Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TORM SHIPPING PHILIPPINES, INC., TORM S/A, *Petitioners,*	**G.R. No. 229228** Present:
- versus -	PERALTA, *C.J.*, CAGUIOA, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
PAMFILO A. ALACRE, *Respondent.*	Promulgated: JAN 26 2021

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DECISION

GAERLAN, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 138700 dated July 13, 2016 and its Resolution[2] dated January 11, 2017, denying the motion for reconsideration thereof. The assailed Decision granted the petition for *certiorari* filed by the petitioner, annulled and set aside the Decision and Resolution dated August 29, 2014 and October 31, 2014, respectively, of the National Labor Relations Commission (NLRC), and reinstated the Decision dated February 21, 2014 issued by the Labor Arbiter (LA).

The Antecedent Facts

Respondent Pamfilo A. Alacre was hired by petitioner TORM Shipping Philippines, Inc. for its principal, TORM.[3]

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1 *Rollo*, pp. 43-61; penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Ramon A. Cruz and Victoria Isabel A. Paredes.

2 Id. at 63-64.

3 Id. at 264.

Under the employment contract, respondent was hired as a Fitter on board the vessel Torm Kristina for a period of six months with a basic monthly salary of US$648.00. Prior to his embarkation on March 12, 2012, the respondent underwent Pre-Employment Medical Examination and was declared fit to work.[4]

Sometime in July 2012, while working on board the vessel, respondent felt pain on his right shoulder. He sought medical help and was diagnosed by the doctor to be suffering from "Right shoulder sprain, right hand joint sprain."[5]

Respondent was repatriated to the Philippines on July 8, 2012. He was referred to the company-designated physician, Dr. Amado Regino of the NGC Medical Specialist Clinic, Inc. (NGC Clinic) for post-employment medical examination.[6]

Thereafter, the respondent underwent a series of treatments from July 10, 2012 up to October 24, 2012, as evidenced by Medical Reports[7] issued by the NGC Clinic.

On October 29, 2012, the NGC Medical Clinic issued a Medical Report[8] finding that based on the respondent's medical condition, his interim disability grading is "Grade 10 – inability to raise arm more than halfway from horizontal to perpendicular."[9]

Thereafter, the respondent continued therapy due to the persistent pain on his right shoulder as advised by the company-designated physician.[10]

As there appeared to be no improvement of his condition, the respondent decided to consult another doctor, Dr. Venancio P. Garduce, Jr. (Dr. Garduce), an Orthopedic Specialist at St. Luke's Medical Center and San Juan De Dios Hospital and a Professor in Orthopedics at the University of the Philippines-College of Medicine. Dr. Garduce concluded that it would be impossible for the respondent to work as a seaman and recommended a Grade 3 disability grading.[11]

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4 Id.
5 Id.
6 Id.
7 Id. at 126-139.
8 Id. at 140.
9 Id.
10 Id. at 265.
11 Id. at 46.

On February 13, 2013, respondent underwent surgery on his right shoulder. Respondent was discharged on February 16, 2013, but was advised to continue his physical therapy.[12]

As his condition failed to improve, respondent filed a Complaint before the LA against the petitioners for recovery of permanent total disability benefits with claims for moral and exemplary damages and attorney's fees.[13]

On February 21, 2014, LA Jaime M. Reyno rendered his Decision[14] finding merit in the respondent's complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents, to pay, jointly and severally, complainant Pamfilo A. Alacre the amount of SIXTY THOUSAND US DOLLARS (US$60,000.00) representing total permanent disability benefits, plus ten percent (10%) thereof as and for attorney's fees.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[15]

The Labor Arbiter held that the Collective Bargaining Agreement (CBA) no longer applies since it covers only the period of February 1, 2008 to January 31, 2010. Thus, applying the provisions of the Philippine Overseas Employment Agency-Standard Employment Contract (POEA-SEC), the LA awarded respondent the maximum disability compensation of US$60,000.00. The basis of the award is the failure of the company-designated physician to issue a final assessment, and the inability of respondent to work for more than 120 days which, thus, rendered his disability total and permanent.[16]

Petitioner appealed to the NLRC, which rendered its Decision[17] on August 29, 2014, granting the appeal and reversing the Decision of the Labor Arbiter, *viz.*:

> WHEREFORE, the appeal is GRANTED. The Labor Arbiter's Decision promulgated on 21 February 2014 is REVERSED AND SET

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12 Id.
13 Id.
14 Id. at 199-206.
15 Id. at 206.
16 Id. at 49.
17 Id. at 263-275; rendered by Presiding Commissioner Grace E. Maniquiz-Tan and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap.

> ASIDE and the complaint DISMISSED WITHOUT PREJUDICE to its refiling after the resolution of the claim pending before the Danish National Board of Industrial Injuries.
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> SO ORDERED. [18]

The NLRC refused to rule on the disability claim of respondent finding that the CBA remained effective as pursuant to its provisions, the absence of prior notice of its termination extends its period of coverage beyond January 31, 2010. Following the CBA, the NLRC held that the respondent's complaint is dismissible pending result of the National Board Industrial Industries (NBII) under the Danish Industrial Injuries Act (DIIA). This however does not deprive the respondent of the right to proceed against the petitioner in accordance with the POEA-SEC, but the remedy should be after the claim under the Danish Act is settled.[19]

Respondent filed a motion for reconsideration of the NLRC Decision but the same was denied by the NLRC in its October 31, 2014 Resolution.[20] In the said Resolution, the NLRC added that the "setting off" provision under the CBA means that it is the award under Danish law that should be deducted from the amount respondent is found to be entitled under the POEA-SEC.[21]

Respondent then filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion in dismissing the complaint on the ground that it is premature, and in not awarding damages and attorney's fees.[22]

On July 13, 2016, the CA rendered the herein assailed Decision[23] which granted the petition for *certiorari* filed by respondent, the *fallo* of which reads:

> FOR THESE REASONS, the instant petition is hereby GRANTED. The assailed Decision dated 29 August 2014 and Resolution dated 31 October 2014 rendered by the Fifth Division of the NLRC in NLRC LAC No. OFW-M-04-000315-14 (NLRC NCR Case No. (M) 06-09042-13) are ANNULLED and SET ASIDE. The Decision of the Labor Arbiter dated 21 February 2014 is hereby REINSTATED.
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> SO ORDERED.[24]

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18 Id. at 274.
19 Id. at 50, 274.
20 Id. at 281-285.
21 Id. at 284.
22 Id. at 51.
23 Id. at 43-61.
24 Id. at 60.

The CA agreed with the findings of the LA that the CBA remained effective at the time relevant to the respondent's disability claims. It also affirmed the LA's findings that respondent's disability lapsed into a total and permanent disability on account of the failure of the company-designated physician to render a final and definitive assessment within the required 240-day period. Similarly owing to such failure, the CA held that "the third-doctor-referral provision did not find application.[25]

Finally, with respect to the disability claim filed before the NBII, the CA noted that the NBII had already rendered its Decision granting the respondent of disability benefits and loss of earning capacity. In this light, there is no need to refile the complaint as the NLRC ruled. The amount awarded by the NBII shall be offset against the amount adjudged by the LA.[26]

Petitioners sought reconsideration of the July 13, 2016 Decision, but the CA denied in its Resolution[27] dated January 11, 2017.

In this Petition for Review on *Certiorari*, petitioners attribute the following errors committed by the CA:

> THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE AND GROSS ERROR OF LAW BASED ON THE FOLLOWING GROUNDS:
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> 1. In annulling the judgment of the NLRC and allowing the claim of the Respondent to prosper notwithstanding incontrovertible evidence that he has no cause of action for permanent total disability benefits under the POEA SEC at the time that he filed the complaint against the Petitioners.
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> 2. In sustaining the Labor Arbiter's award of USD60,000.00 as permanent total disability benefits.
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> 3. In failing to include in the dispositive portion of the Decision its ruling on off-setting thereby leaving room for debate, dispute and interpretation on the proper execution of the judgment.
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> 4. In blindly affirming the Labor Arbiter's award of attorney's fees despite lack of reasonable ground to award the same.[28]

Petitioners submit that prior to his filing of the complaint before the Labor Arbiter on June 24, 2013, respondent had already interposed a claim for recovery before the Danish Shipowner Accident Insurance Association.

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25 Id. at 57-58.
26 Id. at 58-59.
27 Id. at 63-64.
28 Id. at 17.

This rendered the complaint before the LA premature.[29]

Likewise, petitioners averred that on the 234th day or on March 1, 2013, the company-designated physician advised respondent to continue further treatment. However, respondent did not comply with the directive. Thus, the CA should have limited the Grade 10 interim disability rating of the company-designated physician.[30] At any rate, petitioners argue that the CBA provides for the offsetting of the amount that a seafarer is entitled to receive under the Danish Industrial Injuries and the POEA-SEC. As the amount awarded by the NBII and paid for by petitioners had already exceeded the maximum disability benefit payable which is USD60,000.00, there was no longer any obligation on the part of petitioners to compensate the respondent.[31]

In his Comment,[32] respondent argues that disability should be judged not on its "medical significance but on the loss of earning capacity." In this case, respondent avers that his condition clearly shows that he can no longer work as a seafarer. As such, he is entitled to permanent and total disability benefits.[33]

In their Reply,[34] petitioners essentially reiterated their arguments in their petition for review.

The Court's Ruling

The petition is ***meritorious.***

Preliminarily, it must be stated that there is no issue as to the compensability of respondent's illness as the parties do not dispute that it is work-related. The issues presented in this petition whether or not the parties' CBA remains effective and applicable in resolving this controversy and the disability grading of respondent's illness.

The entitlement of seafarers to disability is a matter governed not only by medical findings but also by contract and by law. By contract, the POEA-SEC under Department Order No. 4, series of 2000, of the Department of Labor and Employment and the parties' CBA. By law, the Labor Code

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29 Id. at 20.
30 Id. at 27-28.
31 Id. at 28-30.
32 Id. at 415-421.
33 Id. at 419-420.
34 Id. at 429-436.

provisions on disability applies.[35]

On the first issue, the Court agrees with the NLRC. The CBA should be applied in determining the rights of the parties in this case as it remained effective even after its expressed duration. As succinctly explained by the NLRC in its Decision:

> True, on its face, the CBA covers the period 1 February 2008 to 31 January 2010 only. However, Article 21 thereof provides, thus:
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> ARTICLE 21 – DURATION OF THE COLLECTIVE BARGAINING AGREEMENT
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> This agreement shall be ***effective as from February 1, 2008 until January 31, 2010 and further*** if notification of termination has not been given neither by the DSA nor by the AMOSUP within a 3 months' notice before the date of expiration.
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> It is clear from the above provision that the CBA's life extends beyond 31 January 2010 absent a notification of termination by either party. In this regard, records are bereft of evidence evincing that such notification had been made. This is quite telling given that Complainant could have easily produced said notification, if there was any, as the CBA was forged with a local CBA agent, the AMOSUP.
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> Further, it bears emphasis that, in his pleadings, Complainant never refuted the existence of the CBA. In fact, he even indicated "Danish CBA" as the name of the worker's union/ federation in his complaint. Neither did he deny (Petitioners') averment that the CBA is still in full force and effect. This amounts to an admission by silence under Section 32, Rule 130 of the *Rules of Court*.[36] (Citations omitted; underscoring supplied; emphasis and italics in the original)

Significantly, not only the respondent but as well petitioners' do not dispute the effectivity of the CBA. In fact, one of the errors assigned in this petition for review is that the complaint is premature pending ruling under the Danish Industrial Injuries Act as mandated by the parties' CBA. This assertion is an implied recognition that the CBA remained effective at the time respondent lodged his complaint.[37]

Having thus concluded that the CBA remained effective, its provisions on the award of disability should be followed, particularly as it is not contrary to law, the POEA-SEC, and public policy. In fact, it is more favorable to respondent and does not preclude the latter from recovery under

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35 *Tagalog v. Crossworld Marine Services, Inc., et al.*, 761 Phil. 270, 277 (2015).
36 *Rollo*, pp. 270-271.
37 Id. at 20.

the provisions of the POEA-SEC. On the award of disability, the CBA provides:

> ARTICLE 10- DEATH AND DISABILITY COMPENSATION
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> xxxx
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> When meting out compensations according to POEA Rules, any entitlements according to the Danish Industrial Injuries Act should be set of. The set off is based on a conversion of any running benefits into a lumpsum according to specific rules laid down by the Danish Minister of Social Affairs.[38]

The CBA provides that any amount awarded under the Danish Industrial Injuries Act shall be subtracted from the compensation respondent is found to be entitled under the POEA-SEC. Any deficiency would be the amount payable to respondent. Necessarily, a prior ruling in accordance with the Danish Industrial Injuries Act is necessary in order to determine whether such deficiency exists.

With this determination, it must be noted there is no more hindrance in the resolution of this case as the NBII has already rendered its Decision[39] granting respondent: a) 8% disability benefits in the amount of USD9,596.39 or DKK64,408.00,[40] b) loss of earning capacity equivalent to 75% for which the respondent will receive a monthly compensation in the amount of DKK6,268.00 from January 28, 2015 until June 10, 2038, when the respondent reaches 68 years old.[41] There is no more any practical value in dismissing the case on the ground of prematurity merely because respondent instituted this action during the pendency of the proceedings before the NBII. It is more judicious to resolve the instant case to finally put an end to this controversy.

The NBII Decision was brought to the attention by petitioner on September 24, 2015 through a Manifestation filed before the CA.[42] The same NBII Decision was considered and recognized by the CA in rendering its herein assailed Decision. Notably, respondent made no comment or objection to the introduction of the NBII Decision before the CA. Likewise, petitioner did not assail or repudiate the said NBII Decision in its petition before this Court. Similarly, no objection was made by respondent with respect to petitioner's submission that he had already received a total of DKK98,661.00 or USD14,566.78 – representing disability benefits of

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38 Id. at 272.
39 Id. at 363-367, 387-393.
40 Id. at 363.
41 Id. at 15, 52.
42 Id. at 387-388

DKK64,408.00 or USD9,596.39 which respondent received on May 26, 2015, and DKK34,253.00 or USD4970.38, back payment for loss of earning capacity until February 29, 2016. These payments were supported by statements issued by the Danske Bank that the amounts have been credited to respondent's accounts at the Bank of the Philippine Islands, Ayala Avenue Branch.[43] Respondent similarly does not dispute this fact.

The NBII Decision, of itself, is presumptive evidence of the rights as between the parties.[44] Coupled with its partial execution in the form of payment to respondent of disability benefits, there remains to be no genuine issue in this case but the execution of its remaining disposition vis-à-vis the provisions of POEA SEC.[45]

Pursuant to the NBII Decision, Mr. Frederick Nielsen of the Danish Shipowner Accident Insurance Association affirmed that respondent is entitled to receive DKK2,860.00 by way of monthly compensation for loss earning capacity until he reaches the age of 68 years.[46] Respondent having been born on June 10, 1969, is therefore entitled to receive this monthly compensation until June 9, 2038. Respondent is therefore entitled to a total amount of **DKK764,411.00** or **USD121,601.43**[47] as compensation for loss of earning capacity, computed as follows:

Period	**Amount**
From commencement until February 29, 2016 *(already been received by the respondent)*	DKK 34,253
March 2016 until December 31, 2016 (DKK 2860* 10)	28,600
January 1, 2017 until December 31, 2037 [(DKK 2860*12)*20]	686, 400
January 1, 2038 until June 9, 2038 {[DKK 2860*5]+ [(DKK 2860/30)*9]}	15,158
TOTAL	**DKK 764,411**

On the other hand, the maximum disability compensation that can be awarded under the POEA-SEC is USD60,000.00 which corresponds to permanent and total disability benefits. Considering that this amount is significantly lesser than the amount already awarded by the Danish Authorities,[48] the resolution of the issue of whether respondent is entitled to the same is already moot. Otherwise stated, with the offsetting provision

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43 Id. at 52, 403-405.
44 RULES OF COURT, Rule 39, Section 48.
45 Cf. *Puyat v. Zabarte*, 405 Phil. 413, 425 (2001).
46 *Rollo*, p. 402.
47 1 DKK = 0.16 USD per prevailing rate on November 16, 2020.
48 Cf. *Arlo Aluminum v. Piñon, Jr.*, 813 Phil. 188, 199 (2017).

under the CBA, whether the Court adjudge the respondent entitled to total and permanent liability under the POEA-SEC, the result would be the same, there is no additional obligation imposed upon petitioner. Necessarily, as the amount awarded by the Danish Authorities in their decision is higher than the maximum possible award under the POEA-SEC, there can be no resulting deficiency. Succinctly, no practical relief can be granted by the Court in this case. It would therefore be unnecessary to indulge in the academic discussion of respondent's entitlement to benefits under the POEA-SEC, as a judgment thereon cannot have any practical legal effect, or in the nature of things, cannot be enforced.[49]

On a final note, the Court delves on the propriety of the award of attorney's fees. There is no basis for the award of attorney's fees in favor of the respondent since it cannot be said that he was forced to litigate, was left without any recourse or was maliciously withheld of payment of benefits. At the time he filed the instant complaint, his claim before the Danish Authorities was still pending.[50] While he is not technically precluded from seeking relief simultaneously from both fora, respondent's resort to this jurisdiction is his personal decision and one not attributable to bad faith or malice on the part of the petitioners.[51] Consequently, each party should bear its own costs of suit.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 138700 dated July 13, 2016, and its Resolution dated January 11, 2017 are hereby **REVERSED and SET ASIDE**. Accordingly, the Complaint dated June 24, 2013 is hereby **DISMISSED**.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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49 *Sales v. Commission on Elections*, 559 Phil. 593, 596-597 (2007).
50 *NFD Int'l. Manning Agents, Inc./Barber Ship Mgmt. Ltd. v. Illescas*, 646 Phil. 244, 256-257 (2010).
51 *Tangga-an v. Phil. Transmarine Carriers, Inc., et al.*, 706 Phil. 339, 349 (2013).

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
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