Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JUAN S. ESPLAGO, Petitioner, - *versus* - **NAESS SHIPPING PHILIPPINES, INC., KUWAIT OIL TANKER COMPANY and/or LAMBERTO J. TORRES,** Respondents.	**G.R. No. 238652** **Present:** LEONEN, *J.*, * HERNANDO, *Acting Chairperson*,** INTING, DELOS SANTOS, and LOPEZ, J., *JJ.* **Promulgated:** June 21, 2021 MicADCBath

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DECISION

LOPEZ, J., *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the September 11, 2017 Decision[2] and the March 8, 2018 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 132639, which reversed and set aside the July 15, 2013 Decision of the National Labor Relations Commission (*NLRC*). The NLRC affirmed the February 8, 2013 Decision[4] of the Labor Arbiter (*LA*) which ordered herein respondents to pay petitioner total and permanent disability benefits, sickness wages and attorney's fees.

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* On wellness leave.

** Acting Chairperson, per Special Order No. 2828 dated June 21, 2021.

1 *Rollo*, pp. 11-32.

2 Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Romeo F. Barza (retired Presiding Justice) and Rafael Antonio M. Santos, concurring; *rollo*, pp. 36-48.

3 *Rollo*, pp. 49-50.

4 *Id.* at 39, culled from the CA Decision.

The Factual Antecedents

Juan S. Esplago (hereinafter referred to as "*petitioner*") was hired by Naess Shipping Philippines, Inc. and/or Kuwait Oil Tanker Company (collectively referred to as "*respondents*") as motorman for the vessel "*Arabiyah*" with a basic monthly salary of US$666.00. In his position paper, petitioner averred that prior to his employment, he complied with the required medical examination and underwent a series of tests after which, he was declared fit to work by the company-designated physician. On July 25, 2011, petitioner boarded the vessel for an eight (8)-month tour of duty. As motorman, his responsibilities included watching over the engine room. On October 11, 2011, while the vessel was on its way to Indonesia, petitioner was in the engine boiler room when it discharged an excessive amount of smoke that hurt his eyes. He disregarded the incident thinking that it was just a simple eye irritation. After several days, however, his left eye vision started to blur to the point that his left eye could no longer see. Upon examination by the ship doctor, he was diagnosed with "*left eye cataract*" which prompted the ship doctor to recommend his repatriation and immediate eye surgery.[5]

On October 17, 2011, petitioner sought treatment from the Seamen's Hospital where he was found to be suffering from "*Senile, Mature, Cataract, Left Eye, Senile, Mature, Cataract, Right Eye.*" After reporting to his agency, he was referred to the Metropolitan Medical Center for treatment and management where the company-designated physician Dr. Robert D. Lim (*Dr. Lim*) and his team of doctors discovered that petitioner's right eye also had cataract and his condition was described as *"Cataract Senile Mature, Left Eye; Cataract Senile Mature, Right Eye'*. Dr. Lim then recommended that petitioner undergo *Phacoemulsification with Intra-Ocular Lens* for both eyes. In the meantime, he was prescribed ointments and vitamins.[6]

According to petitioner, the surgical procedure recommended by the ship doctor and the attending doctor at the Seamen's Hospital did not take place as there was no approval from respondents; that he continued to take vitamins and apply ointment in the hope that it will correct the vision impairment; that after several months of treatment but without surgery, his left eye could no longer see; that it was only on June 1, 2012 when he underwent cataract surgery on his left eye and that afterwards, respondents refused to provide medication for his right eye thereby causing it to deteriorate further until he could no longer see; that on July 13, 2012, he sought the opinion of another doctor, Dr. Gina Abesamis Tan-Perez (*Dr. Tan-Perez*) who, after conducting the necessary tests and examinations, concluded that the nature and extent of his illness permanently and totally prohibited him from working and performing the demands of his work as a seaman; and that as result thereof, he lost the possibility of being employed

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5 *Id.* at 37.

6 *Id.* at 37-38.

as a seaman, but even then, respondents failed to pay him total and permanent disability benefits.[7]

In contrast, however, respondents remained firm in asserting that petitioner's condition was brought about by old age and is, therefore, not work-related. According to them, petitioner had surgery on his left eye on January 6, 2012 and not on June 1, 2012, as claimed by the latter in his position paper; that petitioner underwent continuous medication and treatment and was expected to recuperate within six to eight weeks after the surgery; that after the surgery, petitioner was fitted with prescription glasses and was declared "fit to resume sea duties" as of May 7, 2012, or within the 240-day period allowed by law. Respondents, likewise, posited that petitioner's claim for disability benefits should be dismissed for failure to consult with a third doctor, whose opinion is binding pursuant to the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*).[8]

On February 8, 2013, the Labor Arbiter (*LA*) rendered a Decision ordering respondents to pay petitioner total and permanent disability benefits, sickness wages and attorney's fees, to wit:

> WHEREFORE, premises considered, respondents are hereby ordered to pay complainant the following:
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> Permanent and total disability benefits- US$60,000.00 or its equivalent in Philippine Currency at the time of payment; and
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> Sickness wages- US$2,664.00 or its equivalent in Philippine Currency at the time of payment; and
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> Attorney's fees- US$6,266.40 or its equivalent in Philippine Currency at the time of payment.
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> All other claims are denied.
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> SO ORDERED.[9]

Respondents appealed to the NLRC, which in its Decision dated July 15, 2013, affirmed the decision of the LA. Respondents then filed a motion for reconsideration, but the same was denied in a Resolution[10] dated August 30, 2013.

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7 *Id.* at 38.
8 *Id.* at 38-39.
9 *Id.* at 39.
10 *Id.*

After the parties filed their respective Comment and Reply thereto, the case was referred to the Philippine Mediation Center (*PMC*)-Court of Appeals for mediation. However, the parties refused to mediate and the case was referred back to the CA.[11]

On appeal to the CA, respondents argued that the labor tribunals committed grave abuse of discretion and palpable error of law in awarding total and permanent disability benefits, and attorney's fees to petitioner.[12]

In its Decision[13] dated September 11, 2017, the CA ruled in favor of respondents and reversed the decision of the NLRC. According to the CA, the LA should have dismissed petitioner's complaint outright for having been filed in violation of the provisions of the POEA-SEC and that in affirming said decision, the NLRC committed grave abuse of discretion. The dispositive portion of the CA Decision reads:

> Applying these observations and the ruling of the Supreme Court as quoted above, this Court finds that the labor arbiter should have dismissed respondent's complaint for having been filed in violation of the provisions of the POEA-SEC. In turn, respondent NLRC committed grave abuse of discretion in affirming the labor arbiter.
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> For these reasons and without evidence to support the respondent's ancillary claims for sick wages and attorney's fees, the same are also denied.
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> **WHEREFORE**, the petition is **GRANTED**. The decision dated July 15, 2013 and resolution dated August 30, 2013 of the National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. The complaint filed by respondent Esplago is DISMISSED for lack of merit.
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> **SO ORDERED**.[14]

Petitioner moved for the reconsideration of the adverted decision, but the CA denied the same in its Resolution[15] dated March 8, 2018.

Hence, this petition.

The Issue

Essentially, the issue for resolution of the Court is whether the CA erred in reversing the NLRC, and in holding that petitioner is not entitled to

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11 *Id.* at 40.
12 *Id.*
13 *Id.* at 36-48.
14 *Id.* at 48.
15 *Id.* at 49-50.

total and permanent disability benefits for failure to comply with the POEA-SEC rule on referral to a third doctor.

Ruling of the Court

The Court resolves to deny the petition.

After a careful and thorough perusal of the records of this case, especially the positions taken and maintained by both parties, the Court is convinced that the CA did not err when it reversed the Decision of the NLRC. The Decision rendered by the appellate court is in consonance with the law and long-established doctrines that seek to protect employers and seafarers alike.

In situations where the seafarer seeks to claim the compensation and benefits under Section 20-B, the law requires the seafarer to prove the following: (I) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[16]

To begin with, disability may be classified as either partial, total, temporary or permanent.

Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. *Total disability*, meanwhile, means the disablement of an employee to earn wages in the same kind of 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 attainments could do.[17]

Here, it is undisputed that at the time of his injury, petitioner was employed as a motorman on board respondent's vessel "Arabiyah" and was working in the ship's engine boiler room when it discharged an excessive amount of smoke that hurt both his eyes. The extent and seriousness of his eye injury is, likewise, supported by the medical findings of the doctors/physicians who examined him. In fact, the ship doctor recommended

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16 *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 388-389 (2014).

17 *Sunit v. OSM Maritime Services, Inc., et al.*, 806 Phil. 505, 514 (2017), citing *Hanseatic Shipping Philippines Inc. v. Ballon*, 769 Phil. 567 (2015); *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234 (2015); *Maersk Filipinas Crewing, Inc. v. Mesina*, 710 Phil. 531 (2013).

his immediate repatriation and the attending doctors recommended immediate eye surgery. The disagreement, however, lies on the degree of disability and amount of benefits that petitioner is entitled to receive.

Respondents maintain that petitioner's condition was brought about by old age and not entirely attributed to the boiler room incident. They likewise claim that petitioner is not entitled to claim total and permanent disability benefits since the company-designated physician issued a final assessment on May 7, 2012, or within the 240-day period allowed by law. According to them, such assessment must prevail over the assessment of petitioner's private physician, in the absence of an assessment from a third doctor. Petitioner, on the other hand, bases his entitlement to total and permanent disability benefits on the alleged failure of the company-designated physician to arrive at a definite assessment of his disability within the 120-day period allowed by law. He claims that by reason of this delay, he is, by operation of law, deemed totally and permanently disabled.

Section 32 of the 2010 POEA-SEC provides a detailed schedule of disability or impediment for injuries, diseases or illnesses that a seafarer may suffer or contract in the course of his employment. The same section expressly provides that injuries or disabilities that are classified as Grade 1 are considered total and permanent, *e.g.*, blindness or total and permanent loss of vision of both eyes. This, however, as will be discussed later, should not be taken to mean that only those listed as Grade 1 injuries/disabilities are considered total and permanent.

Time and again, this Court has held that a seafarer's entitlement to disability benefits for work-related illness or injury is governed by the Labor Code, its Implementing Rules and Regulation (*IRR*), the POEA-SEC, and prevailing jurisprudence.[18] The applicable provisions were summarized by the Court in the case of *Jebsen Maritime, Inc. v. Ravena*,[19] to wit:

> **By law**, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.
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> **By contract**, it is governed by the employment contract which the seafarer and his employer/local manning agency execute prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[20]

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18 *Pastrana v. Bahia Shipping Services*, G.R. No. 227419, June 10, 2020.

19 *Supra* note 16.

20 *Id.* at 385.

> Lastly, **the medical findings** of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern. x x x[21]

Under Article 192(c)(1) of the Labor Code, disability that is both permanent and total is defined as "temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules,"[22] *viz.:*

> x x x 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;

Meanwhile, Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code provides:

> 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 loss or impairment of physical or mental functions as determined by the System.[23]

Initially, there was confusion as to the application of the 120-day period found in Article 192(c)(1) of the Labor Code *vis-à-vis* the application of the 240-day period found in Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code. The Court, in recognizing the similar import albeit inconsistent wordings of both provisions, thus, synthesized them with Section 20(B)(3) of the POEA-SEC (now Section 20(A)(3) of the 2010 POEA-SEC).

In the case of *Vergara v. Hammonia Maritime Services, Inc.,*[24] the Court clarified that the 120-day period given to the employer to assess the disability of the seafarer may be extended to a maximum of 240 days provided that such extension is justified, *viz.*:

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21 *Id.* at 385.

22 Now Article 198 (c) (1) based on the renumbered Labor Code, per DOLE Department Advisory No. 01, Series of 2015. (Emphasis and underscoring supplied).

23 Amended Rules on Employees' Compensation, Rule X, Sec. 2 (1995). (Emphasis and underscoring supplied).

24 588 Phil. 895, 912 (2008). (Emphasis and underscoring supplied).

> 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 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.

Similarly, in *Olidana v. Jebsens Maritime, Inc.*,[25] the Court discussed in detail the 120/240-day period and its impact on the final assessment of a seafarer's disability, *i.e.,* temporary total disability is transformed to a permanent total disability, regardless of the disability grade:

> 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.
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> > 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**

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25 *Supra* note 17.

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> **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**.[26]

From the foregoing, it is clear that the company-designated doctor/physician carries the responsibility of making a definite and conclusive assessment on the degree of the seafarer's disability and his capacity to resume work within 120 or 240 days from repatriation, as the case may be, and that failure to do so transforms the temporary total disability to permanent total disability, regardless of the disability grade. In determining which of the two periods should apply, our existing labor laws and jurisprudence are instructive on the matter.

The guidelines formulated by the Court in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[27] provides a clear and concise statement of the process that must be observed by a company-designated doctor/physician in the issuance of a final medical assessment. As it now stands, the rules to be followed are:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. **If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period;** and
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> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[28]

Since petitioner was employed in 2011, Section 20(A) of the 2010 POEA-SEC applies and governs the procedure for compensation and benefits arising from a work-related injury or illness suffered on-board a sea vessel during the term of his employment contract, to wit:

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26 *Id.* at 250-251 (Emphasis and underscoring supplied).

27 765 Phil. 341 (2015).

28 *Id.* at 362-363. (Emphasis ours).

SEC. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness required medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, **if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.[29]

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-physician 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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29 (Emphasis ours).

> 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.

Based on the above-cited laws, when a seafarer suffers a work-related injury or illness in the course of his employment, 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.[30]

In this regard, the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to him/her by any other means sanctioned by the present rules. For indeed, proper notice is one of the cornerstones of due process, and the seafarer must be accorded the same especially so in cases where his/her well-being is at stake.[31]

Before declaration and issuance of the final assessment, the seafarer shall be deemed on temporary total disability and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally. In cases where the 120-day period is exceeded and no definitive declaration is made for justifiable reasons, *e.g.,* the seafarer requires further medical attention or is uncooperative, 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.

To avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act and keep a record of documents as proof of continuous medical treatment to justify the extension of the original 120-day period. Otherwise, the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance. Simply put, the 240-day period remains to be an exception to the rule and should not to be presumed.[32]

In *Marlow Navigation Philippines, Inc. v. Osias,*[33] this Court found the medical report of a company-designated physician to have been properly issued within the 240-day extended period because the seafarer was uncooperative, resulting in the extended period of treatment.

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30 *Supra* note 16 at 519.

31 *Gere v. Anglo-Eastern Crew Management Phils., Inc.*, 830 Phil. 695, 706 (2018).

32 See *Pastor vs. Baby Shipping Philippines, Inc.*, G.R. No. 23842, November 19, 2018.

33 773 Phil. 428 (2015).

Meanwhile, In *Aldaba v. Career Philippines Ship Management, Inc.*,[34] this Court deemed the disability of a seafarer to be permanent and total despite the Grade 8 disability rating given by a company-designated physician because the assessment was issued only on the 163rd day of the seafarer's medical treatment without any justifiable reason.

In *Gere v. Anglo-Eastern Crew Management Phils., Inc.*,[35] the seafarer's disability was deemed permanent and total due to the following: (1) the final assessment was issued beyond the 120 or 240-day period; (2) petitioner was informed of his disability grading only after he initiated an action against the respondents before the Panel of Arbitrators; and (3) the disability ratings written by the attending physician and communicated to the company-designated physician were considered merely suggestive and not the "final and definite assessment" required by the law. With regard to the 240-day extended period, the Court ruled in this wise:

> x x x x
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> To begin with, without this proper notice, the 120-day and 240-day rule would have stepped in by operation of law. Insofar as the petitioner is concerned, there was no issuance of a final medical assessment regarding his disability. For all intents and purposes, *Elburg Shipmanagement Phils., Inc.* rules that the petitioner's disability has already become permanent and total.
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> This is in addition to the fact that the records do not contain any document, not even any argument, that offer any justification why the 120-day period should be extended to 240 days as required by *Elburg Shipmanagement Phils., Inc.* There simply was no explanation why the disability grading was not issued within the shorter time, and why it necessitated an extension to the longer period. x x x[36]

Here, the boiler room incident which was the proximate cause of the injury and petitioner's untimely repatriation, transpired on October 11, 2011. Shortly thereafter, and as advised by the ship doctor, petitioner was immediately repatriated. He first sought treatment at the Seamen's Hospital on October 17, 2011 where, after examination, the attending doctor found that he was suffering from "*Senile, Mature, Cataract, Left Eye, Senile, Mature, Cataract, Right Eye.*" It bears emphasizing that prior to his cataract surgery on January 6, 2012, petitioner has undergone continuous treatment (as early as October 2011) and was even referred to the Metropolitan Medical Center for further treatment and management. After the surgery, petitioner continuously received medication and treatment from the ophthalmologist and was even fitted with prescription lenses prior to the issuance of his final medical assessment on May 7, 2012. Although the records show that more than six (6) months have lapsed from the time of his

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34 811 Phil. 486 (2017)

35 *Supra* note 31, at 710-711.

36 *Id.*

repatriation (to receive medical treatment) until May 7, 2012 when the company-designated physician declared him fit to resume sea duties, the continuous treatment he received, coupled with the surgery performed on his left eye, sufficiently warrants the application of the 240-day extended period.

Moreover, records show that respondents provided a detailed account of the various treatment and procedures undertaken during the period in question, thus, solidifying their claim that there was sufficient justification for the extension, *viz.*:

> x x x x
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> However, petitioner's flawed contention is bereft of legal merit. A perusal of petitioner's extensive medical records simply reveals otherwise. Having undergone extensive medical treatment under the supervision of the company-designated physician, petitioner was able to recover his vision and by virtue thereof, he was declared FIT TO WORK on 07 May 2012.
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> The declaration of fitness to work was not a product of a single examination but was brought about by series of check-ups and sessions culminating on 07 May 2012 when petitioner was declared fit to work. In addition, the attending specialist would always attach his own findings in the medical report submitted by the monitoring doctor. The medical report then only reflects the specialist's assessment based on petitioner's overall progress. By a team that worked hand-in-hand, petitioner's recovery and progress were accurately reported in the medical reports. It stands to logic and reason then that the medical reports on petitioner's recovery were amply supported by credible findings.
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> x x x x
>
> Moreover, the fit-to-work assessment is neither indefinite nor vague since it was duly supported by petitioner's exhaustive medical report progress which contained various treatment and procedures undertaken. Simply put, the fit-to-work assessment is a culmination of the petitioner's months of treatment, albeit issued with full and detailed justification within the prescribed 240 days.[37]

Since the assessment was issued by the company-designated physician on May 7, 2012, or approximately 200 days after petitioner's repatriation and the commencement of his treatment, the same clearly falls within the 240-day extended period allowed by law. That petitioner sought treatment from a private physician who assessed him "unfit to work", although respected, cannot prevail over the assessment of the company-designated physician for the following reasons: (1) records show that Dr. Tan-Perez examined petitioner for only a day, or on July 13, 2012, before assessing him "unfit to work"; (2) the assessment of unfitness was solely based on the observation that petitioner's right eye was not operated upon. To the Court's mind and as correctly held by the CA, the attending specialist was in the best

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37 *Rollo*, p. 61

position to assess and determine the proper medical management needed for petitioner's eyes. Here, after conducting a series of tests, the attending specialist deemed that only petitioner's left eye needed surgery and that after continuous medication and fitting of prescription lenses, he was already fit to resume sea duties.

In a plethora of cases involving claims for disability benefits, the Court has consistently recognized and repeatedly upheld the right of a seafarer to consult with a physician of his choice. There is nothing in the law which precludes a seafarer from seeking a second opinion if he/she is not satisfied with the findings of the company-designated physician. The law, however, in its fervent desire to protect both parties from unjust and unfounded claims, requires that in the event that the findings of the company-designated physician is in conflict with the findings of the seafarer's private physician, both parties must come to an agreement and consult with a third doctor or physician in order to validate the claim for permanent and total disability benefits. This procedure cannot be bypassed or disregarded as it is strictly mandated by the POEA-SEC. Failure to comply with the same constitutes a breach of the rules and will result in the dismissal of the claim for benefits.

Given the circumstances under which petitioner pursued his claim, especially the fact that he failed to comply with the rule on referral to a third doctor, the findings of the company-designated physician must be upheld. For petitioner's failure to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the petitioner was "fit to resume sea duties" as final.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated September 11, 2017 and the Resolution dated March 8, 2018 of the Court of Appeals in CA-GR. SP No. 132639 are hereby **AFFIRMED**.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

On wellness leave
MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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 Division.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ALEXANDER G. GESMUNDO
Chief Justice