



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

JEROME D. PALADA,

Petitioner,

G.R. No. 247778

Present:

- versus -

LEONEN, J., *Chairperson,*
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 ROSARIO,* *JJ.*

**CROSSWORLD MARINE
 SERVICES KAPAL
 (CYPRUS), LTD, and KAPAL
 (CYPRUS), LIMITED,**

Respondents.

Promulgated:

February 17, 2021

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DECISION

INTING, J.:

Assailed in the present Petition for Review on *Certiorari*¹ are the Decision² dated February 18, 2019 and the Resolution³ dated June 11, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 156886. The CA reversed and set aside the Decision⁴ dated April 2, 2018 and the Resolution⁵ dated July 23, 2018 of the Panel of Voluntary Arbitrators in MVA-100-RCMB-NCR-168-03-06-2017⁶ which awarded *total and permanent disability benefits* and attorney's fees to Jerome D. Palada (petitioner).

* Designated additional member per Raffle dated February 10, 2021.

¹ *Rollo*, pp. 4-28.

² *Id.* at 335-351; penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) with Presiding Justice Romeo F. Barza and Associate Justice Franchito N. Diamante, concurring.

³ *Id.* at 372-373.

⁴ *Id.* at 244-254; signed by MVA Edgar P. Fernando, Chairman, and MVA Josephus B. Jimenez, and MVA Rosario C. Cruz, Members.

⁵ *Id.* at 278-279.

⁶ Referred to as MVA-100-RCMB-NCR-168-05-06-2017 in the Decision dated April 2, 2018 of the Panel of Voluntary Arbitrators.

The Antecedents

On May 6, 2016, Crossworld Marine Services, Inc., in behalf of its foreign principal, Kapal (Cyprus) Limited (collectively, respondents), hired petitioner as an ordinary seaman on board the vessel M/V Eurocargo Venezia with a contract duration of eight months.⁷ Petitioner's employment was covered by the *ITALIAN CBA for NON DOMS*, a collective bargaining agreement (CBA).⁸

Petitioner was deployed to board the vessel on May 20, 2016. On July 11, 2016, petitioner was accidentally hit by a moving vehicle on board the vessel while he was loading and parking a trailer. He was immediately given first aid and thereafter brought to a medical facility in Malta where he was diagnosed with "*trauma successive dorsal contusion of lumbo sacral spine.*" Petitioner continued to experience pain on his back despite the various medications prescribed to him. As a result, he was repatriated on July 18, 2016.⁹

Petitioner was referred to Dr. Rodolfo P. Bergonio (Dr. Bergonio), the company-designated physician, at the Marine Medical Services, where he was examined and treated from July 21 to October 27, 2016. Petitioner was initially diagnosed to be suffering from "*soft tissue contusion; upper thoracic cage and left anterior chest wall; chronic mild T4 compression fracture.*" As such, he was advised to start formal physical therapy and to take pain and muscle relaxant medications.¹⁰

After a series of treatments in a span of two months, petitioner still continued to feel pain in his chest and upper back area whenever he tried to lift objects.¹¹ Thus, on October 27, 2016, Dr. Margarita Justine O. Bondoc (Dr. Bondoc), also a company-designated physician, gave him an *interim assessment* of a Grade 11 disability for having slight rigidity, or 1/3 loss of lifting power of the trunk.¹²

On November 8, 2016, Dr. Bergonio declared petitioner as fit to

⁷ See Contract of Employment dated May 6, 2016, *rollo*, p. 33.

⁸ *Id.* at 336-337.

⁹ *Id.* at 337.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Medical Report of Marine Medical Services dated October 27, 2016, *id.* at 183.



work from an orthopedic standpoint as suggested by a supposed Functional Assessment done by a certain Dr. Basuil.¹³

Unsatisfied, petitioner consulted another physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), an orthopedic surgeon at the Armed Forces of the Philippines Medical Center, regarding his medical condition. After examination, Dr. Magtira concluded, among others, that petitioner is “*permanently UNFIT in any capacity to resume his sea duties as a Seaman.*”¹⁴

This prompted petitioner to file a complaint for payment of disability benefits against respondents with the National Conciliation and Mediation Board (NCMB). When the parties failed to settle the case amicably during the mandatory conferences, the Panel of Voluntary Arbitrators directed the parties to submit their respective position papers.¹⁵

Ruling of the Panel of Voluntary Arbitrators

In the Decision¹⁶ dated April 2, 2018, the Panel of Voluntary Arbitrators ruled in favor of petitioner and ordered respondents to pay him the amount of US\$60,000.00 as disability benefits, or its peso-equivalent at the time of payment, plus attorney's fees.¹⁷

The Panel of Voluntary Arbitrators rejected the fit-to-work assessment made by Dr. Bergonio given that: (a) the assessment was inconclusive and open to inquiries as it was without the relevant supporting test results;¹⁸ and (b) despite the declaration of fitness to work, petitioner was not redeployed to resume his sea duties as an Ordinary Seaman.¹⁹ The NCMB thus concluded that the company-designated physician had failed to make a definite and final assessment on petitioner's fitness to work within the 120 to 240-day periods; and that for this failure, petitioner is deemed totally and permanently disabled and entitled to the benefits corresponding thereto in accordance

¹³ *Id.* at 184.

¹⁴ See Medical Report dated December 5, 2016, *id.* at 65-66.

¹⁵ See Complainant's Position Paper, *id.* at 67-88; Position Paper (For Respondents), *id.* at 124-149.

¹⁶ *Id.* at 244-254.

¹⁷ *Id.* at 254.

¹⁸ *Id.* at 248, 251.

¹⁹ *Id.* at 251.

with the CBA and the Philippine Overseas Employment Administration (POEA)-Standard Employment Contract (SEC).²⁰

Undaunted, respondents brought the case to the CA through a Petition for Review²¹ under Rule 43 of the Rules of Court.

Ruling of the CA

In the Decision²² dated February 18, 2019, the CA granted the petition and reversed and set aside the Decision of the Panel of Voluntary Arbitrators. It explained as follows:

First, petitioner had been given a Grade 11 disability rating by the company-designated physician because he was only suffering from a slight rigidity, or 1/3 loss of motion or lifting power of the trunk. As such, he should be deemed to be 12% disabled under Annex 5 of the CBA on account of his back pains with some reduction of mobility.²³

And *second*, the findings of the company-designated physician should prevail over those of Dr. Magtira, petitioner's private physician, in the absence of an opinion of a third doctor to resolve the conflicting findings as to petitioner's fitness to resume his sea duties.²⁴

The dispositive portion of the Decision reads:

WHEREFORE, the Petition for Review filed by the petitioner is hereby GRANTED. The Decision dated April 2, 2018 and Resolution dated July 23, 2018, which were both rendered by the National Conciliation and Mediation Board in the case docketed as AC-041-RCMB-NCR MVA-168-03-06-2017 are hereby REVERSED and SET ASIDE.

Respondent Jerome D. Palada is hereby found not to be totally and permanently disabled. As such, the award of full disability benefit and attorney's fees to Respondent Jerome D. Palada are hereby DELETED. Petitioner, however, is hereby ordered to pay respondent

²⁰ *Id.*

²¹ *Id.* at 280-308.

²² *Id.* at 335-351.

²³ *Id.* at 347.

²⁴ *Id.* at 348.

his disability compensation in the amount of USD7,465 which is equivalent to Grade 11 disability under the POEA Contract, or its peso equivalent at the time of actual payment, plus interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.

SO ORDERED.²⁵

Hence, this petition.

The Issues

I.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN UPHOLDING THE QUESTIONED ASSESSMENTS OF THE COMPANY-DESIGNATED PHYSICIAN.

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT FAILED TO HOLD THAT PETITIONER'S DISABILITY IS PERMANENT AND TOTAL IN THE ABSENCE OF A DEFINITE AND FINAL ASSESSMENT OF FITNESS OR PERMANENT DISABILITY FROM THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE 240-DAY PERIOD.²⁶

Petitioner maintains that the Grade 11 disability rating he received was only an interim assessment which was not yet final. He further avers that the fit-to-work assessment was also not definite, certain or final because Dr. Bergonio himself was not sure of the existence of the pain that he is continuously suffering.²⁷

In their Comment, respondents assert that the CA correctly ruled that petitioner is not totally and permanently disabled. After specialized treatments and medication, and upon close monitoring, the company-designated physicians arrived at their evaluation of petitioner. Thus,

²⁵ *Id.* at 350.

²⁶ *Id.* at 10.

²⁷ *Id.* at 11.

petitioner was given a Grade 11 disability rating and later on, assessed as fit to work.²⁸

The Court's Ruling

The petition is impressed with merit.

To determine whether a seafarer is entitled to total and permanent disability benefits, the Court takes into consideration *the law, the employment contract* which govern his or her overseas employment, and *the medical findings* as to his or her medical condition in accordance with the pertinent rules.²⁹

The law that governs a seafarer's disability benefits claim is Article 198 [192](c)(1) of the Labor Code of the Philippines (Labor Code), as amended, which provides:

ARTICLE 198. [192] *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;

Moreover, Section 2, Rule X of the Amended Rules on Employees' Compensation 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

²⁸ *Id.* at 387-388.

²⁹ See *Wilhelmsen Smith Bell Manning, Inc. v. Villaflor*, G.R. No. 225425, January 29, 2020, citing *The Late Alberto B. Javier, et al. v. Philippine Transmarine Carriers, Inc. et al.*, 738 Phil. 374 (2014).

may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Italics supplied.)

The employment of seafarers, including claims for disability benefits, is governed by the contracts they executed at the time of their engagement. While it is true that the seafarer and his or her employer are bound by their mutual agreement, the POEA Rules and Regulations require that the applicable POEA-SEC be deemed *integrated* in every seafarer's employment contract.³⁰

In this case, the parties executed the employment contract on May 6, 2016.³¹ Thus, the 2010 POEA-SEC is applicable in order to determine petitioner's entitlement to disability benefits.³² Section 20 of the 2010 POEA-SEC 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

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

³⁰ See *C.F. Sharp Crew Mgmt., Inc., et al. v. Legal Heirs of the Late Godofredo Repiso*, 780 Phil. 645, 665-666 (2016), citing *Inter-Orient Maritime, Inc., et al. v. Candava*, 712 Phil. 628, 638 (2013).

³¹ *Rolio*, p. 33.

³² See Philippine Overseas Employment Administration Memorandum Circular No. 10 dated October 26, 2010.

As for the medical findings, it is settled that the medical assessment or report of the company-designated physician must be *complete* and *appropriately issued*; otherwise, the disability grading contained therein will *not* be seriously appreciated.³³

In the landmark case of *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue*,³⁴ the Court summarized the rules regarding the company-designated physician's duty to issue a *final medical assessment* on the seafarer's disability grading 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.³⁵

As earlier discussed, the disability rating given to a seafarer must be properly established and contained in a *valid* and *timely* medical report of the company-designated physician pursuant to the above-quoted rules. Failure to meet these standards will result in the medical assessment being stricken down for being *tardy*, *incomplete*, and *doubtful*.³⁶

³³ *Chan v. Magsaysay Maritime Corporation*, G.R. No. 239055, March 11, 2020.

³⁴ 765 Phil. 341 (2015).

³⁵ *Id.* at 362-363.

³⁶ *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234 (2015), citing *Libang, Jr. v. Indochina Ship Management, Inc., et al.*, 743 Phil. 286, 299-300 (2014); See also *Maunlad Trans, Inc., Karnival Cruise Lines, Inc. v. Camoral*, 753 Phil. 676 (2015) and *Carceac v. Maine Marine Philippines, Inc., et al.*, 758 Phil. 166 (2015).

To illustrate, in the 2020 case of *Chan v. Magsaysay Maritime Corporation, et al.*,³⁷ the Court ruled that “the medical assessment issued by the company-designated physician cannot be considered complete, final, and definite as it did not show how the disability assessment was arrived at.”³⁸

In this case, the company-designated physicians appear to have issued two *conflicting findings* regarding petitioner's medical condition as follows:

The *first* medical assessment was issued by Dr. Bondoc on October 27, 2016. The pertinent portion of the report states:

Patient reports upper back and chest pain when lifting weights.

*If patient is entitled to a disability, his closest interim assessment is Grade 11 – slight rigidity or 1/3 loss of lifting power of the trunk.*³⁹ (Underscoring omitted; italics supplied.)

On November 8, 2016, Dr. Bergonio issued the *second* medical assessment which cleared petitioner “from an orthopedic standpoint,” *viz.:*

Mr. Palada is now 4 weeks out since his alleged injury.

His latest chest bucky films show no fracture that could explain his claims of persistent costochondral pain. *His Functional Assessment done by Dr. Basuil suggests that he is fit to work.*⁴⁰ (Italics supplied.)

A careful perusal of both medical reports reveals that they *cannot* be considered as complete, final, and definite as neither one showed exactly how the disability rating or the fit-to-work assessments were arrived at. There is no question that the first medical report was merely *provisional* given Dr. Bondoc's usage of the term “*interim assessment*” in issuing petitioner a Grade 11 disability rating. As for Dr. Bergonio's medical report, it should be pointed out that the supposed Functional Assessment of petitioner's medical condition by a certain Dr. Basuil referenced therein was *not* attached to the report. The Functional

³⁷ *Chan v. Magsaysay Maritime Corporation, supra* note 33.

³⁸ *Id.*

³⁹ *Rollo*, p. 183.

⁴⁰ *Id.* at 64.

Assessment is also *not* in the records of the case which, in itself, renders the existence of the medical assessment *doubtful*.

The CA, therefore, seriously erred when it considered Dr. Bondoc's medical report as a final and definite assessment of petitioner's medical condition and referred to it as the basis to award petitioner partial disability benefits equivalent to a Grade 11 disability rating under the POEA-SEC. Again, Dr. Bondoc's findings were only an interim assessment. They cannot be considered as final and definite medical assessment of petitioner as contemplated under applicable laws and relevant jurisprudence.

Besides, the conflicting assessments issued by the company-designated physicians are enough reason to conclude that they had failed to arrive at a final and definite assessment of petitioner's disability or fitness to work within the 120-day or 240-day periods as required by law. Simply put, the company-designated physicians cannot just issue a Grade 11 disability rating to petitioner and then twelve days later, declare him fit to work without an explanation as to how he was able to reverse the earlier-assessed disability in such a short period of time.

Given the *absence* of a definitive assessment of petitioner's disability or fitness to work within the 120-day or 240-day periods, it is clear that the CA committed another serious error when it ruled that petitioner's failure to demand for his reexamination by a third doctor was fatal to his cause. After all, it is settled that “[t]he third doctor rule does not apply when there is no final and definitive assessment by the company-designated physicians,”⁴¹ as in this case.

In conclusion, the Court rules that petitioner is deemed to be suffering from a total and permanent disability for failure of the company-designated physicians to issue a *valid, definite, and final* assessment of his medical condition within the prescribed periods under the law.⁴² As such, he is rightfully entitled to the benefits corresponding thereto.⁴³

⁴¹ *Magsaysay Mol Marine, Inc., et al. v. Atraje*, 836 Phil. 1061, 1064 (2018).

⁴² *See Sharpe Sea Personnel, Inc., et al. v. Macario Mabunay*, 820 Phil. 306 (2017).

⁴³ *See Seacrest Maritime Management, Inc. v. Noel M. Andrino*, G.R. No. 244270, March 11, 2019.


WHEREFORE, the petition is **GRANTED**. The Decision dated February 18, 2019 and the Resolution dated June 11, 2019 of the Court of Appeals in CA-G.R. SP No. 156886 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated April 2, 2018 of the Panel of Voluntary Arbitrators is hereby **REINSTATED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice


WE CONCUR:



MARYIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



RICARDO R. ROSARIO
Associate Justice

ATTESTATION

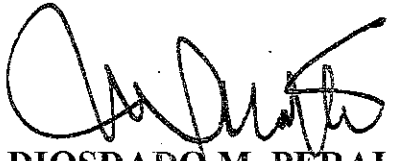
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice

