Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAGSAYSAY MOL MARINE, INC. and/or MOL SHIP MANAGEMENT (SINGAPORE) PTE. LTD.,	**G.R. No. 229192**
Petitioners,	Present:
	VELASCO, JR., *J., Chairperson,*
	BERSAMIN,
	LEONEN,
	MARTIRES, and
-versus-	GESMUNDO, *JJ.*
MICHAEL PADERES ATRAJE,	**Promulgated:**
Respondent.	July 23, 2018

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DECISION

LEONEN, *J.*:

The third doctor rule does not apply when there is no final and definitive assessment by the company-designated physicians.

This is a Petition for Review on Certiorari[1] against the Court of Appeals August 5, 2016 Decision[2] and January 5, 2017 Resolution[3] in CA-G.R. SP No. 141333. The Court of Appeals affirmed the May 15, 2015

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1 *Rollo,* pp. 29–64; Filed under Rule 45.

2 Id. at 10–21. The Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles of the Tenth Division, Court of Appeals, Manila.

3 Id. at 24–25. The Resolution was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles of the Tenth Division, Court of Appeals, Manila.

Decision[4] of the Office of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board granting Michael Paderes Atraje (Atraje) permanent total disability benefits in the amount of US$95,949.00 and 10% attorney's fees. It also denied Magsaysay Mol Marine, Inc. (Magsaysay Mol) and Mol Ship Management (Singapore) Pte. Ltd.'s (Mol Ship) Motion for Reconsideration.

The facts as narrated by the Court of Appeals are as follows:

On February 11, 2014, Atraje entered into a Contract of Employment[5] with Mol Ship, through its local manning agent, Magsaysay Mol, to work on board the vessel Carnation Ace as Second Cook. The employment contract was for nine (9) months with a basic monthly salary of US$599.00.[6] It was his seventh (7th) contract with the company.[7]

Atraje boarded the vessel on February 28, 2014.[8]

On March 4, 2014, at around noontime, Atraje slipped and fell while holding a casserole containing water and sliced vegetables. His head hit the stainless disposer and the floor. He had seizure and lost his consciousness for about five (5) hours. The incident was witnessed by the messman who was with him at that time.[9] When the vessel reached Singapore on March 8, 2014, he was brought to Singapore General Hospital,[10] where he underwent brain magnetic resonance imaging (MRI), electroencephalogram (EEG), and brain computed tomography (CT) scan. He was diagnosed to have suffered Epileptic Seizure with post-fit neurological deficit. He was declared unfit to work and recommended to be repatriated.[11]

Atraje arrived in the Philippines on March 12, 2014, and was referred to Shiphealth, Inc. (Shiphealth)[12] for further medical evaluation and treatment. He was noted to have left-sided hemiparesis. He underwent repeat brain CT scan, electrocardiography (ECG), EEG, and brain MRI, which showed normal results. He was advised to undergo physical therapy for motor function and muscle strength improvements.[13]

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4 Id. at 131–153. The Decision, docketed as AC-691-RCMB-NCR-MVA-129-08-11-2014, was signed by Chairman Cenon Wesley P. Gacutan and Members Gregorio C. Biares, Jr. and Generoso T. Mamaril.
5 Id. at 178.
6 Id. at 11 & 32.
7 Id. at 132.
8 Id. at 11.
9 Id.
10 Id. at 33.
11 Id. at 11.
12 Id. at 291.
13 Id. at 12.

Atraje likewise underwent cervical spine MRI showing "mild desiccation at C3-4, C4-5, C5-6 with impression of mild cervical spondylosis with multi-level disc disease." He was still advised to undergo physical therapy.[14]

On April 4, 2014, Atraje was examined by an Orthopedic Spine Surgeon wherein the assessment was Ossified Posterior Longitudinal Ligament. He was advised to continue with the physical therapy and oral medications for the next two (2) weeks, and to undergo laminoplasty, C3-C6, if the left-sided weakness persisted or worsened.[15]

On April 25, 2014, Shiphealth issued a medical report stating that the Neurologist service's reassessment was single seizure episode. There was no indication for Atraje to undergo further diagnostic or treatment intervention neurology-wise. Hence, Atraje was discharged from Neurology service, although referral to Orthopedic Spine Surgery was recommended.[16]

On May 12, 2014, Atraje completed his 12 sessions of physical therapy. However, persistence of gait instability and weakness on his left side were still noted. Additionally, he reported intermittent recurrences of lower back pain.[17]

Shiphealth opined that "the current symptoms of weakness and spasticity of the left upper and lower extremities could be secondary to the [Ossified Posterior Longitudinal Ligament]."[18] Surgery was contemplated or, as an alternative, physical therapy for an indefinite period of time. The company-designated physicians further stated that the cervical Ossified Posterior Longitudinal Ligament may be pre-existing. "However, slight trauma to the neck may cause symptoms which may qualify it as work-aggravated."[19]

Atraje continued to suffer from shoulder and neck pain, and had difficulty in using his upper extremities. He complained of tenderness on the paracervical area and was not restored to his pre-injury health status. He consulted an independent specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who issued on June 19, 2014 a Medical Report,[20] which stated that Atraje was "permanently unfit in any capacity to resume his sea duties as a seaman."[21]

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14 Id.
15 Id. at 12 and 299.
16 Id. at 12 and 301.
17 Id. at 12.
18 Id. at 12 and 304.
19 Id.
20 Id. at 238–239.
21 Id. at 13.

On June 25, 2014 or 105 days from disembarkation, Shiphealth issued an Interim Disability Grading[22] of Grade 10: "Head, moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities."[23]

Atraje was referred to Ygeia Medical Center, Inc. (Ygeia Medical Center) for second opinion. In a letter[24] dated October 2, 2014, Dr. Lourdes A. Quetulio (Dr. Quetulio), the Medical Director of Ygeia Medical Center, stated that Atraje's illnesses, namely, "Herniated Nucleus Pulposus L3-4, L4-5, L5-S1 with Spondylosis and Radiculopathy, Bilateral Cervical Radiculopathy C5-C6 with degenerative changes; and Carpal Tunnel Syndrome Left, Moderate, are not work-related."[25]

Atraje sought payment of disability benefits from Magsaysay Mol and Mol Ship, invoking Article 28 of the Collective Bargaining Agreement[26] between All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines, and Mol Ship, represented by Magsaysay Mol.[27] This Agreement is otherwise known as the IBF JSU/AMOSUP-IMMAJ CBA.[28]

However, Atraje's demands proved futile.[29]

Thus, he filed a Complaint against Magsaysay Mol and Mol Ship for payment of total and permanent disability benefits, damages, and attorney's fees.[30]

On November 17, 2014, the parties agreed to terminate the mediation and to convene a Voluntary Arbitration Panel.[31]

Not reaching an amicable settlement, the parties were directed to submit their respective pleadings.[32]

In its May 15, 2015 Decision,[33] the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board awarded disability benefits of US$95,949.00 plus 10% of this amount as attorney's fees in favor of

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22 Id. at 306.
23 Id. at 13.
24 Id. at 307–308.
25 Id. at 13.
26 Id.
27 Id. at 179–229.
28 Id. at 132.
29 Id. at 13.
30 Id.
31 Id.
32 Id. at 14 and 410.
33 Id. at 131–153.

Atraje.[34] Finding that his injuries were work-related, it held that there was sufficient evidence to establish that he indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist. However, pre-existence of epileptic seizure has not been proven.[35] The Panel of Voluntary Arbiters further gave credence to the Grade 1 assessment of Atraje's physician over the company-designated physician's interim assessment of Grade 10.[36] It further noted that while Atraje initiated submitting to examination by a third doctor, there was silence on the part of Magsaysay Mol and Mol Ship. Hence, it held that Atraje could not be faulted anymore if the appointment of a third physician was deemed waived in this case.[37]

Magsaysay Mol and Mol Ship's subsequent Motion for Reconsideration[38] was denied in the Panel of Voluntary Arbiters' July 3, 2015 Resolution.[39]

Atraje filed a Motion for Execution,[40] which was granted by the Panel of Voluntary Arbitrators.[41] Magsaysay Mol and Mol Ship paid Atraje the amount of US$95,949.00 plus 10% of this amount as attorney's fees, without prejudice to the outcome of their Rule 65 petition before the Court of Appeals.[42] A Deed of Conditional Satisfaction of Judgment[43] dated September 24, 2015 was executed between the parties and submitted to the National Conciliation and Mediation Board.[44]

In its August 5, 2016 Decision[45] and January 5, 2017 Resolution,[46] the Court of Appeals affirmed[47] the Panel of Voluntary Arbitrators' decision and denied[48] Magsaysay Mol and Mol Ship's subsequent motion for reconsideration.[49]

On March 1, 2017, Magsaysay Mol and Mol Ship filed their Petition for Review on Certiorari before this Court.[50]

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34 Id. at 153.
35 Id. at 149.
36 Id. at 151.
37 Id. at 152.
38 Id. at 391–409.
39 Id. at 129.
40 Id. at 411–413.
41 Id. at 36 and 81.
42 Id. at 81.
43 Id. at 84–86.
44 Id. at 81–83.
45 Id. at 10-21.
46 Id. at 24-25.
47 Id. at 20.
48 Id. at 25.
49 Id. at 440–465.
50 Id. at 29.

Petitioners maintain that respondent is not entitled to permanent total disability benefits because his illnesses are not work-related, according to the letter of Dr. Quetulio on October 2, 2014.[51] They add that respondent's repatriation was not due to his alleged accident but due to a single episode of seizure,[52] the cause of which was unknown per the medical report of the same company-designated doctor.[53] Finally, petitioners argue that referral to a third doctor in case of conflicting findings of the company-designated doctor and the seafarer's personal doctor is mandatory. Since respondent failed to comply with this requirement, the assessment of the company-designated doctor should prevail.[54]

In his Comment,[55] respondent counters that his medical conditions are compensable under the governing Collective Bargaining Agreement[56] and that the Court of Appeals did not err in granting him permanent and total disability benefits.[57] The statements of Messman Francisco M. De Guzman (Messman De Guzman)[58] and Chief Cook Alvin Bartolome (Chief Cook Bartolome)[59] show clearly that respondent suffered an accidental fall while on duty.[60] Respondent adds that petitioners have not presented a Master's Report to prove their allegation that no accident occurred that time.[61] Moreover, the Certification[62] of Capt. Igor Pisarenko (Capt. Pisarenko) that there was no record of an accident involving respondent in the ship's official logbook is not the best evidence of this fact; rather, it is the logbook itself.[63] Respondent contends that "[p]etitioners' unjustifiable failure to present the 'Carnation Ace' logbook is tantamount to willful suppression of evidence, adverse to them if presented."[64]

Respondent further contends that Dr. Quetulio's October 2, 2014 letter relied upon by petitioners does not discount but even lends support to his claim that his medical conditions are work-related.[65] Dr. Quetulio's opinion that his injury is not work-related is negated by the Grade 10 assessment given by the other company-designated physicians at Shiphealth, which constituted "an admission that [respondent's] disabling conditions are work-related nothing less."[66]

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51 Id. at 40 and 46–47.
52 Id. at 41.
53 Id. at 45.
54 Id. at 58.
55 Id. at 482–507.
56 Id. at 497.
57 Id. at 488–489.
58 Id. at 230–231, 370.
59 Id. at 371.
60 Id. at 489–490.
61 Id. at 491.
62 Id. at 389.
63 Id. at 491–492.
64 Id. at 491.
65 Id. at 493.
66 Id. at 496.

Finally, respondent counters that non-referral to a third doctor is not a drawback to his complaint. In the first place, the medical assessment and opinion of the company-designated doctors were not disclosed to him. He came to know about them only after his complaint had been filed. As of April 21, 2014, the company stopped providing for his treatment and he was, since then, left on his own. He could not have complied with the third doctor rule since he was not given any assessment by the company-designated physicians even after his treatment had been supposedly terminated. If at all, it was petitioners who committed a breach of contract by withholding and concealing his medical records.[67]

This Court resolves the issue of whether or not the Court of Appeals erred in affirming the award of permanent and total disability benefits in favor of respondent Michael Paderes Atraje.

This Court denies the Petition.

I

Petitioners insist that respondent's illnesses are not work-related. They anchor their position on Dr. Quetulio's declaration in her October 2, 2014 letter that without any past medical results or examinations, it was difficult to trace the causes of the illnesses, thereby concluding that they were not work-related.[68]

However, the same letter relied upon by petitioners likewise acknowledged that "Herniated Nucleus Pulposus is considered work-related if there is history of trauma or carrying of heavy objects. Carpal Tunnel Syndrome is considered work-related if there is history of repetitive movement of the involved wrist/hand."[69] Shiphealth's earlier report also declared that a "slight trauma to the neck may cause symptoms which may qualify [respondent's injuries] as work[-]aggravated."[70]

In this case, it has been established that there was history of trauma at work involving respondent while on board the vessel. The Panel of Voluntary Arbitrators held that substantial evidence[71] exists showing that respondent indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist.

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67 Id. at 499–500.
68 Id. at 308.
69 Id. at 308.
70 Id. at 304.
71 Id. at 150.

> [E]xtant from the uncontested statement of Chief Cook Alvin Bartolome, that he together with Messman De Guzman saw [respondent] had a sudden fall which incident they immediately reported to their superiors . . . [W]hen [respondent] regained his consciousness, he was asked why and he answered that he was not able to sleep due to the noise of the air-conditioning unit in his cabin.
>
> Such recorded event of [respondent] having suffered a fall and/or lost consciousness while in the course of performing duties as Second Cook aboard has gained prominence as the starting point of the medical condition . . .
>
> It does not require a rocket scientist to ascertain the fact that a person who suffers from lack of or without sleep has weakened systems with tendency to pass out and/or prone to accident. Hence, the sudden fall experienced by [respondent] at work which resulted to the disabling injury on his neck area and aggravated by the injury on his wrist otherwise known as Carpal Tunnel Syndrome.[72]

The Panel of Voluntary Arbitrators further found no evidence to prove that respondent's condition "merely arose from wear and tear or degeneration,"[73] or that he was suffering from a preexistent illness.[74]

These factual findings of the Panel of Voluntary Arbitrators, which were affirmed by the Court of Appeals, are binding and will not be disturbed absent any showing that they were made arbitrarily or were unsupported by substantial evidence.[75]

Petitioners would insist, however, that there was no accident involving respondent. They point to the Certification of Capt. Pisarenko, which stated as follows:

> CERTIFICATION
>
> I, Capt. Igor Pisarenko, am the custodian of the logbook of the ship Carnation Ace. The ship's logbook is a repository of all the ship's activities, including incidents of accidents or injuries onboard. I do certify that upon review of the ship's official logbook, there appears no record of an accident involving Mr. Michael P. Atraje.

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72 Id. at 148–149.

73 Id. at 148.

74 Id. at 149.

75 *Centennial Transmarine, Inc. v. Quiambao,* G.R. No. 198096, July 8, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/198096.pdf> [Per J. Del Castillo, Second Division]; *Dela Rosa v. Michaelmar Philippines, Inc.,* 664 Phil. 154 (2011) [Per J. Nachura, Second Division]; *Merin v. National Labor Relations Commission,* 590 Phil. 596 (2008) [Per J. Tinga, Second Division]; *DMA Shipping Philippines v. Cabillar,* 492 Phil. 631 (2005) [Per J. Callejo, Sr., Second Division]; *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission,* 360 Phil. 881 (1998) [Per J. Romero, Third Division].

> Mr. Michael P. Atraje was engaged as 2nd Cook onboard Carnation Ace from 28 February 2014 until 08 March 2014.[76]

This Court is not persuaded.

As a rule, a Rule 45 review by this Court in labor cases does not delve into factual questions or to an evaluation of the evidence submitted by the parties.[77] This Court is tasked to merely determine the legal correctness of the Court of Appeals' conclusion that found no grave abuse of discretion on the part of the Panel of Voluntary Arbitrators in awarding full disability benefits to respondent.[78] Even so, this Court finds Capt. Pisarenko's Certification proffered by petitioners insufficient to prove their claim that Atraje did not incur an accident.

Capt. Pisarenko's Certification lacks probative value. First, it was not authenticated by Philippine consular officials. Second, the vessel's logbook, which is the official repository of the daily transactions and occurrences on board the vessel,[79] is the best evidence of its contents.[80] In *Haverton Shipping Ltd. v. NLRC,*[81] this Court declared that entries made in the vessel's logbook, when "made by a person in the performance of a duty required by law[,] are *prima facie* evidence of the facts stated [in it]."[82] However, the logbook itself or authenticated copies of pertinent pages of it must be presented and not merely "typewritten excerpts from the 'logbook' [that] have no probative value at all."[83]

In *C.F. Sharp Crew Management, Inc. v. Legal Heirs of Repiso,*[84] this Court rejected an employer's claim that a seafarer was merely repatriated at a convenient port and not due to medical illness, and held:

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76 *Rollo,* p. 389.

77 *Perea v. Elburg Shipmanagement Philippines, Inc.,* G.R. No. 206178, August 9, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/206178.pdf> [Per J. Leonen, Third Division]; *Cootauco v. MMS Phil. Maritime Services, Inc.,* 629 Phil. 506 (2010) [Per J. Perez, Second Division].

78 *See Jebsen Maritime, Inc. v. Ravena,* 743 Phil. 371 (2014) [Per J. Brion, Second Division]; *Javier v. Philippine Transmarine Carriers, Inc.,* 738 Phil. 374 (2014) [Per J. Brion, Second Division]; *Reyes & Lim Co., Inc. v. National Labor Relations Commission,* 278 Phil. 761 (1991) [Per J. Medialdea, First Division].

79 *Transglobal Maritime Agency, Inc. v. Chua, Jr.,* G.R. No. 222430, August 30, 2017 <http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/172800.htm> [Per J. Peralta, Second Division].

80 *See Centennial Transmarine, Inc. v. Dela Cruz,* 585 Phil. 206 (2008); *Wallem Maritime Services, Inc. v. NLRC,* 331 Phil. 476 (1996) [Per J. Romero, Second Division]; *Abacast Shipping and Management Agency, Inc. v. National Labor Relations Commission,* 245 Phil. 487 (1988) [Per J. Cruz, First Division].

81 220 Phil. 356 (1985) [Per J. Melencio-Herrera, First Division].

82 Id. at 362–363.

83 *Wallem Maritime Services, Inc. v. NLRC,* 331 Phil. 476, 489 (1996) [Per J. Romero, Second Division].

84 G.R. No. 190534, February 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/190534.pdf> [Per J. Leonardo-De Castro, First Division].

> The burden was thus shifted to petitioners to prove that Godofredo was only repatriated at a convenient port. However, aside from their bare allegations, petitioners did not present any other proof of their purported reason for Godofredo's repatriation. Petitioners explain that they no longer presented in evidence the ship's logbook or master's report since Godofredo did not complain of or suffer any illness on board M/T *Umm Al Lulu*, hence, there was no such entry in the ship's logbook or any master's report of such incident. **The Court notes though that petitioners had possession of and access to all logbooks and records of M/T *Umm Al Lulu*, and presentation of the said logbooks and records would have been material to prove the *actual absence* of any entry or report regarding Godofredo's health while he was on board.** Moreover, it is difficult to believe that petitioners had absolutely no log entry or record regarding Godofredo's repatriation, whether for medical or any other reason. Godofredo could not have disembarked from M/T *Umm Al Lulu* without express authority or consent from the master of the ship or petitioners as Godofredo's employers, and such authority or consent would have most likely stated the justifying cause for the same. **That petitioners did not present such logbooks and records even gives rise to the presumption that something in said logbooks and records is actually adverse to petitioners' case.**[85] (Emphasis supplied)

Petitioners should have presented the vessel's logbook instead of a mere unauthenticated Certification of a certain Capt. Pisarenko, who was not even shown to be the ship captain during respondent's employment. Moreover, even if no record of the accident is reflected in the logbook, this does not constitute conclusive proof that it did not happen, especially in light of the positive declarations of Chief Cook Bartolome and Messman De Guzman that respondent suffered a fall while at work.

To be compensable, reasonable proof of work-connection, not direct causal relation, is sufficient. "Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings."[86] This Court agrees with the Panel of Voluntary Arbitrators and the Court of Appeals that respondent's illnesses are work-related.

II

Neither did the Court of Appeals err in affirming the Panel of Voluntary Arbitrators' award of permanent total disability benefits.

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[85] Id. at 20–21.

[86] *Magat v. Interorient Maritime Enterprises, Inc.*, G.R. No. 232892, April 4, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/232892.pdf> 7 [Per J. Peralta, Second Division]; *Leonis Navigation Co., Inc. v. Obrero*, G.R. No. 192754, September 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/192754.pdf> [Per J. Jardeleza, Third Division]; *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81 (2010) [Per J. Nachura, Third Division].

The facts of this case show that respondent was never issued any medical assessment or progress report by the company-designated physicians, from his initial check up on March 13, 2014[87] until his last consultation on October 2, 2014, spanning a total of 204 days. Neither the interim disability rating issued on June 25, 2014 nor Dr. Quetulio's letter dated October 2, 2014 was given to respondent. In fact, respondent came to know about the reports only after his Complaint had been filed with the National Conciliation and Mediation Board. By legal contemplation, Atraje's disabilities are conclusively presumed to be permanent and total.[88]

Under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), it is the primary responsibility of the company-designated doctor to determine the disability grading or fitness to work of seafarers.[89] To be conclusive, however, the medical assessment or report of the company-designated physician must be complete[90] and definite[91] to give the seafarer proper disability benefits. As explained by this Court:

> 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.[92] (Emphasis in the original)

Furthermore, while the assessment of the company-designated physician *vis à vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law.[93]

Article 192(c)(1) of the Labor Code provides that temporary total disability lasting continuously for more than 120 days, except as otherwise

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87 *Rollo*, p. 33.

88 *Cutanda v. Marlow Navigation Phils., Inc.*, G.R. No. 219123, September 11, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/219123.pdf> [Per J. Peralta, Second Division]; *Tamin v. Magsaysay Maritime Corp.*, G.R. No. 220608, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf> [Per J. Velasco, Jr., Third Division]; *Fair Shipping Corp. v. Medel*, 693 Phil. 516 (2012) [Per J. Leonardo-De Castro, First Division].

89 *OSG Ship Management Manila, Inc. v. Monje*, G.R. No. 214059, October 11, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/214059.pdf> [Per J. Reyes, Jr., Second Division]; *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839 (2008) [Per J. Leonardo-De Castro, First Division].

90 *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf> [Per J. Mendoza, Second Division].

91 *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf> [Per J. Velasco, Jr., Third Division].

92 Id. at 10.

93 *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division].

provided in the Implementing Rules or the Amended Rules on Employee Compensation of Title II, Book IV of the Labor Code, shall be deemed total and permanent. Rule X, Section 2(a) of the Amended Rules on Employee Compensation in turn provides that:

> Section 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.[94] (Emphasis supplied)

In *Talaroc v. Arpaphil Shipping Corp.*,[95] this Court summarized the rules regarding the duty of the company-designated physician in issuing a final medical assessment, as follows:

> 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.[96]

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[94] Amended Rules on Employees' Compensation, Rule X, Sec. 2 <http://ecc.gov.ph/wp-content/uploads/2015/09/Booklet_Amended_Rules_on_EC_2014.pdf>.

[95] G.R. No. 223731, August 30, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/223731.pdf> [Per J. Perlas-Bernabe, Second Division]. *See also Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf> [Per J. Mendoza, Second Division]; and *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf> [Per J. Velasco, Jr., Third Division].

[96] Id. at 9.

Here, the company-designated physicians clearly breached their duty to provide a definite assessment of respondent's condition. While the records show that reports were regularly issued to update respondent's medical condition, the particular treatment administered, and the medicines prescribed to him, they were correspondences between the company-designated physicians and petitioners only. There was no indication that respondent was furnished these reports.

Significantly, the interim disability rating of Grade 10 issued on June 25, 2014, or 105 days from respondent's repatriation, was never given to respondent. Also, as an interim disability grade, it does not fully assess respondent's condition and cannot provide sufficient basis for the award of disability benefits in his favor. In fact, the company doctors recommended that respondent undergo MRI of the lumbosacral spine[97] and surgery. Respondent was, instead, referred by petitioners to Ygeia Medical Center for a second medical opinion.

Dr. Quetulio's October 2, 2014 letter, on the other hand, stated that "without any past medical results or examinations from Mr. Atraje, . . . it would be difficult to trace the cause of the illnesses. Therefore, concluding, that Mr. Atraje's illnesses are not work-related."[98] This report lacked a final assessment of respondent's medical condition, of his disability, or of his fitness to work. On the contrary, it is noted from the report that physical therapy was recommended by the Neuro-Psychiatrist for further management of respondent's condition. Similar to the June 25, 2014 interim disability rating, respondent also did not have a copy of this report.

Through all his check-ups and tests, respondent did not receive any medical assessment of his fitness to resume work from the company-designated physicians. Respondent's shoulder and neck pain persisted such that he was forced to consult an independent physician, Dr. Magtira. After evaluating respondent's previous MRI and physical examination, and after giving a brief description of respondent's disease, Dr. Magtira issued his Medical Report on June 19, 2014. He stated that respondent "should refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting"[99] and that his work activities must be restricted. He further stated that respondent does not have the physical capacity to return to his previous work and is "permanently unfit in any capacity to resume his sea duties."[100]

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97 *Rollo*, p. 301 (April 25, 2014 Medical Report No. 5), 302 (May 12, 2014 Medical Report No. 6), and 305 (June 25, 2014 Medical Report No. 8).

98 Id. at 308.

99 Id. at 239.

100 Id.

Evidently, his illnesses disabled him to continue his job on board the vessel. Despite medication and physical therapy, he was not restored to his pre-injury health status.[101] Moreover, there was no declaration from the company-designated doctors about his fitness to return to work, while his own physician advised him to refrain from undergoing strenuous activities.

This Court has held that:

> [P]ermanent total disability does not mean a state of absolute helplessness but the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.[102]

Respondent's inability to perform his customary sea duties, coupled with the company-designated physicians' abdication of their primary duty to declare his fitness or unfitness to work within the prescribed period, transforms his disability to permanent and total by operation of law.[103]

III

Finally, petitioners' contention on non-compliance with the third doctor rule is untenable.

Under Section 20(A)(3)[104] of the 2010 POEA-SEC, *"If a doctor appointed by the seafarer disagrees with the* ***assessment****, a third doctor may*

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[101] Id. at 73.

[102] *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf> 8 [Per J. Mendoza, Second Division].

[103] *Tamin v. Magsaysay Maritime Corp.*, G.R. No. 220608, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf> [Per J. Velasco, Jr., Third Division]; *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division].

[104] 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:

. . . .

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.

be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."[105] The *assessment* refers to the declaration of fitness to work or the degree of disability, as can be gleaned from the first paragraph of Section 20(A)(3). It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness or unfitness to work before the expiration of the 120- or 240-day period.[106]

In this case, the third doctor-referral provision does not apply because there is no definite disability assessment from the company-designated physicians.[107]

In *Kestrel Shipping Co., Inc. v. Munar:*[108]

> In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. **A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.**[109] (Emphasis supplied)

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.

105 POEA Memo. Circ. No. 010-10 (2010), Sec. 20 (A)(3), Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, <http://www.poea.gov.ph/memorandumcirculars/2010/10.pdf>.

106 *Saso v. 88 Aces Maritime Service, Inc.*, (Resolution), 770 Phil. 677 (2015) [Per J. Del Castillo, Second Division] *citing C.F. Sharp Crew Management, Inc. v. Taok,* 691 Phil. 521 (2012) [Per J. Reyes, Second Division].

107 *Tamin v. Magsaysay Maritime Corp.*, G.R. No. 220608, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf> [Per J. Velasco, Jr., Third Division]; *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division]. See also *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, G.R. No. 217345, July 12, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/217345.pdf> [Per J. Mendoza, Second Division]; *Apines v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 202114, November 9, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/202114.pdf> [Per J. Reyes, Third Division].

108 702 Phil. 717 (2013) [Per J. Reyes, First Division].

109 Id. at 737–738.

Respondent was kept in the dark about his medical condition. It is the height of unfairness, bordering on bad faith, for petitioners to demand from respondent compliance with the third doctor rule when they and their designated physicians, in the first place, did not fulfill their obligations under the law and the POEA-SEC. Given the company-designated physicians' inaction or failure to disclose respondent's medical progress, the extent of his illnesses, and their effect on his fitness or disability, respondent was justified in seeking the medical expertise of the physician of his choice.

In *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*,[110] a company's belated release of the disability rating and its attempt to discredit the findings of a seafarer's doctor for non-compliance with the third doctor rule was considered by this Court as acts of bad faith, which justified the award of damages in favor of the seafarer. It held:

> By not timely releasing Dr. Cruz's interim disability grading, petitioners revealed their intention to leave respondent in the dark regarding his future as a seafarer and forced him to seek diagnosis from private physicians. Petitioners' bad faith was further exacerbated when they tried to invalidate the findings of respondent's private physicians, for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, despite their own deliberate concealment of their physician's interim diagnosis from respondent and the labor tribunals. Thus, this Court concurs with the Court of Appeals when it stated:
>
> > We also grant petitioner's prayer for moral and exemplary damages. Private respondents acted in bad faith when they belatedly submitted petitioner's Grade 8 disability rating only via their motion for reconsideration before the [National Labor Relations Commission]. By withholding such disability rating from petitioner, the latter was compelled to seek out opinion from his private doctors thereby causing him mental anguish, serious anxiety, and wounded feelings, thus, entitling him to moral damages of P50,000.00. Too, by way of example or correction for the public good, exemplary damages of P50,000.00 is awarded.[111]

In this case, however, respondent no longer questioned the denial of his claims for moral and exemplary damages. Neither did he raise before the Court of Appeals or this Court the issue of whether he was entitled to these damages. Instead, he sought the execution of the Panel of Voluntary Arbitrators' May 15, 2015 Decision while petitioners' Rule 65 petition was pending before the Court of Appeals. Hence, this matter will no longer be tackled here.

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[110] G.R. No. 206113, November 6, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/206113.pdf> [Per J. Leonen, Third Division].

[111] Id. at 16.

Furthermore, as noted by the Panel of Voluntary Arbitrators, non-referral of the case to a third doctor was attributable to petitioners. For while respondent initiated to be submitted to examination by a third doctor, there was silence on the part of petitioners,[112] who did not respond by setting into motion the process of choosing a third doctor who could rule with finality the disputed medical situation.[113]

Lastly, petitioners were adamant in their position that respondent's disabling medical conditions are not work-related. The third doctor rule covers only conflicting medical findings on the fitness to work or degree of disability. It does not cover the determination of whether the disability is work-related or not. As this Court held in *Leonis Navigation Co. v. Obrero*:[114]

> [U]nder Section 20 (B) (3) of the POEA-SEC, referral to a third physician in case of contrasting medical opinions (between the company-designated physician and the seafarer-appointed physician) is a mandatory procedure that must be expressly requested by the seafarer. As a consequence of the provision, the company can insist on its disability rating even against a contrary opinion by another physician, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. We clarify, however, that Section 20 (B) (3) refers only to **the declaration of fitness to work** or **the degree of disability**. *It **does not** cover the determination of whether the disability is work-related.* There is nothing in the POEA-SEC which mandates that the opinion of the company-designated physician regarding work-relation should prevail or that the determination of such relation be submitted to a third physician.[115] (Emphasis in the original, citation omitted)

Under the circumstances of this case, non-referral to a third doctor will not prejudice respondent's claim.

The rigorous process for disability claims prescribed in the POEA-SEC seeks a balance between a seafarer's right to receive a just compensation for his or her injuries[116] and an employer's interest to determine the veracity of disability claims against it. In line with this policy, the third doctor rule was added to enable the parties to expeditiously settle disability claims[117] in case of conflict between the findings of the company-

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[112] *Rollo*, p. 152.

[113] *INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774 (2014) [Per J. Brion, Second Division] citing *Bahia Shipping Services, Inc. v. Constantino*, 738 Phil. 564 (2014) [Per J. Brion, Second Division].

[114] G.R. No. 197254, September 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/192754.pdf> [Per J. Jardeleza, Third Division].

[115] Id. at 9.

[116] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, G.R. No. 217345, July 12, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/217345.pdf> [Per J. Mendoza, Second Division].

[117] *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, 712 Phil. 507 (2013) [Per J. Brion, Second Division].

designated physicians and the seafarer's doctor. It was not to be construed to mean that "it is only the company-designated physician who could assess the condition and declare the disability of seamen."[118] Certainly, it cannot be used by employers to limit or defeat the legitimate claims of seafarers.

WHEREFORE, the Petition is **DENIED.** The Court of Appeals August 5, 2016 Decision and January 5, 2017 Resolution in CA-G.R. SP No. 141333 are **AFFIRMED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

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[118] *Magsaysay Maritime Services v. Laurel,* 707 Phil. 210 (2013) [Per J. Mendoza, Third Division].

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
OCT 0 1 2018