleged that petitioners must be directed to pay him moral and exemplary damages. The award of moral damages is for the bad faith that petitioners exhibited in certifying that respondent is fit to work but refusing to re-employ him as a seafarer, for the physical suffering, mental anguish, and anxiety that respondent and his family suffered, and for the unjust refusal on the part of petitioners to satisfy respondent's reasonable demands. The award of exemplary damages is by way of example to deter other employers from committing the same inequitable acts against their employees. Respondent also averred that he was forced to litigate and that he incurred expenses to protect his rights, which entitles him to an award of attorney's fees.[17]

Petitioners' Arguments

Petitioners argued that, in case of conflicting medical findings between the company-designated physicians, on one hand, and the doctors of choice of the seafarer, on the other hand, the company-designated physicians' assessment should prevail because the POEA-SEC specifically designated the company-designated physician as the person who must determine the seafarer's fitness or degree of disability, and Dr. Lim and Dr. Cruz-Balbon, as company-designated physicians, were the ones who actually monitored and treated respondent's shoulder injury from his repatriation on September 11, 2005 until he was declared fit to work.

Additionally, respondent executed a Certificate of Fitness to Work dated January 31, 2006 wherein he waived any benefits and released petitioners from any liability arising from the Contract of Employment. Thus, respondent is barred from claiming disability benefits from petitioners.[18]

Petitioner Duran alleged he cannot be held personally liable as he merely acted in his corporate capacity without malice or bad faith. Finally, petitioners contend that respondent's claim for disability benefits are unfounded, thus, there is no reason to award him with moral and exemplary damages, and attorney's fees.[19]

The Labor Arbiter's Ruling

After the exchange of position papers and other pleadings, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision[20] on February 28, 2008, upholding the medical analysis of Dr. Pujalte and Dr. Punas that respondent did not fully recover from his shoulder injury, inhibiting him to work as a seaman permanently. Additionally, respondent's disability has become permanent and total since he was not able to perform his usual work

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17 Id. at 177-179.
18 Id. at 151-155.
19 Id. at 156-157.
20 Id. at 120-132; penned by Labor Arbiter Melquiades Sol D. Del Rosario.

for more than 120 days from repatriation, entitling respondent to full disability benefits. The Labor Arbiter also found petitioners liable to pay respondent attorney's fees. The dispositive portion of the Labor Arbiter's Decision reads:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered declaring [respondent] entitled to his disability benefits amounting to USD60,000.00 payable in peso equivalent at the time of payment plus 2% thereof as attorney's fees.[21]

The Ruling of the NLRC

Petitioners appealed to the NLRC, which rendered a Decision on April 27, 2009, dismissing the appeal of petitioners and affirming the Labor Arbiter's Decision. Petitioners filed a Motion for Reconsideration, which the NLRC denied in a Resolution dated October 6, 2009.

The Ruling of the Court of Appeals

Petitioners sought remedy from the Court of Appeals through a Petition for *Certiorari* With Urgent Prayer For The Issuance Of A Writ Of Preliminary Injunction And/Or Temporary Restraining Order. Petitioners assert that the NLRC acted with grave abuse of discretion in finding that respondent's disability is permanent and total for the following reasons, to wit: 1) the ruling of the NLRC is inconsistent with the company-designated physician's certification that respondent is fit work, and the Certificate of Fitness To Work, which respondent executed; 2) the NLRC erred in applying the provisions of the Labor Code of the Philippines and not the provisions of the POEA-SEC; and 3) the NLRC disregarded the more recent pronouncement of the Court in *Vergara v. Hammonia Maritime Services, Inc.*[22] (*Vergara*), which modified the application of the 120-day ruling in *Crystal Shipping, Inc. v. Natividad*,[23] (*Crystal Shipping*). Petitioners further alleged that the award of attorney's fees in favor of respondent have no basis in fact and in law.

On June 30, 2011, the Court of Appeals rendered the assailed Decision, denying the Petition for *Certiorari*, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit. Accordingly, the assailed Decision and Resolution of public respondent National Labor Relations Commission (NLRC) dated April 27, 2009 and October 6, 2009, respectively, are AFFIRMED.[24]

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[21] Id. at 131.
[22] 588 Phil. 895 (2008).
[23] 510 Phil. 332 (2005).
[24] *Rollo*, p. 66.

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The Ruling of the Court

Hence, petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure, based on the following grounds:

> A. Respondent is not entitled to disability benefits because he was already declared fit to work by the company designated physician which he himself acknowledged by executing a "certificate of fitness for work."
>
> B. Respondent is not entitled to disability benefits on the ground that he has been unable to work for more than 120-days. Payment of disability compensation is a contractual obligation that arises only upon fulfillment of the requirements for it, to wit: a) disability of seafarer caused by a work-related illness or injury; and b) which work-related illness or injury was contracted or sustained during the term of his contract. In the instant case, no disability was sustained, as Respondent was declared Fit to Work. Hence, he is not entitled to disability compensation.
>
> C. The POEA-contract does not state at all that seafarer is entitled to maximum disability compensation in the event that he is unable to work for more than 120-days. The POEA-contract is clear that disability compensation is based only on the schedule of Disability provided under the said contract and not on the number of days seafarer has been unable to work.[25]

A careful examination of the present Petition reveals that it contains the same arguments raised by petitioners in their Petition for *Certiorari* filed before the Court of Appeals. Petitioners maintain that respondent is not suffering from any illness or injury since he was declared fit to work by the company-designated physician on January 31, 2006, which respondent acknowledged by executing a Certificate of Fitness to Work. Petitioners assert that, under the POEA-SEC, it is the company-designated physician who must determine the seafarer's disability rating or fitness to work. Likewise, the assessment of the company-designated physicians, Dr. Lim and Dr. Cruz-Balbon, who actually examined and monitored the progress of respondent's treatment should be given more probative weight and credence than the findings of respondent's doctors of choice, Dr. Pujalte and Dr. Punas.

Petitioners reiterate that the Court of Appeals erred in declaring that respondent is entitled to full disability benefits since his medical treatment exceeded 120 days. Citing *Vergara*, petitioners assert that the 120 day medical treatment of a seafarer may now be extended to 240 days, and only upon the lapse of the 240 day period may a seafarer be considered totally

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[25] Id. at 37.

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and permanently unfit. Considering that the company-designated physician certified that respondent is fit to work within the 240-day treatment period, it cannot be said that respondent's disability is total and permanent.

Petitioners likewise restate that their refusal to pay respondent's claims for disability benefit was pursuant to the company-designated physician's certification that respondent is already fit to work. In the absence of malice or bad faith on their part, the award of attorney's fees in favor of respondent is improper.

The petition is not meritorious.

Article 198(c)(1) [formerly Article 192(c)(1)] of Presidential Decree No. 442 of 1974, otherwise known as the Labor Code of the Philippines, as Amended and Renumbered,[26] defines permanent and total disability as follows:

> Article 198. *Permanent Total Disability.* — x x x
>
> x x x x
>
> (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[.]

In conjunction with the above article, the Amended Rules on Employees' Compensation, which was adopted to implement the provisions of Title II, Book IV of the Labor Code, provides:

> RULE VII
> *Benefits*
>
> x x x x
>
> Section 2. *Disability* – x x x
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> x x x x
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> RULE X
> *Temporary Total Disability*
>
> x x x x

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26 July 21, 2015.

> Section 2. *Period of Entitlement.* – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

The interpretation and application of the afore-quoted provisions by the Court have changed and developed through the years. In *Marlow Navigation Philippines, Inc. v. Osias*,[27] the Court summarized jurisprudence on the 120-day and 240-day rules as regards the permanent total disability of a seafarer, thus:

> *Laws and jurisprudence*
> *relating to the 120-day*
> *and 240-day rule*
>
> As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil.* in this wise: "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."
>
> The present controversy involves the permanent and total disability claim of a specific type of laborer – a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.
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> Article 192(c)(1) of the Labor Code, which defines permanent and total disability of laborers, provides that:
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> x x x x
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> The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:
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> x x x x
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> These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC)* whose Section 20 (B)(3) states:

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27 773 Phil. 428 (2015).

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> 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**. x x x.

In *Crystal Shipping, Inc. v. Natividad*, (*Crystal Shipping*) the Court ruled that "[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body." Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The Court in *Vergara v. Hammonia Maritime Services, Inc.* (*Vergara*), however, noted that the doctrine expressed in *Crystal Shipping* – that inability to perform customary work for more than 120 days constitutes permanent total disability – should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made <u>because the seafarer requires further medical attention</u>, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. x x x.

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar* (*Kestrel*). In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total

and permanent disability, considering that the treatment of the company-designated physician may be extended up to a maximum of 240 days. In Kestrel, however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara*, the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.* stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

Then came *Carcedo v. Maine Marine Phils., Inc.* (*Carcedo*). Although the said case recognized the 240-day rule in *Vergara*, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law**." *Carcedo* further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* (*Elburg*), it was affirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated – that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of

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> 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

> Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.
>
> On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.
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> x x x x
>
> Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and

> regulations is to strive for social justice over the diverging interests of the employer and the employee.[28] (Citations omitted.)

Respondent, in this case, filed his Complaint before the NLRC on June 7, 2007, prior to October 6, 2008; therefore, the 120-day rule in *Crystal Shipping v. Natividad*[29] applies herein. The Court reiterates below the pertinent ruling in *Crystal Shipping*:

> **Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.** As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent.
>
> **Total disability, on the other hand, means the disablement of an employee to earn wages in the 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. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity**.
>
> Although the company-designated doctors and respondent's physician differ in their assessments of the degree of respondent's disability, both found that respondent was unfit for sea-duty due to respondent's need for regular medical check-ups and treatment which would not be available if he were at sea. There is no question in our mind that respondent's disability was total.
>
> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. **What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.** An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work. (Emphases supplied, citations omitted.)

It is undisputed that respondent suffered his injury during the term of his Contract of Employment and in the performance of his duties as bosun on board vessel *NASR* after he slipped and fell from a height of 2 to 2.5 meters while conducting an inspection of the crew's maintenance work on the vessel. Respondent was medically repatriated on September 11, 2005, and records show that respondent immediately reported to the office of petitioner PHSAI, which referred him to company doctors, Dr. Lim and Dr. Cruz-Balbon at the Metropolitan Medical Center. Respondent underwent an

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[28] Id. at 438-443.

[29] Supra note 23 at 340-341.

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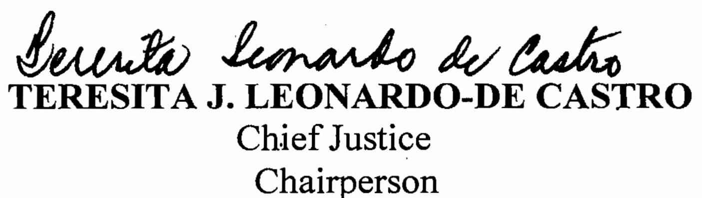
MRI which yielded a finding that he is suffering from "1. Severe osteoarthritis of the right AC joint x x x, and 2. Mild supraspinatus tendonitis/tendinopathy." Respondent was subsequently referred to Dr. Cid who diagnosed him with "Rotator Cuff Tear with Adhesive Capsulitis." From September 27, 2005 to January 28, 2006, respondent underwent a series of physical therapy sessions. However, despite the treatment that he received and improvement in his condition, respondent continued to suffer shoulder pain. By the time that Dr. Cruz-Balbon certified that respondent is already fit to work on January 31, 2006, 142 days had passed since respondent's repatriation on September 11, 2005. During that period, respondent was incapacitated to perform his work as a bosun, which consequently deprived him of his livelihood. Pursuant to *Crystal Shipping*, respondent is already deemed to be suffering from permanent total disability.

Even if the Court resolves the present Petition by its pronouncements in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[30] the company-designated physician still failed to make a determination of respondent's disability within the period prescribed by law, *i.e.*, 120 days. Dr. Lim and Dr. Cruz-Balbon did not give a medical diagnosis within the 120-day period that could justify the extension of respondent's treatment to 240 days. As discussed above, Dr. Cruz-Balbon declared respondent "Fit to Resume Sea Duties" only on January 31, 2006, or after the lapse of 142 days. Dr. Lim and/or Dr. Cruz-Balbon did not offer any plausible reason for their failure to comply with the 120-day rule, hence, respondent's disability became permanent and total.

Lastly, we find the award of attorney's fees in favor of respondent to be in order. Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.[31]

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated June 30, 2011 and Resolution dated January 17, 2012 of the Court of Appeals in CA-G.R. SP No. 111835 are **AFFIRMED**.

SO ORDERED.



TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

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30 765 Phil. 341 (2015).

31 *United Phil. Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014).

WE CONCUR:

On official business
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice