Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TEEKAY SHIPPING PHILIPPINES, INC., and/or TEEKAY SHIPPING LTD., and/or ALEX VERCHEZ,
Petitioners,

- versus -

ROBERTO M. RAMOGA, JR.,
Respondent.

G.R. No. 209582

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

JAN 19 2018

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DECISION

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Teekay Shipping Philippines, Inc., and/or Teekay Shipping Ltd., and/or Alex Verchez (petitioners), assailing the Decision[2] dated May 30, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 125706, which affirmed the Decision[3] dated March 30, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 10-000915-11, finding petitioners liable to pay Roberto M. Ramoga, Jr. (respondent), his permanent total disability benefits.

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[1] *Rollo*, pp. 3-30.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio concurring; id. at 34-48.

[3] Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioner Isabel G. Panganiban-Ortiguerra, concurring and Commissioner Nieves E. Vivar-De Castro dissenting; id. at 80-86.

The pertinent facts of the case as found by the CA are as follows:

> On February 18, 2010, [respondent] entered into a contract of overseas employment with [petitioner] Teekay Shipping Ltd. represented by its local manning agency, Teekay Shipping Philippines Inc., to work on board the vessel M/T "SEBAROK SPIRIT" under the following terms and conditions approved by the Philippine Overseas Employment Administration (POEA):
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> | | |
> |---|---|
> | Duration of Contract: | EIGHT (8) MONTHS |
> | Position: | Deck Trainee |
> | Basic Monthly Salary: | $264.21 |
> | Hours of Work: | 44 Hours/Week |
> | Overtime: | $79.26 excess of 85 hours $2.00 |
> | Vacation Leave with Pay: | 15 days/months |
> | Point of Hire: | Makati, Philippines |
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> After the mandatory pre-employment medical examination (PEME), [respondent] was declared fit for sea duty. He joined the vessel on April 9, 2010. Barely six (6) months after, he slipped and twisted his left ankle while climbing the stairs on board the said vessel. He underwent an x-ray examination at the Bangkok Hospital in Pattaya City, Chonburi, Thailand. He was diagnosed to be suffering from a non-displaced fracture base of 2nd and mild displaced fracture base of 3rd metatarsal bone. A surgery was recommended for open reduction and internal fixation of the injured ankle to prevent its further displacement.
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> [Respondent] was repatriated to the Philippines on October 4, 2010. The following day, he was immediately referred for further evaluation and treatment at the Metropolitan Medical Center. He underwent a rehabilitation program under the supervision of Dr. Esther G. Go. On October 9, 2010, he was operated for open reduction with internal fixation with intramedullary pinning of his left 3rd metatarsal bone by the company designated physician, Dr. William Chuasuan, Jr. He was advised to continue using crutches to aid ambulation and was given medications. On April 8, 2011, Dr. Chuasuan, Jr. issued a certification stating that [respondent] was fit to return to work.
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> Unsatisfied with the company doctor's assessment, [respondent] sought the help of his own doctor, Dr. Rogelio P. Catapang who is an orthopedic and traumatology flight surgeon at Sta. Teresita General Hospital. The said doctor issued a medical report declaring that [respondent] still continues to have pain and discomfort on his left foot and ankle even after his continuous physiotherapy. He likewise cannot ambulate for long distances, unable to tolerate prolonged walking and squat especially if the weight is borne on the left foot. Since the time of his injury, he is unable to work at his previous occupation. Thus, he was declared to be permanently unfit in any capacity to resume his sea duties.

> Consequently, [respondent] lodged a complaint for permanent total disability benefits, sickness allowance, medical expenses, damages and attorney's fees in accordance with the terms and conditions of the Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-going Vessels.[4]

Ruling of the Labor Arbiter

On September 14, 2011, the Labor Arbiter (LA) rendered a Decision[5] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding [herein petitioners] jointly and solidarily liable to pay [herein respondent] the amount of US$60,000.00 or its peso equivalent at the time of payment, illness allowance in the amount of US$648.27 and ten percent (10%) of the total award as attorney's fees.
>
> SO ORDERED.[6]

Ruling of the NLRC

Upon appeal to the NLRC, the latter in its Decision[7] dated March 30, 2012, affirmed with modification the decision of the LA by deleting the award of sickness allowance, thus:

> WHEREFORE, premises considered, judgment is hereby rendered finding [respondent] not entitled to the award of sickness allowance. The award of sickness allowance in the amount of US$648.27 is hereby ordered DELETED. Accordingly, the decision of the [LA] dated September 14, 2011 is hereby MODIFIED. All other dispositions not herein otherwise modified, STANDS undisturbed.
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> SO ORDERED.[8]

Ruling of the CA

Petitioner then filed a petition for *certiorari* before the CA. The CA however affirmed the ruling of the NLRC in its Decision[9] dated May 30, 2013, thus:

> **IN VIEW OF ALL THE FOREGOING**, the challenged Decision and Resolution of the NLRC are hereby **AFFIRMED**.
>
> **SO ORDERED**.[10]

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[4] Id. at 35-36.
[5] Penned by Labor Arbiter Madjayran H. Ajan; id. at 257-265.
[6] Id. at 265.
[7] Id. at 80-86.
[8] Id. at 85.
[9] Id. at 34-48.
[10] Id. at 48.

The motion for reconsideration filed by the petitioners having been denied by the CA in its Resolution[11] dated October 18, 2013, the petitioners filed the instant petition alleging that the CA erred in affirming the findings of the NLRC and the LA that respondent is entitled to his permanent total disability benefits because the latter was unable to resume his work for more than 120 days from his repatriation. Petitioners further alleged that the company-designated physician declared respondent fit to return to work on April 8, 2011 or only 186 days from his repatriation, well within the period allowed by law to make a declaration as to respondent's fitness to return to work.

Ruling of the Court

The petition is granted.

At the outset, it is settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court because this Court is not a trier of facts. However, there are exceptions, which are present in this case, when this Court can pass upon and review the factual findings of the CA, such as the following instances:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x;
> (2) When the inference made is manifestly mistaken, absurd or impossible x x x;
> (3) **Where there is a grave abuse of discretion x x x;**
> (4) **When the judgment is based on a misapprehension of facts x x x;**
> (5) When the findings of fact are conflicting x x x;
> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x;
> (7) The findings of the Court of Appeals are contrary to those of the trial court x x x;
> (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x;
> (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents x x x; and
> (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x.[12] (Citation omitted and emphasis ours)

[11] Id. at 50-51.
[12] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 505 (2015).

The CA in finding that respondent is entitled to permanent total disability benefits held that:

> Dr. Chuasuan Jr's medical certification merely stated that private respondent is fit to return to work. WE find that this declaration was not categorical that [respondent] was already fit to work as of the time he issued the same on April 8, 2011. In the absence of such definitive pronouncement, WE rule that [respondent] is permanently disabled since he was not able to resume work for more than 120 days from his repatriation on October 4, 2010. His disability is likewise total for he remains unemployed as a Deck Trainee or in the same kind of work or work of similar nature that he was trained for or accustomed to perform. Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.[13]

Article 198(c)(1) of the Labor Code states that disability which lasts for more than 120 days is deemed total and permanent. While Section 2, Rule X of the Amended Rules on Employees' Compensation provides that:

> 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 any time 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. (Emphasis ours)

In the case of *Elburg Shipmanagement Phils. Inc., et. al. v. Quiogue*,[14] this Court harmonized the periods when a disability is deemed permanent and total, thus:

> An analysis of the cited jurisprudence reveals that the first set of cases **did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required further medical treatment or (2) the seafarer was uncooperative with the treatment.** Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the company-designated physician additional time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

[13] *Rollo*, p. 45.
[14] 765 Phil. 341 (2015).

The second set of cases, on the other hand, **awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment**. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

The above-stated analysis indubitably gives life to the provisions of the law as enunciated by *Vergara*. Under this interpretation, both the 120-day period under Article 192 (2) of the Labor Code and the extended 240-day period under Rule X, Section 2 of its IRR are given full force and effect. This interpretation is also supported by the case of *C.F. Sharp Crew Management, Inc. v. Taok*, where the Court enumerated a seafarer's cause of action for total and permanent disability, to wit:

> a. The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
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> b. 240 days had lapsed without any certification being issued by the company-designated physician;
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> x x x x

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.[15] (Emphasis ours)

[15] Id. at 361-362.

As it now stands, the mere lapse of 120 days from the seafarer's repatriation without the company-designated physician's declaration of the fitness to work of the seafarer does not entitle the latter to his permanent total disability benefits.[16] As laid down by this Court in *Elburg Shipmanagement Phils. Inc., et. al.*,[17] and in *Jebsens Maritime, Inc., Sea Chefs Ltd., and Enrique M. Aboitiz v. Florvin G. Rapiz*,[18] the following guidelines shall govern the seafarer's claims for permanent total disability benefits:

> 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;
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> 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;
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> 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.

Here, the records reveal that respondent was medically repatriated on October 4, 2010. It is undisputed that the company-designated physician issued a declaration as to respondent's fitness to work on April 8, 2011 or 186 days from his repatriation. Thus, to determine whether respondent is entitled to his permanent total disability benefits it is necessary to examine whether the company-designated physician has a sufficient justification to extend the period.

Examination of the records lead Us to conclude that there is a sufficient justification for extending the period. In a Report[19] dated January 11, 2011, the company-designated physician advised respondent to continue his rehabilitation and medications and to come back on February 1, 2011 for his repeat x-ray of the left foot and for re-evaluation. The company-designated physician has determined that respondent's condition needed further medical treatment and evaluation. Thus, it was premature for the respondent to file a case for permanent total disability benefits on March 4,

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[16] *Tagalog v. Crossworld Marine Services, Inc., et. al.*, 761 Phil. 270, 279 (2015).
[17] Supra note 14.
[18] G.R. No. 218871, January 11, 2017.
[19] *Rollo*, p. 129.

2011[20] because at that time, respondent is not yet entitled to such benefits. The company-designated physician has until June 1, 2011 or the 240th day from his repatriation to make a declaration as to respondent's fitness to work.

Neither is the declaration of respondent's own doctor that respondent is unfit to return to sea duties conclusive as to respondent's condition. It is well-settled that the assessment of the company-designated physician prevails over that of the seafarer's own doctor. "[T]he assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records."[21]

With the declaration of the company-designated physician that respondent is already fit to return to work, the latter is not entitled to his permanent total disability benefits.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated May 30, 2013 and Resolution dated October 18, 2013 of the Court of Appeals in CA-G.R. SP No. 125706 are hereby **REVERSED and SET ASIDE**. Accordingly, the complaint filed by respondent Roberto M. Ramoga, Jr. is **DISMISSED** for lack of merit.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

[20] Id. at 258.
[21] *INC Navigation Co. Philippines, Inc., et. al. v. Rosales*, 744 Phil. 774, 789 (2014).

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
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.

MARIA LOURDES P. A. SERENO
Chief Justice