Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

UNITED PHILIPPINE LINES, INC. and/or HOLLAND AMERICA LINE WESTOURS, INC.,
Petitioners,

- versus -

LEOBERT S. RAMOS,
Respondent.

G.R. No. 225171

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

MAR 18 2021

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DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated January 29, 2016 and Resolution[3] dated June 14, 2016, both of the Twelfth Division of the Court of Appeals (CA), in CA-G.R. SP No. 137672 where the CA affirmed the award of total and permanent disability benefits to respondent Leobert S. Ramos (Ramos).

Facts

Petitioner United Philippine Lines, Inc. (UPL) hired Ramos on March 13, 2013 as Assistant Cook for its foreign principal, petitioner Holland America Line Westours, Inc. (Holland America).[4] His contract was for a period of 10 months with a basic monthly salary of US$300.00.[5]

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1 *Rollo,* Vol. I, pp. 28-73, excluding the Annexes.
2 Id. at 75-86. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.
3 Id. at 88-90.
4 Id. at 212.
5 Id.

On March 27, 2013, Ramos embarked on the vessel "*MS ZUIDERDAM*" but soon thereafter was medically repatriated and arrived on April 10, 2013.[6] This gave rise to Ramos's complaint for disability benefits, which he filed on September 11, 2013.[7]

In his position paper, Ramos claimed that while performing his tasks as Assistant Cook, he felt severe pain on his left shoulder, prompting him to report this to his superior.[8] He was advised to visit the infirmary where the ship doctor gave him pain relievers and advised him to take a few days' rest. Ramos then requested for off-shore consult but Holland America opted for his medical repatriation.[9]

Upon his arrival on April 10, 2013, Ramos reported to UPL for his post disembarkation medical check-up and he was referred to Shiphealth, Inc., where he was advised to undergo physical therapy sessions.[10] Since his condition did not improve, he was referred to the University Physicians Medical Center, Inc. He underwent medical tests but he was not given the results of his medical examinations.[11] He then went back to Shiphealth, Inc. but he was told to get his medical records from UPL.[12] He was told verbally that he was fit to work but he was unable to get any record of his medical assessment from UPL.[13]

Ramos then sought medical consult from Seamen's Hospital from September 10, 2013 to October 8, 2013 where it was recommended that he underwent arthroscopic surgery.[14] He also consulted with Dr. Cesar H. Garcia who specializes in Orthopedic Surgery/Bone and Joint Diseases who opined that Ramos was unfit to work as a seaman due to his shoulder injury. Ramos claimed that he was compelled to seek the medical assistance of independent doctors because Shiphealth, Inc. and UPL did not furnish him with his medical records and that it was through his own initiative that he sought medical help from other doctors.[15]

Ramos claimed that he is entitled to permanent and total disability benefits because he has not returned to his seafaring job after, and even recalled that he was already previously employed by petitioners and medically repatriated in May 2011 for an injury on the same left shoulder. Although he was eventually cleared for duty, he rested for more than a year and embarked on his second contract. However, he again experienced pain on his left shoulder, which led to his medical repatriation.[16]

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[6] Id. at 76, 212 and 230.
[7] Id. at 233.
[8] Id. at 213.
[9] Id.
[10] Id.
[11] Id. at 213-214.
[12] Id. at 214.
[13] Id.
[14] Id.
[15] Id. at 214-215.
[16] Id. at 215.

For their part, petitioners claimed that on June 14, 2013, Ramos was assessed by the company-designated physician with "Grade 10 – ankylosis of the shoulder joint not permitting arm to be raised above a level with a shoulder and/or irreducible fracture or faulty union collar bone,"[17] and that Ramos is therefore only entitled to US$12,090.00.[18] Petitioners also argue that since Ramos failed to show that the assessment of the company-designated physician was tainted with bias, malice or bad faith, and he failed to comply with the procedure under the rules for assailing the assessment of the company-designated physician, he is only entitled to the benefits following the findings of the company-designated physician.[19]

Labor Arbiter (LA) Decision

LA Joanne G. Hernandez-Lazo ruled that the work-relatedness of Ramos's medical condition is not an issue since petitioners never disputed it. The only issue was whether Ramos is entitled to total and permanent disability benefits or only to benefits following a Grade 10 disability rating.[20]

The LA found that Ramos is entitled to total and permanent disability benefits considering that it was the second time for Ramos to be medically repatriated for the same physical infirmity. The LA ruled that petitioners employed Ramos in 2011 where he sustained his shoulder injury and that this same injury was the reason he was again medically repatriated. Since Ramos could not resume his work as a seaman, the LA ruled that a Grade 10 disability rating was incorrect and believed the findings of Ramos's doctors.[21] The LA also found that Ramos was entitled to attorney's fees following Article 2208 of the Civil Code which allows recovery of attorney's fees in actions for recovery of wages and actions for indemnity under the employer's liability laws.[22] The dispositive portion of the LA Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondent companies, United Philippine Lines, Inc. and Holland America Line Westours, Inc. Ltd. to solidarily pay complainant the amount of US$60,000.00 representing his total permanent disability benefits, or its peso equivalent at the time of actual payment, plus ten percent (10%) thereof, as attorney's fees.
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> **SO ORDERED.**[23]

Petitioners thereafter filed an appeal before the NLRC.

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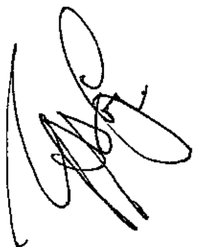
[17] Id. at 217. Italics omitted.
[18] Id.
[19] Id. at 218.
[20] Id. at 234.
[21] Id. at 236-237.
[22] Id. at 239.
[23] Id. at 239-240.



NLRC Decision

In its Decision,[24] the NLRC affirmed the LA. It found that it was only when petitioners filed their position paper that Ramos came to know of the findings and disability rating of Shiphealth, Inc.[25] The NLRC even ruled that petitioners never denied this allegation.[26] Given this, the NLRC found that petitioners' argument that Ramos failed to contest the findings of the company-designated physician was unavailing as Ramos was deprived of the opportunity to contest the assessment.[27]

Since Ramos was unduly deprived of the opportunity to contest the assessment of the company-designated physician, the NLRC affirmed the LA's reliance on the assessments of Ramos's doctors.[28]

Petitioners filed a motion for reconsideration, but this was denied in the NLRC Resolution dated August 27, 2014.[29]

CA Decision

Aggrieved, petitioners filed a petition for *certiorari* before the CA. On the issue of whether Ramos was given the medical assessments, petitioners argued that Ramos failed to prove that he requested for the reports, whether this request was verbal or written, or whether this request was refused.[30]

In the assailed Decision, the CA affirmed the NLRC and denied the petition. The CA ruled that total and permanent disability meant disablement of an employee to earn wages in the same kind of work, or work of a similar nature that a seafarer is accustomed to perform, or any kind of work which a person of his mentality and attainment could do.[31] And since it appears that Ramos was still suffering from his injuries well beyond the 120 or 240 days for the company-designated physician to arrive at a definite assessment, and in fact even after extensive treatment, he was still suffering from his injuries, Ramos is entitled to total and permanent disability benefits.[32] The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the petition is **DENIED**. The Decision dated 22 July 2014 and Resolution dated 27 August 2014 of the NLRC are **AFFIRMED**.

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[24] Id. at 211-227. Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Herminio V. Suelo and Commissioner Gregorio O. Bilog III concurring.
[25] Id. at 221.
[26] Id.
[27] Id. at 223.
[28] Id. at 224.
[29] Id. at 243-245. Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III concurring.
[30] Id. at 178.
[31] Id. at 84-85.
[32] See id. at 82-84.

SO ORDERED.[33]

Petitioners moved for reconsideration, but this was denied.

Hence, this Petition. In due course, Ramos filed his Comment[34] and petitioners filed their Reply.[35]

Issues

The issues that petitioners raised are as follows:

I

THE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT AFFIRMED THE NLRC'S AWARD OF PERMANENT/TOTAL DISABILITY BENEFITS TO THE RESPONDENT DESPITE THE COMPANY-DESIGNATED PHYSICIAN'S FINAL DISABILITY ASSESSMENT OF GRADE 10 – ANKYLOSIS OF THE SHOULDER JOINT NOT PERMITTING ARM TO BE RAISED ABOVE A LEVEL WITH A SHOULDER AND/OR IRREDUCIBLE FRACTURE OR FAULTY UNION COLLAR BONE.

II

THE COURT OF APPEALS PALPABLY ERRED WHEN [IT] AFFIRMED THE AWARD OF PERMANENT DISABILITY BENEFITS BASED SOLE[LY] ON THE RESPONDENT'S BARE ALLEGATION THAT HE HAS NOT BEEN ABLE TO PERFORM HIS NORMAL WORK FOR MORE THAN 120 DAYS.

III

THE GRANT OF ATTORNEY'S FEES EQUIVALENT TO 10% OF THE JUDGMENT AWARD IS CLEARLY UNWARRANTED AS PETITIONERS' DENIAL OF RESPONDENT'S CLAIMS WAS BASED ON JUSTIFIABLE GROUNDS.[36] (Italics and emphasis omitted)

The Court's Ruling

The Petition is denied.

Ramos was not provided with the assessment of the company-designated physician.

While petitioners do not dispute that Ramos's injuries are work-related, they argue that Ramos is only entitled to disability benefits under Grade 10, as against the findings of the LA, NLRC, and CA that Ramos is entitled to

[33] Id. at 85.
[34] *Rollo*, Vol. II, pp. 648-671.
[35] Id. at 713-728.
[36] *Rollo*, Vol. I, pp. 34-35.

Grade 1 disability benefits or for total and permanent disability benefits. Petitioners argue that the company-designated physician's assessment is valid and should be relied on instead of the seafarer's own doctor[37] because Ramos failed to initiate the process to have the conflicting assessments of the company-designated physician and his own doctor referred to a third doctor.[38] The Court affirms that Ramos is entitled to total and permanent disability benefits.

Indeed, the conflict resolution procedure under Section 20(A)(3) of the Philippine Overseas Employment Administration-Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships (POEA-SEC) is clear that "in the event that a seafarer suffers a [work-]related/aggravated illness or an injury during the course of his/her employment, it is the company-designated physician's medical assessment that shall control the determination of the seafarer's disability grading. Should the seafarer's personal physician disagree, then the matter shall be referred to a neutral third-party physician, who shall then issue a final and binding assessment."[39]

Further, it is settled that should the seafarer fail to initiate the process to have the conflicting assessments of the company-designated physician and his own doctor referred to a third doctor, the assessment of the company-designated physician will prevail.[40]

But the seafarer's failure to refer the conflicting findings of the company-designated physician and that of his own doctor is only taken against him if it is first shown that the seafarer had been notified of the assessment of the company-designated physician. It is only when the seafarer is duly and properly informed of the medical assessment can he determine whether or not he agrees with the assessment. If he does not agree, he can commence the process of referring the assessment to his personal physician, and thereafter the conflicting assessments are referred to a third doctor. As the Court held in *Gere v. Anglo-Eastern Crew Management Phils., Inc.*[41] (*Gere*):

> x x x [O]nly when the seafarer is duly and properly informed of the medical assessment by the company-designated physician could he determine whether or not he/she agrees with the same; and if not, only then could he/she commence the process of consulting his personal physician. If conflicting assessments arise, only then is there a need to refer the matter to a neutral third-party physician.
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> Again, this process is mandatory. And, at the risk of sounding repetitive, it could only begin from the moment of proper notice to the

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[37] See id. at 37-49, 59.

[38] Id. at 58.

[39] *Gere v. Anglo-Eastern Crew Management Phils., Inc.*, G.R. Nos. 226656 & 226713, April 23, 2018, 862 SCRA 432, 443.

[40] See *Formerly INC Shipmanagement, Inc. (now INC Navigation Co. Philippines, Inc.) v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 450-453.

[41] Supra note 39.

> seafarer of his medical assessment by the company-designated physician. *To require the seafarer to seek the decision of a neutral third-party physician without primarily being informed of the assessment of the company-designated physician is a clear violation of the tenets of due process, and shall not be countenanced by the Court.*[42] (Italics in the original)

In fact, the Court in *Gere* was explicit in its ruling that "**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 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."[43]

Here, as stated above, the NLRC found that Ramos was shown the assessment of his impediment only when and after petitioners had filed their position paper, which petitioners did not deny.[44]

In fact, in their petition before the CA, petitioners, as against the above findings of the NLRC, still failed to refute the findings of the NLRC, instead argued that Ramos failed to prove his allegations that he requested for medical reports as follows:

> In this case, other than his BARE UNSUBSTANTIATED ALLEGATIONS that he requested for medical reports from Ship Health Clinic, [Ramos] NEVER PROVIDED ANY EVIDENCE that he indeed made such request. To whom did he address his request? Is it verbal or written? Who refused his request? When did he inform the Ship Health that he is requesting for medical reports? ALL OF THESE ARE LEFT UNANSWERED BY [RAMOS].[45]

The Court will not disturb, and accordingly affirms, the NLRC's findings that Ramos only came to know of the assessment of the company-designated physician when petitioners submitted their position paper.

Petitioners' argument that Ramos failed to prove that he requested for the assessment does not exempt them from the requirement that the company-designated physician should have provided Ramos with the assessment. It also does not negate the fact that Ramos only received the assessment of the company-designated physician when petitioners filed their position paper. Petitioners cannot pass the fault onto Ramos when it is clear that the company-designated physician is required to provide the medical certificate to the seafarer personally or to ensure it is received through other sanctioned means. Petitioners could have easily shown that Ramos received the assessment as

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[42] Id. at 445.
[43] Id. at 443. Emphasis and underscoring in original.
[44] *Rollo*, Vol. I, pp. 221, 223-224.
[45] Id. at 178.

soon as the company-designated physician issued the same, but they failed to present any proof of this.

Thus, given that Ramos only received a copy of the assessment from the company-designated physician when petitioners filed their position paper, his referral to his own doctor was actually a superfluity. As the Court held in *Gere*, if the seafarer is not notified of the evaluation of the company-designated physician after the lapse of the 120 or 240-day period for the company-designated physician to issue the final and valid assessment of the seafarer's condition, then, by operation of law, the seafarer is deemed entitled to total permanent disability benefits, thus:

> 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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> x x x x
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> Secondly, without the proper notice, the petitioner was not given the opportunity to evaluate his medical assessment. Again, insofar as he was concerned, the disability grading of his personal physician was the only disability grading available to him prior to the filing of the case before the Panel of Arbitrators. In this instance, the mandatory referral to a neutral third doctor could not have been applicable. **Indeed, from the perspective of the petitioner, there was absolutely no assessment by the company-designated physician to contest. As such, there was no *impetus* to seek a neutral third doctor.**
>
> That the respondents now harp on the conflict-resolution procedure [is] not only self-serving but is also a selfish invocation of a rule which the respondents so easily disregarded earlier on. And this, the Court could not accede to.
>
> Moreover, considering that the respondents failed to inform the petitioner of the assessment of the company-designated physician, it would be the height of injustice if the Court were to uphold the former's disability grading of the petitioner's injury. Such an action would firmly go against the guidelines that the Court has already set in *Elburg Shipmanagement Phils., Inc.*
>
> Therefore, for the respondents' failure to inform the petitioner of his medical assessment within the prescribed period, the petitioner's disability grading is, by operation of law, total and permanent.[46] (Emphasis, italics and underscoring in the original)

Echoing the Court's words in *Gere*, it would be the height of injustice for the Court to uphold the findings of the company-designated physician for Ramos's failure to comply with the dispute resolution mechanism when

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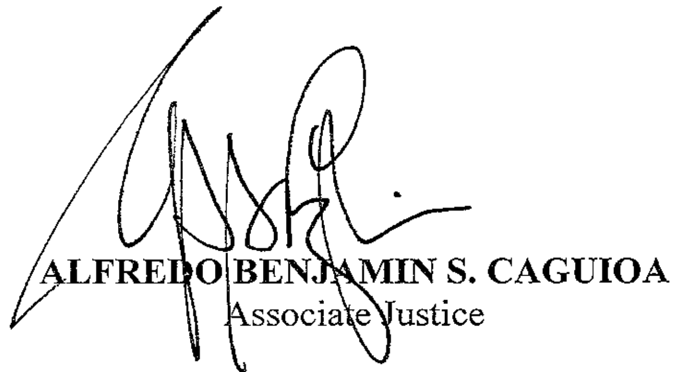
[46] *Gere v. Anglo-Eastern Crew Management Phils., Inc.*, supra note 39, at 448.

petitioners themselves were the reason why he failed to dispute the assessment. As far as Ramos was concerned, no assessment was issued within the periods provided by law, thus, by operation of law, he is deemed entitled to total and permanent disability benefits.

Further, the award of attorney's fees is also proper following Article 2208[47] of the Civil Code. Finally, if the NLRC Decision has not yet been executed,[48] consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,[49] interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary awards counted from the finality of the NLRC Decision until full payment.

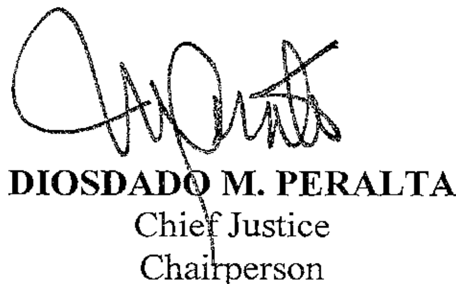
WHEREFORE, premises considered, the Petition is **DENIED**. The monetary awards to respondent Leobert S. Ramos as affirmed in the National Labor Relations Commission Decision dated July 22, 2014 are **AFFIRMED**. If the NLRC Decision has not yet been executed, the monetary awards therein shall earn interest of six percent (6%) *per annum* from its finality until full payment.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson

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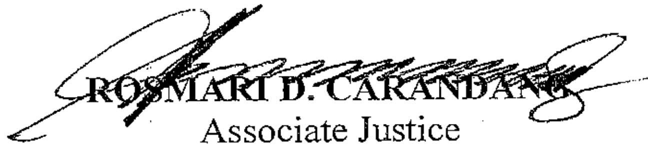
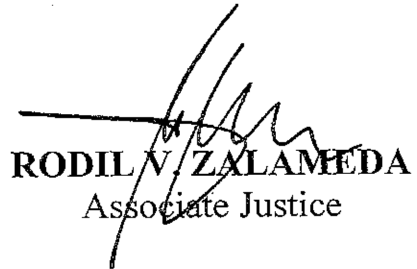
[47] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
x x x x

[48] Rule VII, Section 14 vis-à-vis Rule XI, Section 4 of the NLRC Rules of Procedure, as amended, states the NLRC monetary award already became final and executory despite the filing of a petition for *certiorari* with the CA. Thus, the running of the interest imposed should be reckoned from the finality of the NLRC decision.

[49] G.R. No. 189871, August 13, 2013, 703 SCRA 439.



ROSMARI D. CARANDANG
Associate Justice

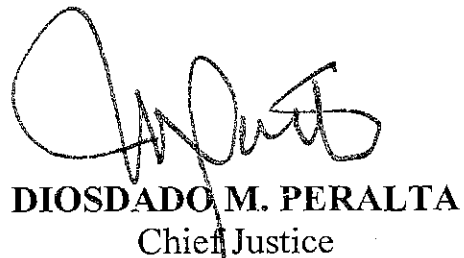


RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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