SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MAGSAYSAY MARITIME CORPORATION, PRINCESS CRUISE• LINES LTD., and/or GARY M. CASTILLO, Petitioners,	**G.R. No. 230901**
	Present:
- versus -	PERALTA, *C.J.*., *Chairperson*, CAGUIOA, J. REYES, JR., LAZARO-JAVIER, and INTING,* *JJ.*
ALLAN F. BUICO, Respondent.	Promulgated: DEC 05 2019

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DECISION

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated October 13, 2016 and Resolution[3] dated March 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144772, which denied petitioners' petition for *certiorari* under Rule 65 of the Rules of Court.

Facts

On November 5, 2013, petitioner Magsaysay Maritime Corporation (Magsaysay), a local manning agency, in behalf of its principal, petitioner Princess Cruise Lines Ltd., entered into a contract of employment with respondent Allan F. Buico (Buico) as Second Pantryman aboard the vessel *Star Princess* (Hotel).[4] Buico's basic wage was US$477.00 per month with guaranteed overtime pay of US$498.00 per month, among other benefits.[5]

• Stated as "Cruises" in some parts of the *rollo* and CA *rollo*.

* Designated additional Member per Special Order No. 2726 dated October 25, 2019.

1 *Rollo*, pp. 3-40.

2 Id. at 41-50. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Ramon Paul L. Hernando (now a Member of the Court).

3 Id. at 52-53.

4 Id. at 41-42.

5 Id. at 42.

While on board, Buico met an accident which caused him an injury on his right leg and ankle.[6] First aid treatment was initially given to Buico and he was thereafter transferred to a hospital in Canada where he underwent an Open Reduction Internal Fixation (ORIF) surgery procedure.[7] Thereafter, he was repatriated to the Philippines on July 9, 2014 for further treatment.[8]

After examination, the company-designated physician initially diagnosed Buico to have "*s/p ORIF (July 4, 2014-Canada) for Fracture, lateral and posterior malleolus with talar shift, right*", and recommended an orthopedic follow-up checkup and continued wound care.[9] The company-designated physician again examined Buico on August 14, 2014 and, in a medical report, he recommended 12 sessions of physical therapy.[10] All in all, Buico underwent therapy for a total of 36 sessions starting August 19, 2014 until November 28, 2014, as shown by his certificate of attendance.[11]

On October 11, 2014 and November 15, 2014, the company-designated physician issued an Interim Disability Grading, assessing Buico's disability at Grade 10 pursuant to the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).[12] Subsequently, on December 1, 2014, the company-designated physician gave a Final Medical Report[13] and a Disability Grading[14] of Grade 10 disability in accordance with the POEA-SEC.

Unhappy with this assessment, Buico consulted his own physician who diagnosed Buico unfit to perform sea duty in whatever capacity with a permanent disability status.[15]

On March 13, 2015, Buico then filed a Complaint[16] with the Labor Arbiter (LA) against petitioners for permanent and total disability benefits.

In their defense, petitioners essentially made the following arguments: Buico was not entitled to permanent and total disability benefits because the company-designated physician had already assessed his disability at Grade 10 pursuant to the POEA-SEC; Buico failed to follow the third doctor rule; the company-designated physician had knowledge of Buico's actual medical condition, hence, he was more qualified to assess his disability and his assessment should be upheld.[17]

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6 Id.
7 Id.
8 Id.
9 Id.
10 Id.
11 Id.
12 Id.
13 CA *rollo*, pp. 126-127.
14 Id. at 128.
15 *Rollo*, p. 43.
16 CA *rollo*, pp. 131-132.
17 *Rollo*, p. 43.

The Ruling of the LA

In a Decision[18] dated June 30, 2015, the LA found that Buico suffered from Grade 10 disability, and ruled that Buico's physician's assessment was not done as thoroughly as that of the company-designated physician who had continuously attended to him for a period of more than four (4) months.[19] The dispositive portion of the LA Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1) Declaring [Buico] as suffering from Grade 10 disability[; and]
>
> 2) Ordering [petitioners Magsaysay], Princess Cruise Lines Ltd. and Gary M. Castillo to jointly and severally pay [Buico] disability benefit in the amount of US$10,075 or in its Philippine Peso equivalent at the time of payment.
>
> All other claims are dismissed for lack of merit.
>
> So Ordered.[20]

Aggrieved, Buico appealed with the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

In a Resolution[21] dated November 27, 2015, the NLRC reversed the LA's findings, ruling that the referral to a third doctor was not mandatory and that the findings of the company-designated physician and the seafarer's doctor were inconclusive because they still had to be weighed and considered by the labor tribunals.[22] Further, the NLRC ruled that the company-designated physician's assessment was not accurate and precise, pointing out that the company-designated physician even admitted in the Final Medical Report that Buico was not restored to his previous condition, hence, his disability should therefore be considered as total and permanent.[23] The dispositive portion of the Resolution reads:

> **WHEREFORE**, premises considered, the appeal of [Buico] is **GRANTED**. The Decision dated June 30, 2015 is hereby **MODIFIED** in that [petitioners] are hereby **ORDERED** to solidarily pay [Buico] the amount of US$60,000 as permanent and total disability compensation plus 10% thereof as attorney's fees.
>
> **SO ORDERED.**[24]

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18 CA *rollo*, pp. 68-75. Penned by Labor Arbiter Remedios L.P. Marcos.
19 Id. at 71-72.
20 Id. at 75.
21 Id. at 57-66. Penned by Commissioner Alan A. Ventura and concurred in by Presiding Commissioner Gregorio O. Bilog, III and Commissioner Erlinda T. Agus.
22 *Rollo*, p. 44; CA *rollo*, pp. 63-64.
23 Id.; id. at 60-62.
24 CA *rollo*, p. 65.

In a Resolution[25] dated January 21, 2016, the NLRC denied petitioners' motion for reconsideration. Subsequently, the petitioners filed a Rule 65 petition with the CA.

The Ruling of the CA

In a Decision[26] dated October 13, 2016, the CA denied the petition and affirmed the NLRC rulings finding Buico entitled to permanent and total disability benefits. The CA held that the Disability Grading given by the company-designated physician was not accurate and precise as to Buico's actual medical condition.[27] Because the company-designated physician failed to arrive at a definite assessment of Buico's fitness or disability within the statutory periods, the CA ruled that Buico should be deemed totally and permanently disabled and entitled to the corresponding disability benefit.[28]

Petitioners filed a Motion for Reconsideration,[29] but this was denied by the CA in a Resolution[30] dated March 31, 2017. Aggrieved, petitioners filed the instant Petition under Rule 45 of the Rules of Court before the Court.

On July 31, 2017, the Court issued a Resolution[31] requiring Buico to file a Comment on the instant Petition. Subsequently, in a July 9, 2018 Resolution,[32] the Court noted that Buico's counsel, Atty. Vicenzo Nonato M. Taggueg (Atty. Taggueg), failed to file a Comment on the Petition and resolved to require Atty. Taggueg to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and to comply with the July 31, 2017 Resolution. On March 4, 2019, the Court again issued a Resolution[33] which required the filing of a comment and imposed a fine of ₱1,000.00 upon Atty. Taggueg for his failure to comply with the show cause resolution. Since the Court has not received Buico's Comment despite the issued Resolutions requiring the filing of the same, the Court shall dispense with the filing of the Comment and now resolve the controversy based on the Petition and the existing records.

Issue

The main issue in the case at bar is whether Buico is entitled to the award of total and permanent disability benefits.

The Court's Ruling

The instant Petition is meritorious.

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25 Id. at 77-79.
26 *Rollo*, pp. 41-50.
27 Id. at 48.
28 Id.
29 Id. at 55-75.
30 Id. at 52-53.
31 Id. at 76.
32 Id. at 79-80.
33 Id. at 84-85.

At the outset, it is important to note that a Rule 45 review by this Court in labor cases generally does not delve into factual questions or to an evaluation of the evidence submitted by the parties.[34] However, one exception to this rule is when the judgment is based on a misapprehension of facts.[35] Such exception applies in the instant case because, contrary to the findings of the NLRC and the CA, the company-designated physician had issued a final, accurate, and precise disability grading within the prescribed statutory periods. Hence, Buico is not entitled to the award of total and permanent disability benefits.

It is settled that the seafarer's entitlement to disability benefits is governed by law, the parties' contracts, and by medical findings. Since Buico was employed in 2013, the procedure to be observed in claiming disability benefits is outlined in Section 20(A) of the 2010 POEA-SEC, as follows:

> **SECTION 20. COMPENSATION AND BENEFITS**
>
> **A. 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
>
> 2. x x x 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. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed **from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days**. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> 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.** (Emphasis supplied)

Pursuant to the above provisions, when a seafarer suffers a work-related injury, the employer is obligated to refer the seafarer to a company-designated physician who has to arrive at a definite assessment of the seafarer's fitness or

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[34] *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64478>.

[35] *Mighty Corp. v. E. & J. Gallo Winery*. 478 Phil. 615, 639-640 (2004).

degree of disability within a period of 120 days from repatriation.[36] However, if there is no definitive declaration because the seafarer required further medical attention, then the 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.[37] The case of *Jebsens Maritime, Inc. v. Mirasol*[38] succinctly summarized the rules governing seafarers' claims for total and permanent disability benefits as follows:

> 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 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[39] (Emphasis and underscoring supplied)

In the case at bar, while the company-designated physician had issued both the Final Medical Report and Disability Grading on December 1, 2014 — beyond the initial 120-day period from repatriation which ended on November 6, 2014 — there was sufficient justification for such failure to give a timely medical assessment and to extend the period of diagnosis and treatment because Buico had required further medical treatment. As found by the CA, Buico had religiously undergone therapy from August 19, 2014 until November 28, 2014.[40] The Final Medical Report and Disability Grading was thus timely issued by the company-designated physician within the extended 240-day period which ended on March 6, 2015.

Despite this, however, both the NLRC and the CA ruled that the disability assessment and medical report made by the company-designated physician were not accurate and precise as to Buico's medical condition based on their wording. A closer look at these documents, however, gives a contrary conclusion.

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36 *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018, p. 7.
37 Id. at 8-9.
38 G.R. No. 213874, June 19, 2019.
39 Id. at 6.
40 *Rollo*, p. 42.

The Final Medical Report[41] issued by the company-designated physician contained the following discussion as to Buico's condition:

> On December 1, 2014, [Buico] was reevaluated by Orthopedic Surgery service. At this time, he has completed a total of 36 sessions of physical therapy. Subjectively, the patient reported intermittent right foot pain of VAS 4/10 felt on prolonged walking and stair climbing. Objectively, [the] latest x-ray dated November 4, 2014 showed healed fracture with implants in place. Patient was able to tolerate full weight bearing, however there was note of a limping gait. Residual limitation in range of motion on the right ankle was noted. **No other treatment intervention was indicated for the patient aside [from] continued self-guided home exercises and as needed intake of pain medication. Mr. Buico was deemed maximally medically improved for the Orthopedic condition referred.**[42] (Emphasis supplied)

The Disability Grading[43] also issued by the company-designated physician on the same date contained the following statement:

> *Should it be needed, [the] disability grading that closely corresponds to the patient's present functional capacity, in accordance [with] the 2010 POEA Standard Employment Contract, Section 32 (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Disease or Illness Contracted), Lower Extremities, Malleolar fracture with displacement of the foot inward or outward, is a* ***Grade 10 disability.***[44] (Emphasis supplied; italics in the original)

After perusing the above excerpts, the Court disagrees with the findings of the CA and NLRC. The above documents show that the findings of the company-designated physician as to Buico's disability were final, accurate, and precise, especially since there was a specific disability grading and since it stated that there was no other treatment intervention indicated for Buico. It is likewise noteworthy that the disability grading given by the company-designated physician was a result of several months of diagnosis and treatment. In fact, this Grade 10 disability rating was already given to Buico at least twice as an interim disability grading, thereby further lending credence to the assessment given by the company-designated physician.

In the face of such final disability grading given by the company-designated physician within the prescribed period, the seafarer who intends to contest such assessment has the duty to observe the third doctor provision under the 2010 POEA-SEC.[45]

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41 CA *rollo*, pp. 126-127.
42 Id. at 127.
43 Id. at 128.
44 Id.
45 2010 POEA-SEC, Sec. 20 states:

> **SECTION 20. COMPENSATION AND BENEFITS**
> **A. 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
>
> **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**

As stated in jurisprudence, in case of non-observance by the seafarer of the third doctor referral provision in the contract, the employer can insist on the company-designated physician's assessment even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make a determination and whose decision shall be final and binding on the parties.[46] Securing a third doctor's opinion is the duty of the seafarer, who must actively or expressly request for it.[47]

Contrary to the pronouncement made by the NLRC, the referral to a third doctor is mandatory.[48] Without referral to a third doctor, there is no valid challenge to the company-designated physician's findings. Ultimately, therefore, the company-designated physician's findings in such a situation must be upheld over the findings of the personal doctor of the seafarer.[49]

In the instant case, after the company-designated physician gave a final Grade 10 disability assessment, Buico consulted his own physician who opined that he was unfit to perform sea duty in whatever capacity with a permanent disability status. Thereafter, Buico filed a complaint against his employers without first expressly requesting the company for the referral of the matter to a third doctor.

This failure by Buico to comply with the requirement of referral to a third doctor is tantamount to a violation of terms under the POEA-SEC. Consequently, without a binding third-party opinion, the final, accurate and precise findings of the company-designated physician prevail over the conclusion of the seafarer's personal doctor.

In light of the foregoing, the Court finds that the LA had correctly awarded Grade 10 disability benefits to Buico based on the disability grading given by the company-designated physician. Further, in accordance with prevailing jurisprudence, the total monetary award in his favor shall be subject to an interest of 6% per annum from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated October 13, 2016 and Resolution dated March 31, 2017 of the Court of Appeals in CA-G.R. SP No. 144772 are **SET ASIDE**. The Labor Arbiter's Decision dated June 30, 2015 is **REINSTATED**. The total monetary award shall be subject to the interest rate of 6% per annum from the finality of this Decision until full payment.

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third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

46 *Pastor v. Bibby Shipping Philippines, Inc.*, supra note 36, at 11.

47 *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, G.R. No. 225899, July 10, 2019, p. 11.

48 *INC Navigation Co. Philippines, Inc. v. Rosales*, 744 Phil. 774, 787 (2014).

49 *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, supra note 47, at 12.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
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.

DIOSDADO M. PERALTA
Chief Justice