



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

SATURNINO A. ELEVERA,
 Petitioner,

G.R. No. 240054

Present:

- versus -

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

**ORIENT MARITIME SERVICES,
 INC./OSM CREW MANAGEMENT,
 INC./MS. VENUS RICO,**
 Respondents.

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 Decision² dated September 5, 2017 and Resolution³ dated May 31, 2018 of the Court of Appeals (CA) in the consolidated petitions for *certiorari* docketed as CA-G.R. SP No. 141374 and CA-G.R. SP No. 141404. Apart from awarding attorney's fees, the assailed CA Decision affirmed the ruling of the National Labor Relations Commission (NLRC) that petitioner Saturnino A. Elevera (Elevera) is only entitled to Grade 3 partial disability benefits, but in the reduced amount of US\$39,180.00.

¹ *Rollo*, pp. 10-28.

² *Id.* at 30-40. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (a retired Member of the Court) and Jhosep Y. Lopez (now a Member of the Court).

³ *Id.* at 42-43.

Facts of the Case

Elevera worked as a 3rd Engineer on board the vessel “Normand Baltic” for respondent OSM Maritime Services, Inc.⁴ (OSM Maritime), on behalf of its foreign principal, OSM Crew Management, Inc. (OSM Crew), under a three-month employment contract.⁵ He was deployed on January 30, 2013. However, sometime in March 2013, Elevera complained of “ringing sensation on (*sic*) his left ear and dizziness characterized as swirling of the surrounding.”⁶ On March 18, 2013, he was brought to Changi General Hospital due to loss of hearing, where he was diagnosed with “Ear-Vertigo and other Vestibular Disorder-Stress Related.”⁷

On March 21, 2013, Elevera was repatriated to the Philippines for medical treatment.⁸ The company-designated physician, Dr. Karen Frances Hao-Quan (Dr. Hao-Quan), diagnosed him with “Mild Sensorineural Hearing Loss, Right Ear; Moderate Sensorineural Hearing Loss, Left Ear; Vestibular Neuronitis, Hypertensive Cardiovascular Disease, and Blepharitis of Both Eyes.”⁹

On July 1, 2013, another company-designated physician, Dr. Raymond L. Rosales (Dr. Rosales), issued a medical report diagnosing Elevera with Vestibular Neuronitis and recommending a Grade 10 disability rating:

Comments – with intermittent headaches and dizziness, tinnitus, both ears and hearing loss, both ears

Diagnosis – Vestibular Neuronitis

Recommendation:

His suggested disability grading is Grade 10 – slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient.¹⁰

On August 30, 2013, Dr. Rosales issued yet another medical report this time diagnosing Elevera with Meniere’s Disease and declaring him permanently unfit for sea duties:

Diagnosis – Meniere’s Disease

Disposition – permanently unfit for sea duties.¹¹

⁴ Orient Maritime Services, Inc. in the Petition.

⁵ *Rollo*, p. 31.

⁶ *Id.* at 120.

⁷ *Id.*

⁸ *Id.* at 31.

⁹ *Id.*

¹⁰ *Id.* at 61.

¹¹ *Id.* at 62.



On September 27, 2013, Elevera filed a complaint for permanent total disability benefits, moral and exemplary damages, attorney's fees, and reimbursement of medical expenses after OSM Maritime refused to pay him full disability benefits.¹²

During the proceedings before the Labor Arbiter (LA), OSM Maritime, as represented by Captain Adonis Donato (Capt. Donato), attached to its position paper a Report dated October 16, 2013 issued by Dr. Rosales, which states that Elevera's condition is not work-related or work aggravated:

Diagnosis: Meniere's Disease

- a. Exposure to noise in the engine room/working condition onboard will not aggravate or contribute to seafarer's present medical condition.
- b. Contributory factors:
 - Age
 - Diet (increased intake of salt)¹³

On the other hand, Elevera, in his Reply, referred to the Medical Evaluation dated February 3, 2014 issued by his own doctor, Dr. Efren R. Vicaldo (Dr. Vicaldo), which states that: (i) he is unfit to resume work as a seaman in any capacity; (ii) his illness is considered work aggravated/related; (iii) he would require the use of hearing aids for both ears for better hearing and to alleviate symptoms of vertigo; and (iv) he is not expected to land a gainful employment given his medical background.¹⁴ As to the causal relation between his work and illness, Elevera emphasized that his 18 years of continuous service within the confines of the engine rooms of OSM Maritime's vessels exposed him to excessive loud and deafening noise, as well as harmful chemicals. To bolster his claim, he quoted medical studies attributing hearing impairment or deafness to exposure to noise or chemicals.¹⁵

LA Decision

In a Decision¹⁶ dated June 23, 2014, the LA dismissed the complaint for lack of merit, the dispositive portion of which states:

WHEREFORE, premises considered, the instant Complaint is hereby dismissed for lack of merit.

¹² Id. at 32.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 149-150.

¹⁶ Id. at 119-129. Rendered by LA Jenneth B. Napiza.



SO ORDERED.¹⁷ (Emphasis in the original)

The LA held that Elevera failed to prove that his illness is work-related or work aggravated. Although he alleged that his “work [on board] the vessel was confined mainly in the engine room where he was exposed to continuous and deafening engine noise,”¹⁸ he still failed to establish that the nature of his work contributed to the development or aggravation of his illness. The LA gave no credence to the Medical Evaluation dated February 3, 2014 of Dr. Vicaldo because it was issued after only a single consultation and without any indication that appropriate tests were conducted to arrive at such opinion. Lastly, the LA dismissed Elevera’s other monetary claims for lack of basis.¹⁹

Aggrieved, Elevera filed an appeal with the NLRC.

NLRC Decision

In a Decision²⁰ dated January 9, 2015, the NLRC granted Elevera’s appeal and awarded him permanent total disability benefits in the amount of US\$60,000.00. The dispositive portion of the NLRC Decision reads as follows:

WHEREFORE, the appeal is hereby *GRANTED* and the Decision of the Labor Arbiter is *REVERSED and SET ASIDE*. A new one is hereby issued ordering respondents OSM Maritime Services, Inc. and OSM Crew Management, Inc. to jointly and severally pay complainant Saturnino A. Elevera permanent total disability benefits of US\$60,000.00 or its peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED.²¹ (Emphasis and italics in the original)

Contrary to the findings of the LA, the NLRC held that Elevera’s illness is work-related. According to the NLRC, respondents did not refute the medical studies cited by Elevera stating that hearing loss may be caused by “aging, exposure to noise, illness or chemicals and physical trauma or any combination of these.”²² Furthermore, Elevera’s exposure to deafening noise at the engine room for 18 years under respondents’ employ sufficiently established the causal link between his illness and work. The NLRC considered Dr. Rosales’ Report dated October

¹⁷ Id. at 129.

¹⁸ Id. at 125.

¹⁹ Id. at 125-129.

²⁰ Id. at 146-155. Penned by Commissioner Perlita B. Velasco, and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

²¹ Id. at 154.

²² Id. at 151.



16, 2013 as self-serving and a mere afterthought considering that it was issued only after a complaint had already been filed. As to the extent of Elevera's disability, considering that both Dr. Rosales and Dr. Vicaldo declared him permanently unfit for sea duties, the NLRC concluded that he is suffering from Grade 1 disability and awarded him US\$60,000.00 as prescribed under the Philippine Overseas Employment Administration Standard Employment Contract²³ (POEA-SEC). The NLRC refused to apply the OSM Model Agreement and OSM Extended Insurance Manual, which allegedly grant a higher sum, because no copies thereof were submitted.²⁴

Both parties sought reconsideration of the NLRC Decision. Elevera urged the NLRC to grant him total and permanent disability benefits in the amount of US\$150,000.00 as provided under the OSM Extended Insurance Manual, a copy of which he attached to his motion. Meanwhile, respondents contended that Elevera was not entitled to any disability benefits.

In a Resolution²⁵ dated May 15, 2015, the NLRC modified its Decision as follows:

WHEREFORE, complainant's partial Motion for Reconsideration is **DENIED** for lack of merit. Respondents' Motion for Reconsideration is partly **GRANTED**. The Decision dated 9 January 2015 of this commission is hereby **MODIFIED**, finding respondents local and foreign agency jointly and severally liable to pay complainant partial disability benefit in the amount of **FORTY[-]FOUR THOUSAND FOUR HUNDRED FIVE US DOLLARS (US\$44,405.00)** or its peso equivalent at the time of payment.

*SO ORDERED.*²⁶

The NLRC still did not apply the OSM Extended Insurance Manual because Elevera did not present any copy of the collective bargaining agreement (CBA) referred to therein, and Elevera did not present proof that he was a member of the union.²⁷

Although Elevera's illness is work-related, the NLRC held that he is only entitled to a partial disability benefit equivalent to a Grade 3 impediment rating. The NLRC explained that the nearest illness that can be associated with Elevera's case is complete loss of the sense of hearing on

²³ Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, POEA Memorandum Circular No. 10-10, October 26, 2010.

²⁴ *Rollo*, pp. 151-154.

²⁵ *Id.* at 173-179. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles.

²⁶ *Id.* at 178; emphasis and italics in the original.

²⁷ *Id.* at 175-176.

both ears, which is a Grade 3 disability and the highest impediment rating that can be granted in case of injury to both ears under the POEA-SEC.²⁸

Both parties elevated the case to the CA *via* petitions for *certiorari*. Respondents' petition for *certiorari* dated July 23, 2015 was received by the CA on July 24, 2015 and docketed as CA-G.R. SP No. 141374. Whereas, Elevera's petition for *certiorari* dated July 24, 2015 was received by the CA on July 27, 2015 and docketed as CA-G.R. SP No. 141404.²⁹ These petitions for *certiorari* were thereafter consolidated.

CA Decision

In the Decision³⁰ dated September 5, 2017, the CA partially granted Elevera's petition for *certiorari* by awarding attorney's fees equivalent to 10% of the total judgment award, but reduced the amount of partial disability benefits. On the other hand, the CA denied respondents' petition for *certiorari* for lack of merit.

The dispositive portion of the assailed CA Decision reads as follows:

WHEREFORE, premises considered, OSM's Petition docketed as **CA GR SP No. 141374** is hereby **DENIED** for lack of merit.

In Elevera's Petition docketed as **CA GR SP No. 141404**, it is **PARTIALLY GRANTED** by awarding attorney's fees equivalent to **10%** of the total judgment award in favor of Elevera but the amount of **US\$44,405.00**, representing partial disability benefit for injury to petitioner's ears as awarded by the NLRC is decreased to **US\$39,180.00** in accordance with the Schedule of Disability Allowances under the POEA[-]SEC.

SO ORDERED.³¹

The CA concurred with the NLRC that Elevera's medical condition is work-related. Despite Meniere's Disease not being among the occupational diseases enumerated under the POEA-SEC, Elevera was able to show a reasonable connection between the nature of his work and Meniere's Disease. Elevera rendered 18 years of continuous service to respondents where he was made to work within the confines of the engine room, and was exposed to excessive and deafening noise. And deafness, which may result from having Meniere's Disease, is an occupational disease under the POEA-SEC. The CA, concurring with the NLRC, also disregarded the Report dated October 16, 2013 of Dr. Rosales for being dubious and issued as an afterthought. In addition, the CA also held that the

²⁸ Id. at 178.

²⁹ Id. at 30-31.

³⁰ Supra note 2.

³¹ Id. at 40; emphasis in the original.



conflict-resolution procedure under the POEA-SEC does not apply in this case because, at the time Elevera filed his complaint, there were no conflicting findings between the company-designated physician and his personal doctor.

The CA also affirmed the Grade 3 disability rating given by the NLRC. However, it found that the NLRC committed an error in the computation of the disability benefit by using 88.81% as a multiplier, instead of 78.36%. Thus, Elevera should only be entitled to US\$39,180.00. The computation was still based on the rates under the POEA-SEC because Elevera was unable to present the CBA or to prove that he is a member of the union. Finally, the CA added 10% attorney's fees to the judgment award in accordance with Article 2208 of the Civil Code.³²

Elevera sought reconsideration of the CA Decision, but was denied through the assailed CA Resolution³³ dated May 31, 2018. Hence, this Petition.

Elevera maintains that he is entitled to total and permanent disability benefits, not only in view of the Medical Evaluation dated February 3, 2014 of Dr. Vicaldo, but also of the Medical Report dated August 30, 2013 of Dr. Rosales which declared him permanently unfit for sea duties. He further claims that he remains unemployed as of the date of filing of his Petition, and can no longer go back to the same kind of work he used to perform and was trained for. He insists that his disability benefits, whether total or partial, should be based on the OSM Extended Insurance Manual which provided a higher maximum disability benefit of US\$150,000.00. To bolster his argument, Elevera attached in his Petition a copy of the OSM Model Agreement.

In its Comment,³⁴ OSM Maritime argues that Elevera is not entitled to the higher disability benefit under the OSM Extended Insurance Manual because he failed to submit a copy of the CBA referred to therein and to prove that he is a member of the union. OSM Maritime also asserts that the NLRC should not have admitted the copy of the OSM Extended Insurance Manual in the first place since it was only submitted for the first time before the NLRC without any justification for its belated submission. Lastly, OSM Maritime contends that the Petition should be dismissed for being moot and academic following Elevera's receipt of the NLRC judgment award and their execution of the conditional settlement award.

³² Id. at 40, emphasis in the original.

³³ Supra note 3.

³⁴ Id. at 315-321.

Issues

The issues submitted for resolution of the Court are as follows:

1. Whether the present Petition is dismissible for being moot and academic;
2. If the Petition is not yet moot, whether the CA committed a reversible error when it upheld the NLRC ruling which held that Elevera is only entitled to disability benefits corresponding to Grade 3 impediment rating; and
3. Whether the CA committed a reversible error when it refused to apply the provisions of the OSM Extended Insurance Manual.

Ruling of the Court

The Petition is not moot and academic

OSM Maritime argues that Elevera's acts of moving for the execution of the NLRC Decision and receiving the judgment award amount to a recognition that the NLRC Decision is valid and correct. As such, Elevera should be deemed to have abandoned his claim for higher disability benefits through the present Petition. In addition, OSM Maritime contends that the conditional settlement of award executed by the parties operates as a final satisfaction of the judgment and a judgment on the merits thereby barring Elevera from further seeking affirmative reliefs. These circumstances, OSM Maritime maintains, render the present Petition moot and academic.

These contentions are erroneous. Under the 2011 NLRC Rules of Procedure (NLRC Rules), the decision of the NLRC shall become final and executory after the lapse of ten (10) calendar days from notice.³⁵ Thereafter, a writ of execution may be issued by the LA either *motu proprio* or on motion.³⁶ Nonetheless, the filing of a petition for *certiorari* before the CA is an available remedy, but it shall not stay the execution of the NLRC Decision, unless a restraining order is issued by said court.³⁷ Clearly, the execution of the NLRC Decision and Elevera's receipt of the judgment award are in accordance with the NLRC Rules, but this does not bar him from assailing the NLRC Decision before the CA through a petition for *certiorari*, and thereafter, before this Court through this present Petition.

³⁵ 2011 NLRC RULES OF PROCEDURE, as amended, Rule VII, Section 14.

³⁶ Id., Rule XI, Section 1.

³⁷ Id., Section 4.



With respect to the conditional settlement award executed by the parties, the Court has no basis to rule on whether it should amount to a final judgment that bars Elevera's claim because no copy was attached to OSM Maritime's Comment or was found in the records of the case. At any rate, it is worthy to note that the execution of a conditional settlement agreement *per se* does not automatically amount to a final satisfaction of judgment or a judgment on the merits.

Elevera is entitled to total and permanent disability benefits under the POEA-SEC

It is settled that in labor cases, a petition for review on *certiorari* under Rule 45 is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.³⁸

With this manner of review, the Court finds the Petition partly meritorious.

The work-relatedness of Elevera's illness is beyond dispute, and so is his entitlement to disability benefits. The controversy before the Court centers on two things: (i) whether his disability is total or partial; and (ii) whether his disability should be computed following the OSM Maritime CBA or the POEA-SEC.

On the first issue, Elevera insists that he is suffering from "permanent *total* disability." On the other hand, the NLRC, as affirmed by the CA, found Elevera to be suffering only from "permanent *partial* disability" with Grade 3 rating. The Court finds that Elevera is deemed suffering from "permanent *total* disability."

It must be stressed that in disability compensation, what is compensated is not the injury or illness, but the incapacity to work resulting in the impairment of one's earning capacity.³⁹ Moreover, the determination of the fitness of a seafarer for work is the duty of the company-designated physician, the seafarer's personal doctor, or the third doctor, as the case may be. In *Carcedo v. Maine Marine Philippines, Inc.*,⁴⁰ the Court emphasized that such determination is "the province of the company-designated physician, subject to the periods prescribed by law."⁴¹ This prerogative is required by no less than the POEA-SEC, particularly Section 20(A), paragraphs 2 and 3 thereof, which reads:

³⁸ *Fuji Television Network, Inc. v. Espiritu*, G.R. Nos. 204944-45, December 3, 2014, 744 SCRA 32, 63.

³⁹ *Quitortiano v. Jepsens Maritime, Inc.*, G.R. No. 179868, January 21, 2010, 610 SCRA 529, 536.

⁴⁰ G.R. No. 203804, April 15, 2015, 755 SCRA 543.

⁴¹ *Id.* at 563.

SECTION 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:

x x x x

2. If the injury or illness requires 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.

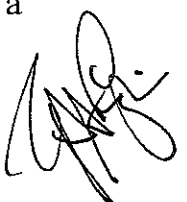
3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been 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.

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-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. 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.

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. (Underscoring supplied)

It is, therefore, beyond the labor tribunals' or the court's authority, nay expertise, to make its own medical determination of a seafarer's fitness to work and/or prescribe a disability rating. The POEA-SEC has provided a



dispute mechanism wherein the seafarer's fitness to work and/or disability rating may be determined by the company-designated physician, the seafarer's own doctor, or the appointed third doctor, as the case may be.⁴²

Hence, the NLRC committed grave abuse of discretion amounting to excess of jurisdiction when it gave a Grade 3 disability rating for Elevera's medical condition even if none of the doctors had prescribed such a rating.

Further, the wording itself of the Medical Report dated August 30, 2013 is already sufficient basis to award permanent and total disability benefits. It states:

Diagnosis – Meniere's Disease
Disposition – permanently unfit for sea duties.⁴³

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,⁴⁴ the Court outlined the rules respecting the obligation of the company-designated physician to issue a final and definitive disability assessment, *viz.*:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (*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;⁴⁵

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

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.⁴⁶

⁴² See also *Pacific Ocean Manning, Inc., et al. v. Roger P. Solacito*, G.R. No. 217431, February 19, 2020.

⁴³ *Rollo*, p. 62.

⁴⁴ G.R. No. 211882, July 29, 2015, 764 SCRA 431.

⁴⁵ Subject to the clarification made by the Court in *Henry Espiritu Pastrana v. Bahia Shipping Services, et al.*, G.R. No. 227419, June 10, 2020.

⁴⁶ *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, *supra* note 44, at 453-454.



Accordingly, the company-designated physician must issue a medical assessment that is *final and definitive* within the periods provided by law. In *Jebsens Maritime, Inc. v. Mirasol*,⁴⁷ the Court held that:

A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.⁴⁸

Here, although the Medical Report dated August 30, 2013 of the company-designated physician states that Elevera is “permanently unfit for sea duties,”⁴⁹ it failed to indicate the appropriate rating corresponding to Elevera’s disability. It cannot, therefore, be determined with certainty whether he is suffering from total or mere partial permanent disability. This makes the Medical Report dated August 30, 2013 fatally defective for being incomplete and indefinite.

This accordingly results in a failure of the company-designated physician to issue a final and definitive medical assessment within the 120-day period set by law. Because of this, Elevera is deemed in law to be suffering from total and permanent disability.

On the second issue, Elevera insists that he is entitled to a higher disability benefit in the amount of US\$150,000.00. In support thereof, he submitted before the labor tribunals copies of: (1) his employment contract which made reference to the OSM Addendum;⁵⁰ (2) the Addendum to Contract which states, among others, that “[f]or members of the OSM crew P&I cover, OSM has agreed to increase the amounts mentioned in CBA for Death and Disability compensation [to US\$150,000.00] per Seafarer;”⁵¹ and (3) the OSM Extended Insurance Manual which covers the “[m]edical expenses and compensation for illness, injury or death up to the amount and conditions in accordance with the terms from the CBA as stated in each Crew member’s contract of employment.”⁵² In his Petition, Elevera also attached an *unsigned* copy of the OSM Model Agreement,⁵³ also referred therein as the Collective Agreement, which provides for a maximum disability compensation of US\$150,000.00.

⁴⁷ G.R. No. 213874, June 19, 2019, 905 SCRA 112.

⁴⁸ *Id.* at 121.

⁴⁹ *Rollo*, p. 62.

⁵⁰ *Id.* at 54.

⁵¹ *Id.* at 53.

⁵² *Id.* at 175, as quoted in the NLRC Resolution, emphasis omitted.

⁵³ *Id.* at 278-306.



Elevera would have the Court revisit the factual findings of the NLRC and CA by re-examining evidence on record and admitting one that is being submitted for the first time through the Petition. This is beyond the jurisdiction of the Court in a petition for review on *certiorari*. The Court is not a trier of facts. It is settled that in a petition for review on *certiorari* under Rule 45, only questions of law may be put in issue and questions of facts will generally not be entertained.⁵⁴ The findings of the NLRC and CA on this issue are supported by substantial evidence. As aptly discussed by the CA, *viz.*:

Anent Saturnino's claim that his contract with OSM was covered by Model Offshore CBA and OSM Extended Insurance, which allegedly increased the maximum disability compensation of its crew members to USD150,000.00, We reject Saturnino's submission thereon. *A contrario*, We affirm the ruling of the NLRC that Saturnino did not provide proof that he was a member of the union, and the terms of the CBA, upon which he based his claim of increased benefit, were hardly part of the record. Moreover, if indeed there was a CBA concluded between the parties, why did the seafarer not submit his claims to the voluntary arbitrator in accordance with Section 29 of the POEA[-]SEC? At any rate, from the allegation of Saturnino's Petition, the amount of USD150,000.00 appeared to be awarded only to seafarers with Grade 1 impediment rating.⁵⁵

Even so, the documents presented by Elevera still do not support his position. Based on said documents, Elevera must prove that he is a member of OSM crew P&I cover, as well as the terms of the CBA or the Model Agreement. Elevera failed to prove both factual premises.

Elevera failed to present any proof of his membership in the OSM crew P&I cover. In turn, the Model Agreement cannot be appreciated by the Court in his favor as the copy attached to the Petition does not bear any signatures of the parties. In addition, it expressly states that it shall be effective from May 1, 2013, which is after the termination of Elevera's employment. As it stands, therefore, there is still no proof of the purported CBA.

Thus, on this point, the NLRC did not commit grave abuse of discretion when it refused to apply the OSM Extended Insurance coverage and award Elevera higher disability benefits.

To summarize, Elevera is entitled to total and permanent disability benefits under the POEA-SEC in the amount of US\$60,000.00. He is likewise entitled to attorney's fees in the amount equivalent to ten percent (10%) of the total monetary award, or ten percent (10%) of US\$60,000.00. From this amount shall be deducted the amounts already received by Elevera by reason of the execution of the NLRC Decision.

⁵⁴ *Century Iron Works, Inc. v. Bañas*, G.R. No. 184116, June 19, 2013, 699 SCRA 157, 165.

⁵⁵ *Rollo*, p. 39; citations omitted.

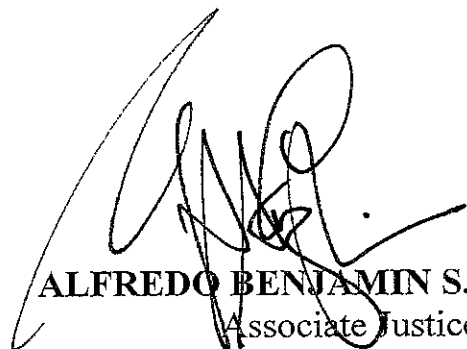


In conformity with existing jurisprudence and considering that the NLRC Decision has already been executed, legal interest at the rate of six percent (6%) *per annum* is also imposed on the amount still due to Elevera reckoned from the finality of this Decision until full satisfaction thereof.

Finally, following Section 10⁵⁶ of Republic Act (R.A.) No. 8042, as amended by R.A. No. 10022, or the Migrant Workers and Overseas Filipinos Act of 1995, OSM Maritime and OSM Crew, the local recruitment agency and the foreign principal, respectively, shall be jointly and solidarily liable for the amounts awarded to Elevera.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The Decision dated September 5, 2017 of the Court of Appeals in CA-G.R. SP No. 141374 and CA-G.R. SP No. 141404 is hereby **MODIFIED**. Respondents OSM Maritime Services, Inc. and OSM Crew Management, Inc. are hereby ordered to jointly and severally pay petitioner Saturnino A. Elevera total and permanent disability benefits in the amount of Sixty Thousand U.S. Dollars (US\$60,000.00), or its peso equivalent at the time of payment, and attorney's fees equivalent to ten percent (10%) of the judgment award, or ten percent (10%) of US\$60,000.00, less the amounts already received by petitioner Saturnino A. Elevera. Legal interest at the rate of six percent (6%) *per annum* is also imposed on the amount still due to Elevera reckoned from the finality of this Decision until full satisfaction thereof.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

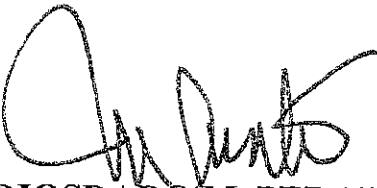
⁵⁶ Section 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 10. Money Claims. – x x x

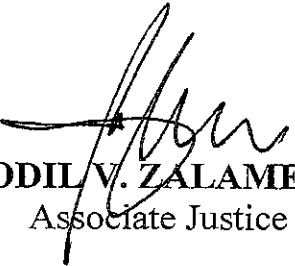
The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

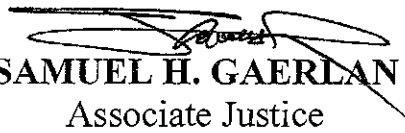
x x x x

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice
Chairperson

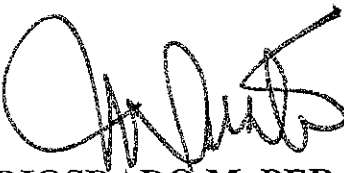

ROSMARI D. CARANDANG
Associate Justice


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

