Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARCELO M. CORPUZ, JR.,
Petitioner,

- versus -

GERWIL CREWING PHILS., INC.,
Respondent.

G.R. No. 205725

Present:

PERLAS-BERNABE, *SAJ.*, *Chairperson,*
GESMUNDO,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO,* *JJ.*

Promulgated:

JAN 18 2021

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DECISION

GESMUNDO, *J.*:

Licensed recruitment agencies are subject to a continuing liability to ensure the welfare of the Filipino workers they deployed abroad. Their carelessness and wanton disregard of such responsibility that result to the substitution of employment contracts previously approved by the Department of Labor and Employment *(DOLE),* through the Philippine Overseas Employment Administration *(POEA),* shall render them liable for damages.

The Case

We resolve this appeal by *certiorari* seeking to reverse and set aside the September 28, 2012 Decision[1] and January 30, 2013 Resolution[2] of the

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* Designated as additional member per Special Order No. 2797 dated November 5, 2020; on official leave.
[1] *Rollo*, pp. 61-68; penned by Associate Justice Japar B. Dimaampao with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes, concurring.
[2] Id. at 69-70.

Court of Appeals *(CA)* in CA-G.R. SP No. 120720, which affirmed the March 30, 2011 Decision[3] and May 30, 2011 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. 10-000818-10. The NLRC decision reversed and set aside the September 11, 2010 Decision[5] of the Labor Arbiter *(LA)* that granted petitioner's claim for disability benefits.

Antecedents

Gerwil Crewing Phils., Inc. *(respondent)* recruited Marcelo M. Corpuz, Jr. *(petitioner)* to work as an Able Seaman for a period of twelve (12) months with Echo Cargo & Shipping LLC on board the vessel *MT Azarakhsh,*[6] with a monthly salary of Four Hundred Sixty-One Dollars ($461.00).[7] Respondent deployed petitioner on August 5, 2008.[8]

On May 17, 2009, petitioner was brought to the Sheik Khalifa Medical City in the United Arab Emirates due to severe headache and vomiting after he allegedly sustained a fall while lifting heavy motor parts on board the vessel. He experienced an episodic low back pain radiating to his left posterior thigh accompanied by severe pain of the foot. This caused him to slip, hitting his chest first, followed by his head. The diagnosis revealed that he suffered from *Left Cerebellar Hemorrhage with Intraventricular Hematoma.* Aside from the medications given, he underwent an external ventricular drain *(EVD)* to relieve his hydrocephalus. Petitioner was eventually recommended for repatriation to undergo further evaluation and treatment.[9]

On September 9, 2009, petitioner arrived in Manila on a wheelchair. Petitioner claims to have reported to the office of respondent the next day. However, respondent's Chief Executive Officer (*CEO*), Rommel S. Valdez *(Valdez),* denied his request for medical assistance on the ground that his illness was not work-related. Valdez also allegedly humiliated him in front of the people present in the agency.[10]

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[3] Id. at 162-171; penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring.
[4] Id. at 172-174.
[5] Id. at 266-272; penned by Labor Arbiter Adolfo C. Babiano.
[6] "MT Azarakhsm" in some parts of the *rollo.*
[7] *Rollo*, p. 62.
[8] Id.
[9] Id.
[10] Id. at 62-63.

Consequently, petitioner sought medical consultation with Dr. Nune Babao-Balgomera *(Dr. Balgomera),* a neurologist at Sta. Rosa Medical Center. On October 28, 2009, Dr. Balgomera issued a medical certificate declaring petitioner as permanently unfit for sea duty in any capacity and suffering from *Severe Complex Cerebral Function Disturbance* or *Post Traumatic Psychoneurosis.* Dr. Balgomera classified petitioner's illness as a Grade I disability.[11]

Petitioner also consulted Dr. Donald S. Camero *(Dr. Camero),* an internist, who also gave an assessment of POEA Disability Grade I. Armed with both medical assessments, petitioner demanded payment of disability benefits from respondent to no avail.[12]

On April 20, 2010, petitioner instituted a complaint against respondent and Valdez for payment of disability benefits, among others.[13]

Labor Arbiter Ruling

The Labor Arbiter *(LA)* promulgated a Decision on September 11, 2010, disposing as follows:

> WHEREFORE, judgment is hereby rendered ordering respondents to jointly and severally:
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> 1. Pay complainant permanent disability benefit in the amount of $60,000.00;
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> 2. Pay complainant sickness allowance in the amount of $1,844.00;
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> 3. Pay complainant moral and exemplary damages in the total amount of [₱300,000.00]; and
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> 4. Pay complainant attorney's fees equivalent to 10% of the total award.
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> SO ORDERED.[14]

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[11] Id. at 63.
[12] Id.
[13] Id. at 62.
[14] Id. at 272.

The LA based his decision solely on the evidence submitted by petitioner in view of respondent's failure to file a position paper. The LA held that since respondent refused to provide petitioner with medical attendance, the latter was justified in consulting his own personal doctors. Also, both certifications issued by Dr. Balgomera and Dr. Camero showed that petitioner's injury was related to his exposure to toxic and hazardous materials.[15]

Aggrieved, respondent appealed to the NLRC.

NLRC Ruling

On March 30, 2011, the NLRC reversed the decision of the LA and dismissed petitioner's complaint for lack of merit.[16] The NLRC noted that based on petitioner's logbook, petitioner did not report to the agency on September 10, 2009.[17] Petitioner's failure to report upon repatriation was fatal to his claim for disability benefits.

The NLRC also held that petitioner failed to prove that his injury was work-related. As an Able Seaman, petitioner's duties were confined only to deck and navigational work and did not include lifting of motor parts. Furthermore, the medical certificates submitted by petitioner failed to establish that the injury he sustained was work-related because his doctors readily concluded that he had been exposed to hazardous materials, although the evidence on record did not support such finding.[18]

Petitioner filed a motion for reconsideration, which the NLRC denied in its May 30, 2011 Resolution.[19] Unsatisfied, petitioner filed a petition for *certiorari* before the CA.

CA Ruling

In the now assailed decision, the CA dismissed the petition for *certiorari* for lack of merit. It agreed with the NLRC that petitioner was not entitled to disability compensation and other benefits due to his failure to comply with the compulsory examination upon repatriation. It noted that petitioner's name did not appear in respondent's visitor logbook for the

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[15] Id. at 270-271.
[16] Id. at 170.
[17] Id. at 167-169.
[18] Id. at 169-170.
[19] Id. at 172-174.

period of September 4, 2009 to October 6, 2009. The NLRC also held that petitioner failed to submit evidence to support his claim that his disability was work-related.[20]

Petitioner filed a motion for reconsideration, which the CA denied in its January 30, 2013 Resolution.

Hence, this petition.

Issue

Petitioner attributes the sole error on the part of the CA:

> WHETHER OR NOT THE NLRC (FIRST DIVISION) AND THE HONORABLE COURT OF APPEALS (FOURTEENTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE ASSAILED DECISIONS AND DENIED RESOLUTIONS.[21]

Petitioner points to two (2) procedural defects in respondent's appeal before the NLRC: (1) that the appeal was filed out of time because respondent received a copy of the LA Decision on September 30, 2010 but filed the notice of appeal only on October 11, 2011; and (2) that respondent did not post a cash or surety bond.[22]

He also argues that the NLRC committed grave abuse of discretion in reversing the LA decision and denying his claim for Grade 1 disability benefits and attorney's fees. Based on his medical histories, records and physician's reports, the working conditions at *MT Azarakhsh* increased his risk of contracting *Severe Complex Cerebral Function Disturbance*.[23] Considering that his injury arose out of the occupational conditions on board *MT Azarakhsh,* he should be entitled to disability compensation.[24]

Finally, petitioner maintains that he has the prerogative to consult a physician of his choice. Hence, the CA and the NLRC erred in ruling that

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[20] Id. at 64-67.
[21] Id. at 39.
[22] Id. at 56.
[23] Id. at 44.
[24] Id. at 40-54.

the company-designated physician is the sole authority to determine the degree of disability of an ailing seafarer.[25]

The Court resolved to require respondent to comment on the petition in its June 19, 2013 Resolution.[26] Despite such notice, respondent failed to file its comment. Hence, on March 3, 2014, the Court issued a Resolution[27] requiring Atty. Robertson R. Aquino *(Atty. Aquino)* of Atienza Madrid and Formento, to file a comment and to show cause why he should not be disciplinarily dealt with or held in contempt. Noting that respondent's counsel again failed to comply with the prior resolutions, the Court resolved on December 10, 2014 to impose upon Atty. Aquino a fine of ₱1,000.00 and to file a comment.[28] Respondent counsel's failure to comply with said resolution prompted the Court to issue another Resolution on January 11, 2016[29] imposing an additional fine of ₱1,000.00 on Atty. Aquino. Respondent's counsel once again failed to comply with the prior resolutions, and the Court resolved to impose on him another additional fine of ₱1,000.00.[30]

In view of the several notices sent to respondent to file the required comment which remained unheeded, the Court deems it proper to dispense with the filing of the same and to proceed with the resolution of the instant petition.

Our Ruling

The petition is partially meritorious.

Respondent's appeal before the NLRC is not procedurally infirm

Petitioner insists that respondent's appeal before the NLRC was defective because it was filed beyond the reglementary period and was not accompanied by a cash or surety bond.

We find the above claim to have no basis both in fact and in law.

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[25] Id. at 54-55.
[26] Id. at 334.
[27] Id. at 338-339.
[28] Id. at 349-350.
[29] Id. at 357-358.
[30] Id. at 369-370.

Section 1, Rule VI of the 2005 Revised Rules of Procedure of the NLRC, the applicable rule at the time that respondent filed its appeal, reads:

> Section 1. *Periods of Appeal.* - Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions, resolutions or orders of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. **If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.**
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> x x x x (emphasis supplied)

Respondent received a copy of the LA Decision on September 30, 2010 and therefore had until October 10, 2010 to file an appeal to the same. Since October 10, 2010 fell on a Sunday, it had until October 11, 2010 to file its appeal. Hence, respondent submitted its appeal within the reglementary period.

As regards respondent's alleged failure to secure a bond, We find the same to be without basis. The records show that it had secured a *supersedeas* bond covering the monetary award from CAP General Insurance Corporation to which the latter issued CGI Bond No. JCL (15) 00001/00242.[31] Accordingly, respondent had perfected its appeal before the NLRC.

Petitioner is not entitled to disability benefits; Failure to submit to post-employment medical examination was fatal to his cause

The main thrust of the instant petition anchors on petitioner's claim for disability benefits. As the one claiming entitlement to benefits under the law, petitioner must establish his right thereto by substantial evidence.[32]

Petitioner's right to receive disability benefits is determined by his employment contract. Deemed written in his contract is a set of standard provisions established and implemented by the POEA called the *Amended Standard Terms and Conditions Governing the Employment of Filipino*

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[31] Id. at 222.

[32] *Ceriola v. Naess Shipping Philippines, Inc.*, 758 Phil. 321, 333 (2015).

Seafarers on Board Ocean-Going Vessels, which are the minimum requirements acceptable to the government for the employment of Filipino seafarers.[33] In petitioner's case, the 2000 POEA Standard Employment Contract *(2000 POEA-SEC)* governs his relationship with respondent.

Under the 2000 POEA-SEC, two elements must concur for an injury or illness to be compensable. *First*, the injury or illness must be work-related; and *second*, the work-related injury or illness must have existed during the term of the seafarer's employment contract.[34] Paragraph 3, Sec. 20(B) of the same contract also requires him to submit to a post-employment medical examination within three (3) days from repatriation, *viz.*:

> 3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days.
>
> For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphases and underscoring supplied)

Dionio v. ND Shipping Agency and Allied Services, Inc.[35] succinctly laid down the rules relating to the mandatory post-employment medical examination under paragraph 3, Sec. 20 as follows:

> [A] seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. **Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits.** There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.

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[33] *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 315 (2009).
[34] *Jebsens Maritime, Inc. v. Undag*, 678 Phil. 938, 945 (2011).
[35] G.R No. 231096, August 15, 2018.

> Moreover, **it is the burden of the employer to prove that the seafarer was referred to a company-designated doctor.**[36] (emphases supplied; citation omitted)

Herein petitioner claims that he went to respondent's office on September 10, 2009, the day following his repatriation, but respondent, through CEO Valdez, refused to refer him to the company-designated physician.

We are unconvinced.

While the rule vests in the employer the burden to prove that the seafarer was referred to the company-designated physician for a post-employment examination, the same presupposes that the seafarer had first reported to the employer's office.

In here, respondent submitted copies of its visitor logbook to disprove petitioner's claim that he visited their office immediately after his repatriation. Notable that petitioner's name does not appear in the entries of said logbook from September 4, 2009 until October 6, 2009.[37] Faced with this evidence, petitioner remained silent and did not rebut or address the same in his pleadings. Between petitioner's bare and unsupported allegations and the documentary evidence submitted by respondents, We are more inclined to accord weight to the latter. Thus, We find petitioner's failure to comply with the mandatory post-employment medical examination to be due to his own omission and not through respondent's fault.

In this regard, We likewise reject petitioner's assertion that he has the prerogative to consult a physician of his choice. In *Coastal Safeway Marine Services, Inc. v. Esguerra,*[38] We explained that despite having a choice to consult his own doctor for a second opinion, the seafarer still has to comply with the three-day mandatory post-employment medical examination, thus:

> [Section 20-B(3) of the 2000 POEA-SEC] has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his

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[36] Id.
[37] *Rollo*, pp. 263-265.
[38] 671 Phil. 56 (2011).

> ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. **For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.**[39] (emphasis supplied; citations omitted)

To reiterate, the three-day period from return of the seafarer or sign-off from the vessel, whether to undergo a post-employment medical examination or report the seafarer's physical incapacity, should always be complied with to determine whether the injury or illness is work-related.[40] Hence, petitioner's failure to comply with the mandatory reporting requirement resulted in the forfeiture of his right to claim disability benefits and proved fatal to his cause.

Respondent is liable to pay moral and exemplary damages, and attorney's fees

While petitioner may have forfeited his right to claim disability benefits, We find it proper to award him with moral damages, exemplary damages, and attorney's fees.

Sec.18, Article II and Sec. 3, Article XIII of the 1987 Constitution accord all members of the labor sector, without distinction as to place of deployment, full protection of their rights and welfare.[41] Republic Act *(R.A.)* No. 8042 *(The Migrant Workers and Overseas Filipinos Act of 1995)* confirms this State policy by declaring that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.[42] Evidently, Congress enacted R.A. No. 8042 to institute the policies on overseas employment and to establish a higher standard of protection and promotion of the welfare of migrant workers.[43]

One of the safeguards incorporated in R.A. No. 8042 is found in Sec. 10 which provides for the solidary and continuing liability of recruitment agencies against monetary claims of migrant workers. These pecuniary

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[39] Id. at 65-66.
[40] *Ceriola v. Naess Shipping Philippines, Inc.*, supra note 32, at 335.
[41] *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 281 (2009); citations omitted.
[42] Section 2(e).
[43] *Industrial Personnel and Management Services, Inc. v. de Vera*, 782 Phil. 230, 241 (2016).

claims may arise from employer-employee relationship or by virtue of law or contract, and may include claims of overseas workers for damages. Sec. 10 reads:

> SEC. 10. Money Claims. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, **the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.**
>
> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several.** This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.
>
> **Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.**
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> x x x x (emphases supplied)

The cases of *Interorient Maritime Enterprises, Inc. v. National Labor Relations Commission (Interorient)*[44] and *Becmen Service Exporter and Promotion, Inc. v. Spouses Cuaresma (Becmen)*[45] affirm the continuing responsibility of recruitment agencies in ensuring the welfare and safety of overseas Filipino workers. In *Interorient*, the Court held that the employer has the obligation to ensure the safe return of a distressed worker.[46] In *Becmen*, the Court stressed that recruitment agencies are expected to extend assistance to migrant workers, especially those who are in distress.[47] We explained:

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[44] 330 Phil. 493 (2009).
[45] 602 Phil. 1058 (2009).
[46] Supra note 44, at 510.
[47] Supra note 45, at 1076.

> Under Republic Act No. 8042 (R.A. 8042), or the Migrant Workers and Overseas Filipinos Act of 1995, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular. The State shall provide adequate and timely social, economic and legal services to Filipino migrant workers. The rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.
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> x x x x
>
> Thus, more than just recruiting and deploying OFWs to their foreign principals, recruitment agencies have equally significant responsibilities. In a foreign land where OFWs are likely to encounter uneven if not discriminatory treatment from the foreign government, and certainly a delayed access to language interpretation, legal aid, and the Philippine consulate, the recruitment agencies should be the first to come to the rescue of our distressed OFWs since they know the employers and the addresses where they are deployed or stationed. **Upon them lies the primary obligation to protect the rights and ensure the welfare of our OFWs, whether distressed or not.** Who else is in a better position, if not these recruitment agencies, to render immediate aid to their deployed OFWs abroad?[48] (emphasis supplied; citations omitted)

We also ruled in *Becmen* that the acts and omissions of the foreign principal and the recruitment agencies on the plight of the migrant workers and their families ran against public policy. Their indifference undermined and subverted the interest and general welfare of our Filipino workers abroad who are entitled to full protection under the law. As such, they shall be liable to pay moral and exemplary damages, as well as attorney's fees.

Verily, R.A. No. 8042 did not limit the responsibility of recruitment agencies to the recruitment and deployment of Filipino workers to foreign countries. As DOLE-accredited agencies, they entered into a covenant with the State to promote the safety and welfare of Filipino workers. They have, in fact, undertaken to ensure that the "contracts of employment are in accordance with the standard employment contract and other applicable laws, regulations and collective bargaining agreements."[49] This responsibility exists during the lifetime of the employment contract and shall continue despite substitution, amendment or modification of the agreement.[50]

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[48] Id. at 1075-1079.

[49] Section 1(e), Rule II, Part II, 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

[50] See third paragraph of Section 10, R.A. No. 8042.

Hence, We turn our attention to the averments made by respondent in its Notice of Appeal with Memorandum of Appeal[51] dated October 11, 2010 before the NLRC. Respondent laid down the following factual antecedents as follows:

> Respondents-appellants **GERWIL CREWING PHILS., INC. and MR. ROMMEL S. VALDEZ, ET AL.,** the former a domestic corporation, are engaged in the business of manning and crewing seafarers.
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> Complainant-appellee Corpuz was hired as Able Seaman and was deployed last August 5, 2009 through respondent agency, Gerwil under the principal, Echo Cargo & Shipping LLC, represented by Ms. Rosalie S. Cortes.
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> During that time of hiring and deployment of appellee Corpuz, the principal Echo Cargo was under probationary standing with appellant Gerwil. The extension of the accreditation of Echo Cargo was not granted for its failure to submit the required documents. For which reason, its agent Ms. Cortes decided to pull out Echo Cargo with Gerwil and transfer the same to other local agencies.
>
> Appellants Gerwil and Valdez have not heard any news from appellee in regard to his status on board. In fact, they were never notified about the events that transpired until such time that they received a copy of the complaint with the NLRC.
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> x x x x[52]

Notably, respondent deployed petitioner to work on board *MT Azarakhsh* while the foreign principal, Echo Cargo, was under probationary status and under an extended accreditation. However, the Court finds it disturbing that after petitioner's deployment on August 5, 2008 until sometime after the filing of the complaint on April 20, 2010, respondent did not even have an iota of information regarding his status. It did not even attempt or seek out information about the worker that it recruited and deployed after the foreign principal failed to complete its accreditation. Palpably, this fell short of the agency's responsibility to continuously ensure petitioner's welfare and safety while deployed overseas.

Respondent's apparent carelessness became more glaring by the details disclosed in the Sea Service Certificate *(certificate)*[53] dated August 13, 2009 presented by petitioner. The certificate showed that petitioner

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[51] *Rollo*, pp. 253-262.
[52] Id. at 255-256.
[53] Id. at 321.

worked with *Al Mansoori Production Services Co. (LLC)* as an Oiler on board *M.V. Alshaheen MPS (DPS2)*, a production well testing and supply vessel, from *August 6, 2008 to August 10, 2009.*[54] The entries in the certificate, which respondent did not refute, were completely different from those in the Contract of Employment[55] that it executed on May 28, 2008. The pertinent entries in the said contract read:

> Name of Agent: GERWIL CREWING PHILIPPINES, INC.
> For and in behalf of: **ECHO CARGO AND SHIPPING LLC**
>
> x x x x
>
> Name of vessel: **MT AZARAKHSH**
>
> x x x x
>
> 1.1. Duration of Contract: 12 MONTHS
> 1.2. Position: **ABLE SEAMAN**[56] (emphases supplied)

The Seabased Overseas Filipino Worker *(OFW)* Information[57] also contained similar entries with further information that petitioner was deployed on August 5, 2008.

A simple scrutiny of the terms and conditions of the Contract of Employment *vis-à-vis* the Sea Service Certificate readily reveals respondent's overwhelming inaction in ensuring the welfare of petitioner. In the POEA-approved contract, Echo Cargo appeared as petitioner's foreign employer while the certificate referred to a certain Al Mansoori Production Services Co. (LLC). Based on the contract, petitioner was recruited as an Able Seaman but the certificate showed him to have worked as an Oiler. Even the vessel assignment of petitioner appeared to be different. Furthermore, petitioner was deployed on August 5, 2008[58] while the certificate showed that petitioner worked as Oiler on board *M.V. Alshaheen MPS* (DPS2) from August 6, 2008 to August 10, 2009. Evidently, petitioner rendered his services to Al Mansoori within the same 12-month period covered by the POEA Contract executed by respondent with Echo Cargo as the foreign principal.

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[54] Id.
[55] Id. at 300.
[56] Id.
[57] Id. at 301.
[58] Id. at 62.

Evidently, the salient terms of the Contract of Employment were altered or changed without the approval of the DOLE through the POEA. Respondent cannot feign ignorance of the same, considering that such was done well within the stipulated period of the POEA–approved contract. As a licensed recruitment agency, respondent had full knowledge of the requirement of prior review and approval by the POEA in the event of any alterations or changes to the Contract. Only after gaining this approval shall the amendments, modifications or alterations be deemed an integral part of the POEA Standard Employment Contract.[59]

In here, respondent had been complacent with the fact that it was able to deploy petitioner abroad without ensuring his status and his whereabouts despite the non-accreditation of the foreign principal Echo Cargo. Respondent seemed to have delighted in its own inaction, misguidedly secured in its flawed notion that once deployed, it no longer has any responsibility to petitioner. This nonchalant attitude cannot be countenanced. Respondent's seeming indifference cannot be ascribed as a simple case of negligence as it possessed full knowledge of its responsibilities as a licensed recruitment agency.

Needless to state that respondent's omission resulted in the change of petitioner's foreign employer on board a different vessel, and service in a totally different capacity which working conditions may have led to his medical repatriation. Indubitably, the substitution or alteration of the POEA-approved contract had relegated petitioner to the unfavorable situation which R.A. No. 8042 specifically seeks to avoid. Sec. 6(i) of the law provides:

> SEC. 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. **It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority**:
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> x x x x
>
> (i) **To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of**

[59] Id. at 300.

> **actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment**;
>
> x x x x (emphases supplied)

Clearly, respondent's inaction or omission was against existing law and public policy as it perpetrated the illegal and pernicious practice of substituting the POEA–approved contract to the detriment of the Filipino worker. Having knowingly reneged on its obligation to ensure the welfare of petitioner while deployed abroad, and in allowing the substitution of a previously approved POEA contract, respondent should be held liable.

To reiterate, Sec. 10 of R.A. No. 8042 allows the migrant worker to claim moral and exemplary damages in connection with the employment contract or as provided by law. In *Becmen,*[60] the Court imposed moral damages by reason of misconduct on the part of the employer under Article 2219(10) of the Civil Code, which allows recovery of such damages in actions referred to in Article 21.[61] The Court also ordered the payment of exemplary damages to set an example to foreign employers and recruitment agencies on how to treat and act on the plight of distressed Filipino migrant workers.

In view of the foregoing, the Court holds that respondent should be liable to pay the following: moral damages in the amount of ₱100,000.00; exemplary damages in the amount of ₱100,000.00, due to its wanton behavior and by way of example for the public good;[62] and attorney's fees equal to ten percent (10%) of the total monetary award.[63] Finally, the total

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[60] Supra note 45.

[61] Id. at 1081.

[62] ARTICLE 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[63] ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this judgment until fully satisfied.[64]

WHEREFORE, the petition is **PARTIALLY GRANTED.** The September 28, 2012 Decision and January 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120720 are **AFFIRMED with MODIFICATION.**

Gerwil Crewing Phils., Inc. is hereby **ORDERED** to indemnify Marcelo M. Corpuz, Jr. the following amounts:

1. Moral damages in the amount of One Hundred Thousand Pesos (₱100,000.00);

2. Exemplary damages in the amount of One Hundred Thousand Pesos (₱100,000.00);

3. Attorney's fees equal to ten percent (10%) of the total monetary award; and

4. Costs of suit.

All monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully satisfied.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

[64] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

(On Official Leave)
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

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