



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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**THIRD DIVISION**

**LEMUEL DEOCAMPO,**  
Petitioner,

**G.R. No. 236570**

**Present:**

- versus -

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

**SEACREST MARITIME  
MANAGEMENT, INC.,  
NORDIC TANKERS MARINE  
A/S DENMARK and GEZIEL  
DE GUZMAN,**

**Promulgated:**

Respondents.

June 14, 2021

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**DECISION**

**LOPEZ, J., J.:**

It is the duty of a company-designated physician to issue a final and definite medical assessment within 120 days from the time the seafarer reported to him/her. An extension up to 240 days may be invoked only when the company-designated physician performs some significant act to show that the extension was sufficiently justified.

This Court resolves the Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated August 16, 2017 and the Resolution<sup>3</sup> dated January 4, 2018 of the Court of Appeals (CA) in CA-G.R. SP No.146593, which reversed and modified the Panel of Voluntary Arbitrators' (PVA) Decision dated March 3, 2016 and, instead, denied the claim of Lemuel Deocampo for total and permanent disability benefits and

\* On leave

<sup>1</sup> *Rollo*, pp. 17-52.

<sup>2</sup> Penned by Associate Justice Ricardo R. Rosario (now a member of this Court), with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring, *id.* at 62-71.

<sup>3</sup> *Id.* at 73.

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attorney's fees.

The facts, as culled from the CA Decision, are as follows:

Lemuel Deocampo (*Lemuel*) was hired by Seacrest Maritime Management, Inc. (*Seacrest*), for and on behalf of employer Nordic Tankers Marine A/S-Denmark (*Nordic*), to work as a Fitter on board the vessel MT Harbour Clear, with a basic salary of US\$691.00.<sup>4</sup> Lemuel was certified as fit for sea duty by the company physician and was allowed to board the vessel on October 2, 2014.<sup>5</sup>

Lemuel signed a Contract of Employment with a "*ITF/IBFTCC-FLEET Collective Bargaining Agreement (CBA)*," which provided for a greater benefit for permanent disability as a result of work-related illness or injury resulting from an accident, than that provided by the POEA Standard Employment Contract (*POEA-SEC*). Lemuel's Contract of Employment was also covered by the Compulsory Insurance Coverage for Agency-Hired Workers under Section 37-A of Republic Act No. (*R.A. No.*) 8042, as amended by Section 23 of R.A. No. 10022.<sup>6</sup>

As a Fitter, Lemuel's work was hard manual labor, which normally consisted of lifting of heavy loads; repair of engine, running motors, and vessel; welding and fabrication; lifting and transferring of pipes, equipment, and other heavy items; painting and rust removal; cleaning of empty tanks, air generator, oil filters and boilers; maintenance of purifiers, crane, mooring lines, anchor winches, injectors, generators; and other similar duties. Considering, further, that the ship was a chemical/oil tanker, Lemuel was regularly exposed to fumes, noxious gases, and other toxic elements.<sup>7</sup>

On March 3, 2015, or almost five (5) months on board the ship, Lemuel complained of dizziness and fainted in the bathroom. He was later found to have an increased blood pressure. Lemuel was then referred to the Hospital Universitario Santa Lucia in Cartagena, Spain on March 30, 2015 where he was diagnosed with Acute Vestibular Syndrome of Peripheral Origin and was prescribed medication.<sup>8</sup>

Lemuel was repatriated to Manila for treatment on April 5, 2015 and was referred to the Alegre Medical Clinic in St. Luke's Medical Center. A laboratory test conducted on April 9, 2015 showed that his cholesterol level was elevated.<sup>9</sup>

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<sup>4</sup> *Id.* at 62.

<sup>5</sup> *Id.* at 62-63.

<sup>6</sup> *Id.* at 63.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

On April 16, 2015, the company-designated physician, Dr. Alegre (*Dr. Alegre*), issued his 2<sup>nd</sup> Progress Report which stated that Lemuel was suffering from Syncope (fainting) and Benign Paroxymal Positional Vertigo (vertigo).<sup>10</sup>

On July 22, 2015, Lemuel underwent a hearing test which showed that he had “mild to moderate conductive hearing loss on both ears.” Further, the diagnosis of Lemuel’s brain MRI scan conducted on May 21, 2015 stated “*Consider Gliosis or Chronic Lacunar Infarct, Left Corona Radiata.*” Gliosis is damage to the central nervous system, Chronic Lacuna Infarct means stroke, and the Left Corona Radiata refers to the location of the damage in the brain, “specifically at the left bundle of nerve cells which carry information from the cerebral cortex to the brain stem.”<sup>11</sup>

On August 12, 2015, after Lemuel underwent treatment, Dr. Alegre issued his 12<sup>th</sup> and Final Progress Report which stated:

The **vertigo** is refractory to treatment and persistent. Based on the POEA Contract Section 12, a **disability Grade 12** is given with the nearest similarity found under **Abdomen #5**, slight residuals of disorder resulting to **moderate tenderness**.<sup>12</sup>

Dissatisfied with the findings of Dr. Alegre that he only suffers from Grade 12 partial disability, Lemuel sought the second opinion of Dr. Rommel Galvez (*Dr. Galvez*), an independent cardiologist. After examining Lemuel, Dr. Galvez issued a Medical Report dated August 19, 2015, diagnosing Lemuel with “Cebrovascular Accident with Infarct on his Lacunar Area,” or a small stroke in the subcortical areas of the brain. Dr. Galvez found Lemuel to be suffering from a permanent disability and stated that he “was unfit to work in any capacity as a seaman.”<sup>13</sup> The recommendation of Dr. Galvez reads:

This is to certify that Mr. Lemuel de Ocampo diagnosed case of Cerebro vascular Accident with Infarct on his Lacunar Area. He was also diagnosed with mild to moderate hearing loss on (*sic*) his both ears. At present patient still complains of on and off dizziness and hearing impairment. Based on all this (*sic*) findings he is unfit to work in any capacity as a seaman.<sup>14</sup>

Notably, the records do not show whether Dr. Galvez conducted any tests on Lemuel and whether he based his recommendation on those tests.<sup>15</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 63-64.

<sup>12</sup> *Id.* at 64.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Subsequently, Lemuel claimed from Seacrest and Nordic the balance of his 12-day sick leave amounting to US\$369.00, as well as reimbursement of his medical expenses amounting to ₱5,900.00. Both claims were rejected by Seacrest and Nordic. When his condition did not improve despite treatment, Lemuel demanded payment of permanent and total disability benefits from Seacrest and Nordic, but also to no avail.<sup>16</sup>

Thus, Lemuel filed an action under Article 20.1.3.1 in relation to Article 20.1.4 of the CBA against Seacrest and Nordic to collect permanent and total disability benefits, unpaid sick leave benefits, reimbursement for medical expenses, damages, and attorney's fees.<sup>17</sup>

### *The PVA's Ruling*

In a Decision dated March 3, 2016, the PVA ruled in favor of Lemuel and ordered Seacrest and Nordic to pay him permanent and total disability benefits in the amount of US\$129,212.00, unpaid sick leave pay of US\$369.00, and attorney's fees equal to 10% of the total claims.<sup>18</sup>

In so ruling, the PVA held that Lemuel was fit when he started his job, but because of the toxic and arduous nature of his work aboard the ship, he suffered from fainting and vertigo during the term of his employment.<sup>19</sup> The PVA also stated that the post-employment medical tests conducted on Lemuel confirmed that he was suffering from mild stroke, vertigo, and hearing loss in both ears.

Moreover, the PVA found as incorrect and not definitive the 12<sup>th</sup> and Final Progress Report of Dr. Alegre which assessed Lemuel's disability as Grade 12 under Section 32 (Abdomen, No. 5) of the POEA Standard Employment Contract. According to the PVA, disability under Section 32 (Abdomen, No. 5) refers to slight disorders in the intra-abdominal organs; whereas the post-employment medical tests conducted on Lemuel, as well as the second opinion of Dr. Galvez, revealed fainting, vertigo, mild stroke, and hearing loss—disorders relating to the nervous system and sense organs.

The PVA further noted that the 12<sup>th</sup> and Final Report of Dr. Alegre showed that Lemuel's disability was not yet resolved at the time it was issued on August 12, 2015 because Dr. Alegre stated that Lemuel's headache with vertigo and ringing in the ears was recurrent and persistent, and advised Lemuel to continue his medication. Considering also that the 12<sup>th</sup> and Final Report of Dr. Alegre was issued on August 12, 2015, or on the 129<sup>th</sup> day from the date Lemuel arrived in Manila on April 5, 2015, the PVA held that

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 64-65.

<sup>18</sup> *Id.* at 62.

<sup>19</sup> *Id.* at 65.

Lemuel was still incapacitated even after the 120-day period provided under Articles 191 to 193 of the Labor Code. The PVA opined that the unresolved medical condition of Lemuel might have even persisted 240 days beyond April 5, 2015 because the second opinion of Dr. Galvez made on August 19, 2015 stated that Lemuel was still suffering from on-and-off dizziness and hearing impairment, with no definitive medical report after that. Thus, the PVA concluded that Lemuel's disability is permanent and total which was compensable under the terms of the CBA.

Finally, the PVA granted Lemuel's prayer for unpaid sick leave pay in the amount of US\$369.00 for failure of Seacrest and Nordic to dispute it, and awarded attorney's fees stating that Lemuel was forced to litigate to protect his rights.<sup>20</sup> The dispositive portion of the PVA Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered ordering respondents Seacrest Maritime Management, Inc[.], Nordic Tankers Marine A/S Denmark, and Geziel De Guzman, to pay complainant Lemuel Dictado Deocampo, jointly and severally, the following:

1. Permanent and total disability benefits of US\$129,212.00;
2. Balance of sick leave pay of US\$369.00; and
3. Plus ten percent (10%) of the total claims representing the attorney's fees or its equivalent in Philippine Peso at the time of payment.

Other claims are dismissed for utter lack of substantial basis.

**SO ORDERED.**<sup>21</sup>

Aggrieved, Seacrest and Nordic appealed the PVA Decision to the CA.

### ***The CA Ruling***

In a Decision<sup>22</sup> dated August 16, 2017, the CA reversed and modified the PVA Decision and held that Lemuel was not entitled to permanent and total disability benefits and attorney's fees. It ruled that there was no doubt that the disability of Lemuel was permanent,<sup>23</sup> but was only partial. It gave credence to the findings of Grade 12 disability by Dr. Alegre, which it said were supported by the results of the hearing test and laboratory examinations conducted on Lemuel, and not contradicted by Dr. Galvez's opinion.<sup>24</sup>

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 27-28.

<sup>22</sup> *Id.* at 62-71.

<sup>23</sup> *Id.* at 67.

<sup>24</sup> *Id.* at 68.

Moreover, the CA held that there was no point in determining if Dr. Alegre issued his 12<sup>th</sup> and Final Progress Report within the 120 to 240-day period because he already declared Lemuel's disability to be permanent.<sup>25</sup> The dispositive portion of the CA Decision reads:

**WHEREFORE**, the *Decision*, dated 3 March 2016, of the Panel of Voluntary Arbitrators in MVA-086-RCMB-NCR-163-10-10-2015, ordering herein petitioners Seacrest Maritime Management, Inc. and Nordic Tankers Marine A/S – Denmark to pay herein respondent Lemuel D. Deocampo 100% of permanent and total disability benefits; unpaid sick leave pay of US\$369.00; and attorney's fees equal to 10% of total claims, is **REVERSED** and **MODIFIED** in that –

1. Petitioners are **ORDERED** to pay respondent a disability compensation in an amount equivalent to a Grade 12 rating of permanent partial disability, with interest at the legal rate of 6% per annum until fully paid.

2. The award of unpaid sick leave pay of US\$369.000 is **AFFIRMED** with interest at the legal rate of 6% per annum until fully paid.

The award of attorney's fees is **DELETED**.

**SO ORDERED.**<sup>26</sup>

Lemuel's motion for reconsideration was denied in a Resolution<sup>27</sup> dated January 4, 2018. Hence, this Petition.

### ***The Issues***

Lemuel raises the following issues:

#### I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE SELF-SERVING ASSESSMENT OF PARTIAL DISABILITY FROM A DOCTOR WHO WAS NOT AN EXPERT

#### II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN GRANTING THE PARTIAL DISABILITY EVEN IF LEMUEL'S CONDITION REMAINS UNRESOLVED FOR A PERIOD OF MORE THAN 240 DAYS (*sic*); and

#### III.

<sup>25</sup> *Id.* at 69.

<sup>26</sup> *Id.* at 70-71.

<sup>27</sup> *Id.* at 73.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN GRANTING ATTORNEY'S FEES BASED ON THE PARTIAL DISABILITY<sup>28</sup>

Lemuel argues that Dr. Alegre's finding of partial disability is hearsay because he is not an expert, being neither a cardiologist or neurologist, but a rehabilitation doctor.<sup>29</sup> Moreover, he contends that since he was not given a copy of the final assessment of Dr. Alegre, he had no obligation to dispute the final assessment by referring it to a third physician in accordance with Section 20(A)(3) of the POEA-SEC.<sup>30</sup> Finally, Lemuel insists that he has been unfit for sea service from the onset of his disability on April 5, 2015 until the filing of his petition. Since it has been more than 240 days from the time he arrived in Manila, he says his disability is considered permanent and total.<sup>31</sup>

In their Comment<sup>32</sup> dated June 14, 2018, Seacrest and Nordic argue that the present petition should be dismissed outright for raising questions of fact.<sup>33</sup> They further argue that the CA did not err in giving more weight to the diagnosis of Dr. Alegre considering that he attended to Lemuel for months, in contrast to the assessment of Dr. Galvez which was arrived at after a one-time examination only.<sup>34</sup> Lastly, they emphasize that Dr. Alegre made his final assessment on the 129<sup>th</sup> day of medical treatment, or within the 240-day period; thus, Lemuel is not entitled to total and permanent benefits.<sup>35</sup>

In his Reply<sup>36</sup> dated June 29, 2018, Lemuel stated that his petition presents a question of law considering that "only the expert and attending physician of the seafarer should issue a medical certificate of fitness for work of disability within the threshold allowed under Articles 191-193 of the Labor Code, as amended."<sup>37</sup>

### *The Ruling of the Court*

The petition is granted.

It is well settled that only questions of law may be entertained in a petition for review on *certiorari* under Rule 45 of the Rules of Court. This Court, not being a trier of facts, is not duty bound to reexamine and calibrate

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<sup>28</sup> *Id.* at 29-30.

<sup>29</sup> *Id.* at 30.

<sup>30</sup> *Id.* at 41.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 75-93.

<sup>33</sup> *Id.* at 75.

<sup>34</sup> *Id.* at 77.

<sup>35</sup> *Id.* at 84.

<sup>36</sup> *Id.* at 95-106.

<sup>37</sup> *Id.* at 95.

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the evidence on record.<sup>38</sup> There are recognized exceptions to this rule, however, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked undisputed facts that if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to admissions of both parties.<sup>39</sup>

Here, the Court is compelled to review the facts of the case, considering the presence of two exceptions—the CA manifestly overlooked the undisputed facts that, if properly considered, would justify a different conclusion, and the findings of the CA are contrary to those of the PVA.

## I.

The parties do not dispute that Lemuel's disability is permanent. The question is whether his disability is partial or total.

The right of seafarers to claim disability benefits is governed by law, contract, and medical findings. The applicable laws are Articles 197 to 199<sup>40</sup> of the Labor Code in relation to Section 2(a), Rule X of the Rules Implementing Title II, Book IV of the said Code. The pertinent provisions state:

### ART. 198. **Permanent Total Disability** xxx

(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 in the Rules; x x x.

Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code (*IRR*) - 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 anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual

<sup>38</sup> *Deocariza v. Fleet Management Services Philippines, Inc.*, 836 Phil. 1087, 1097 (2018).

<sup>39</sup> See *Dionio v. ND Shipping Agency and Allied Services, Inc.*, et al., 838 Phil. 953, 965-966 (2018).

<sup>40</sup> Formerly Articles 191 to 193 of the Labor Code.



loss or impairment of physical or mental functions as determined by the System.

The applicable contracts, on the other hand, are the POEA-SEC and the parties' CBA, if any.<sup>41</sup> The 2010 POEA-SEC provides the minimum standard terms and conditions governing the employment of Filipino seafarers on board ocean-going ships, and is deemed incorporated into every contract of seafarers. Under Section 20(A) of the POEA-SEC, the employer is liable when the seafarer suffers a work-related injury or illness during his contract.<sup>42</sup> When a seafarer complains of a work-related injury, the POEA SEC requires the company-designated physician to issue a definite assessment of the seafarer's fitness to work or degree of disability within a period of 120 days from repatriation.<sup>43</sup>

In *Elburg Shipmanagement Phils. Inc., et al. v. Quiogue*,<sup>44</sup> the Court delved into applicable rules and existing jurisprudence, and summarized the rule on awarding permanent and total disability benefits, thus:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules shall govern:

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/her;
2. If the company-designated physician fails to give his/her 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/her 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/her assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.<sup>45</sup>

The doctrine in *Elburg* has since been reaffirmed by the Court in many cases.<sup>46</sup>

<sup>41</sup> See *Anuat v. Pacific Ocean Manning, Inc.*, 836 Phil. 618 (2018).

<sup>42</sup> See Section 20 (A) of 2010 POEA-SEC.

<sup>43</sup> *Id.*, Section(20)(A)(3).

<sup>44</sup> 765 Phil. 341 (2015),

<sup>45</sup> *Id.* at 362-363.

<sup>46</sup> See *Martinez v. OSG Ship Management Manila, Inc.*, G.R. No. 237373, July 29, 2020; *Abosta Shipmanagement Corp. v. Segui*, G.R. No. 214906, January 16, 2019; *Cariño v. Maine Marine Phils., Inc.*, G.R. No. 231111, October 17, 2018.

## II.

*The final medical assessment of Dr. Alegre was issued beyond the 120-day period without sufficient justification*

Following the *Elburg* doctrine, if the final medical assessment was issued beyond 120 days from the first day of medication, the seafarer's disability becomes total and permanent, unless the failure to give the final medical assessment within 120 days was sufficiently justified (e.g., seafarer was required further medical treatment or seafarer was uncooperative). In that case, the period of diagnosis and treatment shall be extended to 240 days.

Thus, in *Elburg*, the Court elaborated on this point and said that the company-designated physician "must perform some significant act before he can invoke the exceptional 240-day period under the IRR."<sup>47</sup>

In *Elburg*, seafarer Enrique Quiogue (*Quiogue*) was on treatment and therapy from November 2010 to April 2011 with the company-designated physician, and the final medical assessment certifying that the seafarer was fit for sea duties was issued on April 13, 2011, or after the lapse of 120 days. The Court held that since the company physician was silent on the need to extend the period of diagnosis and treatment, it was the original 120-day period that applied. The Court then ruled that it did not matter that the company physician certified Quiogue as fit to return to work, because the certification was issued beyond the authorized 120-day period. Thus, Quiogue was entitled to permanent and total disability benefits not only because of incapacity to work for more than 120 days, but also because the company physician belatedly gave his final medical assessment of Quiogue, without any justifiable reason therefor.

In the present case, it is not disputed that Dr. Alegre issued his 12<sup>th</sup> and Final Report on August 12, 2015, or on the 129<sup>th</sup> day after Lemuel first reported to him. Thus, following *Elburg*, Lemuel is entitled to total and permanent disability benefits, unless Dr. Alegre was able to sufficiently justify the need to extend the period of diagnosis and medical treatment to 240 days.

This Court finds that Dr. Alegre failed to do so.

The records are bereft of any evidence to show that Dr. Alegre made a finding that there was a need to extend the period of diagnosis and treatment to 240 days. The 2<sup>nd</sup> Progress Report issued by Dr. Alegre on April 16, 2015,

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<sup>47</sup> *Elburg Shipmanagement Phils. Inc., et al. v. Quiogue, supra* note 44, at 362.

to be sure, merely stated that Lemuel was suffering from Syncope (fainting) and Benign Paroxysmal Positional Vertigo (vertigo).<sup>48</sup> On the other hand, the *12<sup>th</sup> and Final Progress Report* states:

The **vertigo** is refractory to treatment and persistent. Based on the POEA Contract Section 12, a **disability Grade 12** is given with the nearest similarity found under **Abdomen #5**, slight residuals of disorder resulting to **moderate tenderness**.<sup>49</sup>

In ruling that the *12<sup>th</sup> and Final Progress Report* issued on the 129<sup>th</sup> day was timely made, the CA cited *Jebsens Maritime, Inc., et al. v. Rapiz*,<sup>50</sup> particularly the Court's pronouncement as follows:

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

x x x

x x x

x x x

As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.** In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work.<sup>51</sup>

Thus, following the *Jebsens* ruling, the CA held that the law gives the company-designated physician up to a total of 240 days to give a final medical assessment "*if the patient requires further medical treatment, as in this case.*"<sup>52</sup>

<sup>48</sup> *Rollo*, p. 63.

<sup>49</sup> *Id.* at 64.

<sup>50</sup> 803 Phil. 266 (2017).

<sup>51</sup> *Id.* at 272. (Emphasis and underscoring in the original; citations omitted).

<sup>52</sup> *Id.* at 68.

The CA's reliance on the *Jebbens* case, however, is misplaced. The relevant final medical assessment in that case was issued on the 102<sup>nd</sup> day from repatriation. Thus, the Court did not have an opportunity to discuss whether there was a need to extend the period to give a final medical assessment to 240 days. To reiterate, this is because the final medical assessment was timely made within the 120-day period.

More important, the CA must have overlooked that in *Jebbens*, the Court also cited *Elburg*, thus:

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the Court further clarified that for the company-designated physician to avail of the extended 240-day period, **he must first perform some significant act to justify an extension** (e.g., that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be conclusively presumed to be permanent and total.<sup>53</sup> (Emphasis supplied.)

The need for the company-designated physician's "significant act to justify an extension" to 240 days, therefore, was reiterated in *Jebbens*. In the present case, the CA's conclusion that Lemuel required further medical treatment was not shown to be supported by any evidence that it was so declared by Dr. Alegre.

It should be emphasized that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period.<sup>54</sup> In *Paleracio v. Selanes Marine Services, Inc.*,<sup>55</sup> this Court found that an extension of the 120-day period was not sufficiently justified in view of the absence of any document to establish that the company-designated physician had declared the necessity for extension of treatment or assessment to address the temporary disability. Moreover, the Court found that no medical report of the treatment or the various medical tests and procedures was ever presented. The Court ruled that the seafarer was entitled to total and permanent disability benefits, considering that the final medical assessment was issued beyond the 120-day period.

Similarly, the CA did not cite or refer to any document or medical report by Dr. Alegre stating that there was a need to extend the period of diagnosis and treatment to 240 days. In the absence of such showing, this Court is inclined to rule in favor of Lemuel. In case of doubt in the evidence presented by the employer, the scales of justice should be tilted in favor of the seafarer, pursuant to the principle that the employer's case succeeds or fails on the strength of its own evidence and not on the weakness of that adduced by the employee.<sup>56</sup>

<sup>53</sup> *Supra* note 49, at 273. (Emphasis supplied; citations omitted).

<sup>54</sup> *Albada v. Career Philippines Ship Management, Inc., et al.*, 811 Phil. 486, 505 (2017).

<sup>55</sup> 835 Phil. 997, 1010 (2018).

<sup>56</sup> *Saso v. 88 Aces Maritime Service, Inc., et al.*, 770 Phil. 677, 691 (2015).

The CA held that in any case, the counting of the 120 and 240-day periods is not material considering that the disability of Lemuel was already declared permanent, albeit partial.<sup>57</sup>

In *Carcedo v. Maine Marine Philippines, Inc., et al.*,<sup>58</sup> the Court held that “a partial and permanent disability could by legal contemplation, become total and permanent.” Citing *Kestrel Shipping Co., Inc. v. Munar*,<sup>59</sup> the Court said:

x x x The Court in *Kestrel Shipping Co., Inc. v. Munar* held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, viz.:

Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.

**Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.**<sup>60</sup>

Based on the above discussion, this Court rules that Lemuel is entitled to total and permanent disability benefits for failure of Dr. Alegre to issue his final medical assessment within the 120-day period without any sufficient justification.

<sup>57</sup> *Rollo*, p. 69.

<sup>58</sup> 758 Phil. 166, 182-183 (2015).

<sup>59</sup> 702 Phil. 717 (2013).

<sup>60</sup> *Id.* at 730-731. (Emphasis in the original; citations omitted)

***The 12<sup>th</sup> and Final Progress Report was not the final and definitive medical assessment contemplated by law***

In any case, even assuming that Dr. Alegre issued the *12<sup>th</sup> and Final Progress Report* within a valid 240-day period, this Court still finds that Lemuel is entitled to total and permanent disability benefits.

In *Rosales v. Singa Ship Management Phils., Inc.*,<sup>61</sup> the Court, citing *Sunit v. OSM Maritime Services, Inc., et al.*,<sup>62</sup> said:

**A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.** Otherwise, the corresponding disability benefits awarded might not be commensurate with the **prolonged effects of the injuries suffered.**<sup>63</sup>

In *Rosales*, the Court found that the final assessment of the company-designated physician did not indicate whether the illness of the seafarer was resolved. Instead, the physician recommended the seafarer to undergo further treatment for another six (6) months, depending on his response to treatment. The Court said that the inconclusive assessment and the seafarer's prolonged illness highlighted that the company-designated physician failed to render a definitive assessment of his disability.<sup>64</sup> The Court thus held:

Without a final and definitive medical assessment from the company-designated physician within the 240-day extended period, **the law steps in to consider the seafarer's disability as total and permanent.**<sup>65</sup>

Since more than 240 days had lapsed from the time of the seafarer's repatriation up to the time he filed a complaint, he was considered by the Court as permanently and totally disabled.<sup>66</sup>

In the present case, the *12<sup>th</sup> and Final Progress Report* made by Dr. Alegre states:

The **vertigo** is refractory to treatment and persistent. Based on the POEA Contract Section 12, a **disability Grade 12** is given

<sup>61</sup> G.R. No. 234914, February 19, 2020.

<sup>62</sup> 806 Phil. 505 (2017).

<sup>63</sup> *Id.* at 519. (Emphasis supplied in the original).

<sup>64</sup> *Rosales v. Singa Ship Management Phils., Inc.*, *supra* note 60.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

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with the nearest similarity found under **Abdomen #5**, slight residuals of disorder resulting to **moderate tenderness**.<sup>67</sup>

Notably, Dr. Alegre found that the illness of Lemuel was not yet resolved at the time he issued the report, as in fact he stated—“the vertigo is refractory to treatment and persistent.” Moreover, although not cited by the CA in its Decision, the PVA Decision mentioned that in the *12<sup>th</sup> and Final Progress Report*, Dr. Alegre had advised Lemuel to continue with his medications.<sup>68</sup>

Following the ruling in *Rosales*, this Court finds that the *12<sup>th</sup> and Final Progress Report* of Dr. Alegre was merely an interim assessment, and not a final and definitive assessment.

It also bears stressing that the *12<sup>th</sup> and Final Progress Report* of Dr. Alegre did not certify that Lemuel was already fit to resume work. In *Jebsens Maritime, Inc., et al., v. Babol*,<sup>69</sup> the Court found that in the absence of a certification that the employee is fit or unfit to work, the law presumes that the employee remains in a state of temporary disability. The Court stated:

In *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC*, the Court held that disability should be understood not more on its medical significance, but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness. Evidence of this condition can be found in a certification of fitness/unfitness to work issued by the company-designated physician.

In this case, records reveal that the medical report issued by the company-designated oncologist was bereft of any certification that respondent remained fit to work as a seafarer despite his cancer. This is important since the certification is the document that contains the assessment of his disability which can be questioned in case of disagreement as provided for under Section 20 (B) (3) of the POEA-SEC.

***In the absence of any certification, the law presumes that the employee remains in a state of temporary disability. Should no certification be issued within the 240 day maximum period, as in this case, the pertinent disability becomes permanent in nature.***

Considering that respondent has suffered for more than the maximum period of 240 days in light of the uncompleted process of evaluation, and the fact that he has never been certified to work again or otherwise, the Court affirms his entitlement to the permanent total disability benefits awarded

<sup>67</sup> *Rollo*, p. 64. (Emphasis in the original).

<sup>68</sup> *Id.* at 65.

<sup>69</sup> 722 Phil. 828, 844 (2013).

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him by the CA, the NLRC and the LA.<sup>70</sup>

Considering that (1) no other final and definitive medical assessment was made after the *12<sup>th</sup> and Final Progress Report*; (2) the *12<sup>th</sup> and Final Progress Report* did not certify that Lemuel was fit or unfit to resume work; and (3) it has been over 240 days from the time Lemuel first reported to Dr. Alegre, this Court finds that the disability of Lemuel has become total and permanent by operation of law.

### III.


This Court finds that Lemuel is likewise entitled to attorney's fees. Under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workers' compensation and employer's liability laws.

Pursuant to *Nacar v. Gallery Frames*,<sup>71</sup> this Court imposes an interest at the legal rate of six percent (6%) *per annum* on the monetary award for total and permanent disability benefits from the date of the finality of this judgment until full satisfaction.

**WHEREFORE**, premises considered, the petition is **GRANTED**. The Decision dated August 16, 2017 and the Resolution dated January 4, 2018 of the Court of Appeals in CA-G.R. SP No. 146593 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 3, 2016 of the Panel of Voluntary Arbitrators is hereby **AFFIRMED**. Respondents Seacrest Maritime Management, Inc. and Nordic Tankers Marine A/S Denmark are hereby **ORDERED** to jointly and solidarily **PAY** petitioner Lemuel Deocampo US\$129,212.00, or its peso equivalent, representing his disability benefit under the Philippine Overseas Employment Administration-Standard Employment Contract, sick leave pay in the amount of US\$369.00, if the same has not been paid, and ten percent (10%) attorney's fees.

A legal interest of six percent (6%) *per annum* shall, likewise, be imposed on the total judgment award from the finality of this Decision until its full satisfaction.

**SO ORDERED.**

  
**JHOSEP Y. LOPEZ**  
Associate Justice

<sup>70</sup> *Id.* at 844-845. (Emphasis ours; citations omitted).


<sup>71</sup> 716 Phil. 267 (2013).



**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

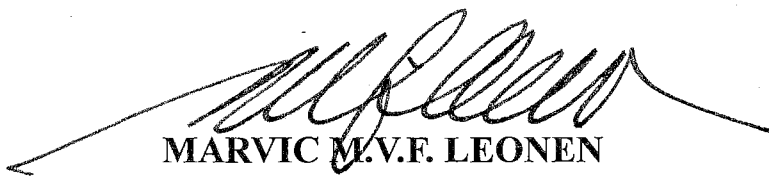
On leave  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
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 Third Division.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to the 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice