Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

EFREN J. JULLEZA,
Petitioner,

- versus -

ORIENT LINE PHILIPPINES, INC., ORIENT NAVIGATION CORPORATION AND MACARIO DELA PEÑA,[•]
Respondents.

G.R. No. 225190

Present:

CARPIO, *J., Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

29 JUL 2019

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DECISION

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated December 16, 2015 and Resolution[3] dated June 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136290, which granted in part respondents' petition for *certiorari* under Rule 65 of the Rules of Court, and found petitioner to be entitled only to partial permanent disability benefits.

Facts

The antecedent facts as summarized by the CA are as follows:

> Private respondent [petitioner herein] was employed by petitioners [respondents herein] as a bosun on board MV Orient Phoenix. After undergoing the required pre-employment medical examination (PEME), he was certified as fit for sea duty and hence, signed a contract on 21 November 2011 for a period of nine (9) months. The aforesaid employment was covered by the IBF-JSU/PSU-IMMAJ Collective Bargaining Agreement

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• Macario is also stated as "Acario" while Dela Peña also appears as "Dela Pena" in some parts of the records.

1 *Rollo*, pp. 27-56, excluding Annexes.

2 Id. at 62-71. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rodil V. Zalameda and Victoria Isabel A. Paredes.

3 Id. at 73-75.

(CBA). Meanwhile, for lack of a replacement, the employment of private respondent was extended.

On 19 December 2012, private respondent allegedly slipped while cleaning the cargo hold under bad weather condition. AB Rolen Magalona wanted to bring him to the hospital for medical attention; however, the ship master advised private respondent to just wait a while until his extended contract ends on 25 December 2012 and thereafter have his medical check up. In the meantime, private respondent was given medication to alleviate the pain on his lower back.

Upon his return to the Philippines, private respondent went to the company-designated physician on 27 December 2012. Several tests and therapy sessions were done until 21 February 2013 when the company-designated [physician] certified that private respondent was suffering from bilateral nephrolithiasis and lumbar spondylosis. They likewise informed petitioners in a letter dated 23 April 2013 that the disability grading of private respondent is Grade 8, i.e. loss of 2/3 lifting power of the trunk.

On 04 May 2013, private respondent consulted an independent physician, Dr. Rogelio Catapang, Jr.; and on 07 May 2013, he filed a complaint for illness allowance, disability benefits, reimbursement of medical expenses and damages. In his Medical Report dated 29 June 2013, Dr. Catapang stated that private respondent is unfit for further strenuous duties.

Disputing the claim, petitioners countered that the bilateral nephrolithiasis suffered by private respondent is not work related as certified by the company-designated [physician]; rather, it is caused by a combination of genetic predisposition, diet and water intake. Meanwhile, the lumbar spondylosis was classified as Grade 8 disability only. Petitioners likewise contended that the illness or injury did not result from an accident, as there was no confirmation or validation of such incident except only the self-serving statements of private respondent and his peer, AB Magalona. Consequently, private respondent is not entitled to the disability compensation granted under Paragraphs 28.1 and 28.4, Article 28 of the CBA.[4]

LA Decision

The Labor Arbiter (LA) ruled that petitioner figured in an accident, which caused his lumbar spondylosis.[5] The LA found that petitioner's medical problem had not been resolved following the Grade 8 disability rating of the company-designated physician and the findings of his independent doctor which showed that it was impossible for petitioner to be gainfully employed as a bosun.[6] Given this, the LA ruled that petitioner was entitled to permanent total disability benefits following the IBF-JSU/AMOSUP-IMMAJ Collective Bargaining Agreement[7] (CBA).[8] The dispositive portion of the LA Decision[9] states:

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4 Id. at 63-64.
5 Id. at 343-344.
6 Id. at 344-345.
7 Id. at 203-258.
8 Id. at 346.
9 Id. at 339-347. Penned by Labor Arbiter Fe S. Cellan.

> **WHEREFORE**, in view of the foregoing, judgment is hereby rendered ordering respondents ORIENT LINE PHILIPPINES, INC. AND/OR ORIENT NAVIGATION CORP. and MR. MACARIO DELA PE[Ñ]A liable to pay, jointly and severally, complainant EFREN J. JULLEZA, the amount of **US$90,882.00** or its Philippine Peso equivalent at the time of payment, representing the latter's permanent total disability benefits plus **US$9,088.20** or ten percent (10%) of the total award, as and by way of attorney's fees.
>
> **SO ORDERED**.[10]

NLRC Decision

The National Labor Relations Commission (NLRC) found that respondents failed to refute the fact that petitioner slipped while he and AB Rolen M. Magalonga[11] (AB Magalonga) were washing the cargo hold, thus petitioner is entitled to benefits under the CBA for having met an accident while on board the ship.[12] The NLRC affirmed the LA that petitioner is entitled to permanent total disability because his incapacity exceeded 120 days. The NLRC also affirmed the award of attorney's fees.[13] The dispositive portion of the NLRC Decision[14] states:

> **WHEREFORE**, the appeal is DISMISSED for lack of merit and the Decision of the Labor Arbiter dated February 28, 2014 is AFFIRMED en toto.
>
> **SO ORDERED**.[15]

CA Decision

In the assailed CA Decision, the CA reversed the NLRC, the dispositive portion of which states:

> **WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **GRANTED IN PART**. The Decision dated 02 May 2014 and the Resolution dated 11 June 2014 of the National Labor Relations Commission are **REVERSED and SET ASIDE** insofar as it affirmed the grant of Ninety Thousand Eight Hundred Eighty Two Dollars (US$90,882.00) as disability benefits. Instead, petitioners ORIENT LINE PHILIPPINES, INC. and/or ORIENT NAVIGATION CORPORATION and/or ACARIO DELA PEÑA are **ORDERED TO PAY** private respondent EFREN J. JULLEZA total permanent disability benefit (Grade 8) in the amount of Sixteen Thousand Seven Hundred Ninety-Five Dollars (US$16,795.00) or its Philippine Peso equivalent at the time of payment, and One Thousand Six Hundred Seventy[-]Nine Dollars and 50/100 (US$1,679.50) as and by way of attorney's fees.

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10 Id. at 347.
11 Also stated as "Magalona" in some parts of the records.
12 *Rollo*, pp. ¶17-118.
13 Id. at 118.
14 Id. at 113-119. Penned by Commissioner Numeriano D. Villena, with Commissioner Angelo Ang Palaña and Presiding Commissioner Herminio V. Suelo concurring.
15 Id. at 119.

SO ORDERED.[16]

In reversing the NLRC, the CA ruled that the company-designated physician has determined the final suggested disability grading of petitioner, which was Grade 8 due to loss of 2/3 lifting power of the trunk.[17] The CA ruled that the company-designated physician acknowledged that petitioner suffered from partial permanent disability.[18]

The CA also ruled that the failure to consult a third doctor, which is part of the conflict-resolution procedure, ties the hands of the Court and therefore the certification of the company-designated physician must be upheld.[19] The CA also ruled that a review of the records revealed that petitioner may have not met an accident which would place him under the coverage of the CBA for compensation arising from an accident while on board the ship. From the records, petitioner only complained of lower back pain, and his only support for his claim of accident was the unnotarized typewritten account of a certain AB Magalonga, which was not submitted to the ship master or to respondents.[20]

The CA affirmed the award of attorney's fees as respondents failed to pay petitioner's disability benefits even if the company-designated physician already found them to be liable for petitioner's partial permanent disability benefits.[21]

Petitioner filed a motion for reconsideration but this was denied by the CA. Hence, this Petition.

Issue

The issue for the Court's resolution is whether the CA acted correctly in granting the petition for *certiorari*.

The Court's Ruling

The Petition is denied.

The CA acted correctly in reversing the NLRC and LA.

Petitioner failed to comply with the conflict-resolution procedure under the CBA.

It is undisputed that petitioner suffered from lumbar spondylosis. But the company-designated and the independent physicians arrived at different

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16 Id. at 70-71.
17 Id. at 67.
18 Id.
19 See id. at 68.
20 Id. at 70.
21 Id.

findings. The company-designated physician, who saw petitioner for medical check-up for at least 10 instances from December 2012 to April 2013,[22] issued his medical findings on April 23, 2013, or 119 days from petitioner's repatriation on December 25, 2012.[23] The company-designated physician's report states:

> Case of 55 year old male with Lumbar Spondylosis.
>
> His final suggested disability grading is Grade 8 – loss of 2/3 lifting power of the trunk.[24]

Unsatisfied, petitioner consulted an independent doctor on May 4, 2013. His own doctor saw him twice[25] and issued his Medical Report[26] subsequently on June 29, 2013. The report states:

> ***Mr. Julleza*** continues to complain and suffer low back pain. Diagnosis: Disc Dessication L2 - S1; Herniated Nucleus Pulposus L2 - S1. The pain is made worse by prolonged standing and bending. He has difficulty climbing up and down the stairs. He has lost his pre-injury capacity and is **UNFIT** to work back at his previous occupation.[27]

Given the conflict between the findings of the two doctors, the provision of the CBA regarding the resolution of such conflict applies. The CBA states:

> **Article 28: Disability**
>
> x x x x
>
> 28.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.[28]

In *Gargallo v. Dohle Seafront Crewing (Manila), Inc.*,[29] the Court ruled that the seafarer is required to comply with the conflict-resolution procedure, which was the same under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and the CBA. Thus:

> Moreover, petitioner failed to comply with the prescribed procedure under the afore-quoted Section 20 (A) (3) of the 2010 POEA-SEC on the

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22 Id. at 198, 263-264.
23 Id. at 134.
24 Id. at 265.
25 See id. at 200.
26 Id. at 200-202.
27 Id. at 201.
28 Id. at 224.
29 769 Phil. 915 (2015).

joint appointment by the parties of a third doctor, in case the seafarer's personal doctor disagrees with the company-designated physician's fit to work assessment. The IBF CBA similarly outlined the procedure, *viz.*:

> 25.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> x x x x

In the recent case of *Veritas Maritime Corporation v. Gepanaga, Jr.*, involving an almost identical provision of the CBA, the Court reiterated the well-settled rule that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC and the CBA militates against his claims, and results in the affirmance of the fit to work certification of the company-designated physician, thus:

> The [POEA-SEC] and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x.[30]

Further, with regard to the procedure for referral to a third doctor, jurisprudence has set that it is the duty of the seafarer to signify his intent to refer the conflict between the findings of the company-designated physician and that of his own doctor to a third doctor.[31] After notice from the seafarer, the company must then commence the process of choosing the third doctor.[32]

Here, after receipt of his own doctor's medical report, petitioner did not show any proof that he sent the medical report to respondents and signify to respondents that he would like to refer the conflicting medical findings to a third doctor. The CA was therefore correct that absent compliance with the conflict-resolution procedure, the findings of the company-designated

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30 Id. at 930-931; citations omitted.

31 *Yialos Manning Services, Inc. v. Borja,* G.R. No. 227216, July 4, 2018, p. 5.

32 Id., citing *Bahia Shipping Services, Inc. v. Constantino*, 738 Phil. 564, 576 (2014).

physician that petitioner has a Grade 8 disability rating should prevail over that of the seafarer's doctor.

Petitioner's injury was not a result of an accident.

Both the LA and the NLRC ruled that petitioner's lumbar spondylosis arose from an accident. The CA, on the other hand, ruled that petitioner was not involved in an accident while on board the ship. A review of the records reveals that the CA was correct.

An accident has been defined in *NFD International Manning Agents, Inc. v. Illescas*[33] as follows:

> Black's Law Dictionary defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."
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> The Philippine Law Dictionary defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."
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> "Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:
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> > [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.
> >
> > **The word may be employed as denoting** a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; **any unexpected personal injury resulting from any unlooked for mishap or occurrence**; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events.[34] (Emphasis and underscoring in the original)

Here, support for petitioner's claim that he met an accident comes only from his own handwritten statement[35] and that of AB Magalonga who issued an unnotarized statement dated December 22, 2012,[36] both of which state that petitioner slipped and fell, with his butt, leg and back hitting the floor. However, the Medical Report for Seafarer signed by Capt. Jeremias S. Ferrer, indicates that on December 19, 2012, petitioner complained of back pain

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33 646 Phil. 244 (2010).
34 Id. at 260; citation omitted.
35 CA *rollo*, p. 109.
36 Id. at 110.

above the waistline but that this arose from sickness. The report also says that the possible cause was weather or sea condition, while the tick boxes for fall, tripping, hitting, or slipping were unchecked.[37] The fact that petitioner simply complained of lower back pain was confirmed by the initial medical report of the company-designated physician, which states:

> This is a case of 55 year old Bosun, who complained of pain on the lower back radiating to the right thigh on December 19, 2012 onboard sea vessel. x x x[38]

Even petitioner's own doctor stated in his June 29, 2013 Medical Report that petitioner experienced gradual onset of low back pain after lifting heavy objects on December 19, 2012, thus:

> x x x The condition apparently started on 19 December 2012; while on board MV Orient as Bosun; the patient claimed that after discharging and loading procedures in China involving lifting heavy objects; he experienced gradual onset of low back pain. He self medicated with emollients which provided some relief and continued to work. Past Medical History revealed on August 2010; he experienced on and off lower back pain which was relieved by intake of Mefenamic Acid. The above condition increased in intensity prompting the patient [to] request for medical checkup while in China, but was advised by his superior to have it done in Manila. x x x[39]

The totality of the foregoing evidence attached to the records convinces the Court that the CA was correct in ruling that petitioner was not involved in an accident. The Court gives more weight to the reports of the ship captain, company-designated physician, and petitioner's own doctor, all of which are silent on the fact that he slipped and fell. In fact, the reports of both doctors reveal that petitioner had been experiencing back pain since August 2010 and his back pain got worse on December 19, 2012, a few days before the end of his contract, when he was carrying heavy objects.

Other than his allegation and the unnotarized statement of his companion, petitioner failed to present any evidence to support his claim that he met an accident on December 19, 2012. The Court's ruling in *Island Overseas Transport Corp. v. Beja*[40] applies as, similarly, the seafarer therein claimed that his knee injury was a result of an accident but failed to present evidence to support his allegation:

> We, however, note that Beja has not presented any proof of his allegation that he met an accident on board the vessel. There was no single evidence to show that Beja was injured due to an accident while doing his duties in the vessel. No accident report existed nor any medical report issued indicating that he met an accident while on board. Beja's claim was

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37 Id. at 111.
38 Id. at 243.
39 *Rollo*, p. 200.
40 774 Phil. 332 (2015).

> simply based on pure allegations. Yet, evidence was submitted by petitioners disputing Beja's allegation. The certifications by the Master of the vessel and Chief Engineer affirmed that Beja never met an accident on board nor was he injured while in the performance of his duties under their command. Beja did not dispute these certifications nor presented any contrary evidence. "It is an inflexible rule that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process."[41]

The same is true for petitioner. The back pain, which he had been experiencing as far back as August 2010, and which worsened while he was carrying heavy objects, was not an unlooked for mishap, occurrence, or fortuitous event. It did not arise from an unusual circumstance. It did not arise from a calamity, casualty, catastrophe, disaster, or an undesirable or unfortunate happening as it would seem to have developed through time given the nature of his work.

Petitioner is entitled to benefits under the POEA-SEC.

The LA and the NLRC vis-à-vis the CA ruled differently on whether petitioner is entitled to benefits under the CBA. The LA and the NLRC both ruled that petitioner, having been involved in an accident, is entitled under the stipulations in the CBA. The CA, on the other hand, ruled that petitioner is entitled to the benefits under the POEA-SEC since his injury did not arise from an accident. The Court agrees with the CA.

The provisions of the CBA state:

> **Article 28: Disability**
>
> 28.1 A seafarer who suffers permanent disability **as a result of an accident** whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to wilful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.
>
> 28.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> 28.3 The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than ten percent (10%) disability, to be pro rata.

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[41] Id. at 343-344; citation omitted.

> 28.4 A seafarer whose disability, in accordance with 28.2 above is assessed at fifty percent (50%) or more under the attached APPENDIX 3 shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to one hundred percent (100%) compensation. Furthermore, any seafarer assessed at less than fifty percent (50%) disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to one hundred percent (100%) compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 28.2 above.
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> 28.5 Any payment effected under 28.1 to 28.4 above, shall be without prejudice to any claim for compensation made in law, but may be deducted from any settlement in respect of such claims.[42] (Emphasis and underscoring supplied)

A reading of the foregoing shows that it only covers disabilities arising from accidents. In fact, in *Fil-Star Maritime Corp. v. Rosete*,[43] the Court ruled that Article 28 of the ITF-JSU/AMOSUP CBA, which also covers petitioner, is limited to injuries arising from accidents, thus:

> The CBA provisions on disability are not applicable to respondent's case because Article 28 thereon specifically refers to disability sustained after an accident. Article 28 of the ITF-JSU/AMOSUP CBA specifically states that:
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> Article 28: Disability
>
> 28.1 A seafarer who suffers permanent disability ***as a result of an accident*** whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer as a result thereof, but excluding permanent disability due to wilful acts, shall be in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. x x x[44] (Emphasis in the original)

The Court likewise ruled in *Island Overseas Transport Corp. v. Beja*,[45] which involved the same clause 28.1, that it only covers injuries resulting from accidents. And since the seafarer's knee injury was not proven to have been the result of an accident, his disability benefits should be based on the POEA-SEC and not the CBA.[46]

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42 *Rollo*, pp. 224-225.

43 677 Phil. 262 (2011).

44 Id. at 275.

45 Supra note 38.

46 See *NFD International Manning Agents, Inc. v. Illescas*, supra note 33, at 259, where the Court held that even if the seafarer was not involved in an accident, he was still entitled to the benefits under the CBA. The stipulations in the CBA, however, cover even injuries not arising from an accident. The CBA stipulations therein state:

> Art. 13. (Compensation for Death and Disability).
>
> **If a seafarer/officer, due to no fault of his own, suffers permanent disability** ***as a result of an accident while serving on board or while traveling to or from***

Following the foregoing, and given that petitioner's injury did not arise from an accident, the provisions under the POEA-SEC applies to petitioner. Section 20(A)(6) of the POEA-SEC states:

> **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
>
> 6. **In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of [t]his Contract.** Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
>
> **The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance was paid.** (Additional emphasis and underscoring supplied)

The CA was therefore correct in awarding to petitioner disability benefits under the POEA-SEC corresponding to a Grade 8 disability rating, which is Sixteen Thousand Seven Hundred Ninety-Five US Dollars (US$16,795.00).

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated December 16, 2015 and Resolution dated June 16, 2016 of the Court of Appeals in CA-G.R. SP No. 136290 are **AFFIRMED**.

***the vessel on Company's business or due to marine peril*, and as a result, his ability to work is permanently reduced, totally or partially, the Company shall pay him a disability compensation which including the amounts stipulated by the POEA's Rules and Regulations Part II, Section C, shall be maximum of US$70,000.00 for ratings and US$90,000.00 for officers**.

The degree of disability, which the Company, subject to this Agreement, is liable to pay, shall be determined by a doctor appointed by the Company. If a doctor appointed by the Seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Company and the seafarer and his/her Union, and third doctor's decision shall be final and binding on both parties.

A seafarer who is disabled as a result of an injury, and whose permanent disability in accordance with the POEA schedule is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently disabled and be entitled to 100% compensation (USD90,000 for officers and USD70,000 for ratings).

A seafarer/officer who is *disabled as a result of any injury*, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation. (Additional emphasis in the last paragraph supplied)

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

LUCAS P. BERSAMIN
Chief Justice