Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RICHIE P. CHAN, Petitioner, -versus- **MAGSAYSAY MARITIME CORPORATION, CSCS INTERNATIONAL NV and/or MS. DORIS HO,** Respondents.	**G.R. No. 239055** Members: **PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG,* J. REYES, JR., and LAZARO-JAVIER, *JJ.*** Promulgated: MAR 11 2020

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on Certiorari[1] seeks to reverse the Decision dated June 29, 2017[2] of the Court of Appeals in CA-G.R. SP No. 141340 holding that petitioner was only entitled to Grade 10 Disability Benefits.

Antecedents

Petitioner Richie P. Chan sued respondents Magsaysay Maritime Corporation, CSCS International N/V and/or Ms. Doris Ho for permanent

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* Designated as additional member in lieu of J. Lopez per raffle dated February 3, 2020.

[1] *Rollo*, pp. 21-58.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Mario V. Lopez (now a member of this Court); *id.* at 59-66.

total disability benefits, moral and exemplary damages, and attorney's fees. On November 19, 2012, Magsaysay Maritime Corporation, in behalf of its principal CSCS International NV engaged his services as fireman on board *Costa Voyager-D/E*. On November 25, 2012, he boarded the vessel. On April 2013, he felt severe pain after he slipped and hit his right knee on the deck during a regular boat drill.[3] He was initially treated at the ship's hospital, given pain medication, and advised to rest. Sometime in the first week of May 2013, his right knee got swollen and he could hardly walk and sleep. On May 8, 2013, he was brought to a hospital in Turkey and given pain medication. As he could no longer work, he was repatriated on May 13, 2013.[4]

Upon his return to the country, he reported to respondents' office and was referred to the company-designated physician at the Marine Medical Center.[5] He was diagnosed with gouty arthritis with meniscal tear (right knee) and advised to undergo surgery. But since he refused surgery, he was further advised to take medication and rehabilitation instead. On June 24, 2013, he requested more time to decide whether or not to go through surgery.[6]

On July 11, 2013, the company-designated physician issued Disability Grade 10. Meantime, he was provided further therapy and medication. On August 16, 2013, the company-designated physician noted he had attained maximum medical cure and was given a final assessment of Disability Grade 10.[7]

On August 17, 2013, he manifested his decision to undergo surgery which respondents agreed to provide. He was admitted for surgery on August 27, 2013 or three (3) months after repatriation. Despite the surgery, his condition did not improve. On October 29, 2013, the company-designated physician noted that he had already attained maximum medical cure with Grade 10 Disability,[8] thus:

> October 29, 2013
>
> ROBERT D. LIM, MD
> Marine Medical Services
> Metropolitan Medical Services
>
> Re Mr. Richie Chan
>
> > Follow-up on 36 y/o male, S/P Arthroscopic Partial Meniscectomy, Right Knee. Gouty Arthritis is not work-related.
> >
> > Medical Meniscal Tear may be secondary to trauma, wear and tear, can be work-related.

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[3] *Id.* at 60.
[4] *Id.* at 81.
[5] *Id.* at 60.
[6] *Id.* at 122.
[7] *Id.*
[8] *Id.* at 123.

> Patient has already reached maximum medical improvement.
>
> Disability grade remains at Grade 10.
>
> Thanks.
>
> Respectfully yours,
>
> WILLIAM CHUASUAN, JR. MD
> Lic. No. 95270[9]

Due to persistent pain even after surgery and respondents' continued silence on whether he could resume his seafarer duties, he consulted an independent medical expert who, after a series of examinations, issued a Medical Report dated January 6, 2014, declaring him unfit for sea duty due to persistent pain on the knee, swelling, and limited movement. Thereafter, he asked respondents for total permanent disability benefits but to no avail.[10]

On the other hand, respondents countered that Chan had no cause of action since he failed to follow the procedure in contesting the findings of the company-designated physician. Chan had prematurely filed the complaint without seeking a second opinion from the physician of his own choice. Thus, any medical document that Chan may have later submitted would only be a mere afterthought for the sole purpose of claiming total disability benefits. Too, Chan's delayed treatment which exceeded one hundred twenty (120) days should be attributed to him as he himself requested more time to decide whether to undergo surgery. Assuming Chan was entitled to disability benefits, it should be limited to Grade 10 disability as assessed by the company-designated physician. Chan is not entitled to damages and attorney's fees as respondents were never in bad faith in dealing with him. Lastly, respondent Ms. Doris Ho should be dropped as party respondent since Chan had no employer-employee relationship with her.

The Labor Arbiter's Ruling

By Decision dated January 30, 2015, Labor Arbiter Vivian H. Magsino-Gonzales ruled in Chan's favor. The labor arbiter found that Chan was not informed of the company-designated physician's final assessment even after the lapse of two hundred forty (240) days from medical repatriation. Chan, therefore, was left with no other alternative but to consult an independent physician to evaluate his medical condition.[11] The labor arbiter awarded total permanent disability benefit based on the POEA Contract but denied the other claims for lack of basis, thus:

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[9] *Id.* at 44.
[10] *Id.* at 82-83.
[11] *Id.* at 262-269.

> **WHEREFORE,** foregoing considered, judgment is hereby rendered ordering respondents MAGSAYSAY MARITIME CORPORATION/C.S.C.S. INTERNATIONAL NV to jointly and severally pay complainant, the sum of US$60,000.00 or its peso equivalent prevailing at the time of payment.
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> All other claims are dismissed.
>
> **SO ORDERED.**[12]

The NLRC's Ruling

On appeal, the NLRC affirmed with modification awarding attorney's fees to Chan. The NLRC subsequently denied respondents' motion for reconsideration.[13]

The Court of Appeals' Ruling

By Decision dated June 29, 2017, the Court of Appeals reduced the award to Grade 10.

It held that Chan disregarded the conflict resolution procedure under the POEA-SEC when he did not refer the conflicting findings on the extent of his disability to a third doctor. For this reason, the findings of the company-designated physician must prevail. Too, the Court of Appeals held that the seafarer's incapacity to work after the lapse of more than one hundred twenty (120) days from the time he suffered an injury and/or illness is not a magical incantation that automatically warrants the grant of total and permanent disability benefits in his favor since jurisprudence has extended this period to two hundred forty (240) days. Only one hundred sixty-nine (169) days passed from Chan's repatriation for medical treatment on May 13, 2013 until the company-designated physician gave him a Grade 10 rating on October 29, 2013.

The Court of Appeals denied Chan's motion for reconsideration.[14]

The Present Petition

Chan now seeks[15] affirmative relief from the Court and prays that the assailed dispositions of the Court of Appeals be reversed and a new one rendered reinstating the NLRC's Resolution dated April 10, 2015.

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[12] *Id.* at 269.
[13] *Id.* at 61-62.
[14] *Id.* at 67-71.
[15] *Id.* at 21-57.

He first argues that he is not duty bound to avail of the conflict resolution procedure under Section 20-B(3) of the POEA-SEC since respondents deliberately refused to furnish him a copy of the company-designated physician's final assessment after his medical treatment was discontinued. As a result, he was deemed totally and permanently disabled by operation of law. The Grade 10 assessment issued him on October 29, 2013 cannot be the final assessment within the contemplation of law.

He next asserts that the final assessment attached to respondents' position paper was not compliant with law and jurisprudence. There was no categorical declaration of his fitness to work as seafarer despite the Grade 10 assessment issued by the company-designated doctor. There was no discussion either on the implication on his capacity to return to work as seafarer.

Lastly, Grade 2 to 14 (POEA-SEC) assessments must include a certification that the seafarer remains fit to work as seafarer, otherwise, it can only be considered as an interim assessment. Here, there was no such definitive assessment from the company-designated physician.[16]

On the other hand, respondents counter that Chan's Grade 10 disability was already assessed not once but twice, first on August 16, 2013 prior to his surgery, and second, on October 29, 2013 after his surgery. Also, the complaint was prematurely filed without seeking a second or third opinion. It was only when Chan filed his position paper that he belatedly presented a medical report issued by his alleged physician of choice, Dr. Runas. Thus, at the time the complaint was filed, petitioner did not as yet consult any personal physician for his disability assessment. In any event, the two (2) conflicting medical findings were not referred to a third doctor, hence, the findings of the company-designated physician pertaining to his Grade 10 disability must prevail.[17]

Issues

1. Is the October 29, 2013 medical assessment of the company-designated physician complete, final and definite?

2. Is referral to a third doctor mandatory?

3. Is petitioner entitled to total and permanent disability benefits?

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[16] *Id.* at 21-58.
[17] *Id.* at 505-522.

Ruling

To begin with, this Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. In the exercise of its power of review, the factual findings of the Court of Appeals are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. It is a recognized exception, however, that when the Court of Appeals' findings are contrary to those of the NLRC and the labor arbiter, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[18]

The employment of seafarers is governed by the contracts they signed at the time of their engagement. So long as the stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[19]

Here, petitioner's employment is governed by law, the contract he executed with respondents on November 19, 2012, and the POEA-SEC.[20] Section 20(A) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, sets the procedure for disability claims of seafarers, to *wit*:

x x x *x x x* *x x x*

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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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[18] See *Camilo A. Esguerra v. United Philippines Lines, Inc., Belships Management (Singapore) PTE LTD., and/or Fernando T. Lising,* 713 Phil. 487, 497 (2013).

[19] See *C.F. Sharp Crew Management, Inc., et. al. v. Legal Heirs of the Late Godofredo Repiso*, 780 Phil. 645 (2016).

[20] Memorandum Circular No. 10, s. 2010.

> 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.
>
> *x x x* *x x x* *x x x*
>
> 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.
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> **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**. (Emphasis supplied)

On the other hand, Section 20(A)(6) of the 2010 POEA-SEC highlights that the seafarer's disability shall not be measured by the number of days the seafarer underwent treatment, *viz.*:

> 6. 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 is paid.

In ***Olidana v. Jebsens Maritime, Inc.***,[21] the Court ruled that before the disability gradings under Section 32 may be considered, the same should be properly established and contained in a **valid and timely** medical report of a company-designated physician. Thus, the foremost consideration of the courts is to determine whether the medical assessment or report of the company-designated physician was **complete and appropriately issued**; otherwise, the medical report shall be set aside and the disability grading contained therein will not be seriously appreciated.

The October 29, 2013 medical assessment is not complete, final,

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[21] 772 Phil. 234, 245 (2015).

nor definite.

As stated, Chan sustained knee injury after he slipped and hit his right knee on the deck during a regular boat drill. He was medically repatriated for treatment on May 13, 2013.[22] On May 14, 2013, he got referred to the company-designated physician at Marine Medical Center.[23] The company-designated physician diagnosed him with gouty arthritis with meniscal tear (right knee) and advised him for surgery. On June 24, 2013, Chan requested for more time to decide whether to undergo surgery.[24] On August 16, 2013, the company-designated physician noted that Chan had already attained maximum medical cure and was given a disability assessment of Grade 10.[25] On August 17, 2013 or after ninety-six (96) days since his repatriation, Chan finally manifested his decision to undergo surgery. Thus, the surgery on his affected knee was done on August 27, 2013.[26] But the surgery did not relieve him of the pain. Even subsequent therapy and medical treatments did not help. Consequently, respondents discontinued to finance Chan's therapy and medical treatment starting on the last week of October 2013.[27] On October 29, 2013, the company-designated physician issued his alleged final assessment, to *wit.*:

> October 29, 2013
>
> ROBERT D. LIM, MD
> Marine Medical Services
> Metropolitan Medical Services
>
> Re Mr. Richie Chan
>
> Follow-up on 36 y/o male, S/P Arthroscopic Partial Meniscectomy, Right Knee. Gouty Arthritis is not work-related.
>
> Medical Meniscal Tear may be secondary to trauma, wear and tear, can be work-related.
>
> Patient has already reached maximum medical improvement.
>
> Disability grade remains at Grade 10.
>
> Thanks.
>
> Respectfully yours,
>
> WILLIAM CHUASUAN, JR. MD
> Lic. No. 95270[28]

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[22] *Rollo*, p. 81.
[23] *Id.* at 60.
[24] *Id.* at 122.
[25] *Id.*
[26] *Id.* at 28.
[27] *Id.* at 28-29
[28] *Id.* at 44.

True, the company-designated physician issued his medical assessment on Chan's disability twice. First, on August 16, 2013 prior to his surgery, and second, on October 29, 2013 after his surgery. But the latter medical assessment fell short of the parameters laid down by jurisprudence as a final medical assessment.

Under the POEA-SEC, the company-designated doctor is primarily vested with the responsibility to determine the disability grading or fitness to work of seafarers. To be conclusive, however, the medical assessment or report of the company-designated physician must be complete and definite for the purpose of ascertaining the degree of the seafarer's disability benefits. [29]

In ***Orient Hope Agencies, Inc. and/or Zeo Marine Corporation v. Michael E. Jara,***[30] the Court emphasized the importance of a final and definite disability assessment. It is necessary in order to truly reflect the 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.

Indubitably, a definite declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade.[31]

Here, the medical assessment issued by the company-designated physician cannot be considered complete, final, and definite as it did not show how the disability assessment was arrived at. If at all, the assessment merely stated that petitioner had attained maximum medical treatment and declared petitioner's disability at Grade 10. A declaration of disability in the medical assessment, without more, cannot be considered complete, final and definitive.

In ***Maunlad Trans., Inc./Carnival Cruise Lines, Inc., And Mr. Amado L. Castro, Jr. v. Rodolfo M. Camoral***,[32] the Court declared the seafarer's disability as total and permanent because not only was the medical report and disability assessment submitted beyond one hundred twenty (120) days, it also did not show how the supposed *partial* permanent disability assessment of the seafarer was arrived at. It simply stated he was suffering from Grade 10 disability. Nothing more. At any rate, it was not disputed that both the company-designated doctor and the seafarer's private doctor declared the seafarer unfit to return to his previous occupation. The Court, therefore, held that this is equivalent to a declaration of permanent and total disability.

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[29] See *Magsaysay Mol Marine, Inc. v. Atraje,* G.R. No. 229192, July 23, 2018.
[30] G.R. No. 204307, June 6, 2018.
[31] See *Tamin v. Magsaysay Maritime Corporation, et al,* 794 Phil. 286, 301 (2016).
[32] 753 Phil. 676, 691 (2015).

The October 29, 2013 medical assessment was not timely nor properly issued.

Although Section 20(A)(6) of the 2010 POEA-SEC instructs that disability shall not be measured or determined by the number of days a seafarer is under treatment, as to when the fitness of a seafarer for sea duty may be ascertained is still subject to the periods prescribed by law.[33]

Article 192(c)(1) of the Labor Code provides:

> Art. 192. Permanent total disability. — *x x x*
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

Section 2, Rule X of the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code is relevant, *viz.*:

> 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.

In ***Vergara v. Hammonia Maritime Services, Inc., et al.***,[34] the Court laid down the procedure for a seafarer's claim for disability benefits, thus:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability

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[33] Supra note 21.
[34] 588 Phil. 895, 912 (2008).

> already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

In ***Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.***,[35] the Court further summarized the rules governing a seafarer's claim for total and permanent disability benefits by a seafarer, *viz.*:

> 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.

Two (2) requisites, therefore, must concur: 1.) an assessment must be issued within the 120/240-day window, and 2.) the assessment must be final and definitive.[36]

It is true that the company-designated physician here failed to issue the medical assessment within the one hundred twenty (120)-day period owing to petitioner's request for time to decide whether or not to undergo surgery. Although this delay should be attributed to petitioner and might have justified an extension of the period for the company-designated physician to issue an assessment within two hundred forty (240) days, this circumstance does not preclude petitioner from recovering total permanent disability benefits.

For even assuming that the October 29, 2013 medical assessment was complete, final, and definite, the fact that it was not actually relayed to or made known to petitioner within the extended two hundred forty (240)-day period is fatal to the company's defense. On this point, we quote with concurrence the labor arbiter's disposition, thus:

> During the first mandatory conference and even when complainant explicitly manifested that "no disability grading nor fitness to work was

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[35] 765 Phil. 341, 363 (2015).

[36] See *Talaugon v. BSM Crew Service Centre Phils., Inc.*, G.R. No. 227934, September 4, 2019.

> issued," the record of the proceedings show that respondents' counsel did not, at all, bother to oppose complainant's assertion. x x x[37]
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> In view of the obtaining circumstances and in the absence of any written proof, respondents are now estopped from claiming that complainant was duly informed by the company of his disability grading, or "was offered by the company doctor's assessment several times [during] the conferences, which he refused." There is nothing on record to support respondents' self-serving claim. Without a doubt, an act, declaration or omission of a party can be used in evidence against him.[38]
>
> xxx xxx xxx
>
> In the present case, while respondents' medical report dated 29 October 2013 claims that complainant reached maximum care and that he was assessed by company doctors to be suffering from a disability grade 10, there is no concrete proof that said final assessment was actually relayed to complainant within the 240 day period.[39] (Italics omitted)

In ***Pastor v. Bibby Shipping Philippines, Inc.***,[40] the Court ruled that the company-designated physician failed to timely issue a medical assessment of petitioner's disability within the two hundred forty (240) day extended treatment period, thus, there is no valid assessment to be contested and the law steps in to transform the latter's temporary total disability into one of total and permanent. So must it be.

The mandatory third-doctor referral is not applicable here.

Under Section 20(A)(3) of the 2010 POEA-SEC, "*[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.*" The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the one hundred twenty (120) day or two hundred forty (240)-day period.[41]

As stated, there is no occasion here for the mandatory third-doctor referral precisely because a complete, final, and definite medical assessment from the company-designated physician is absent, aside from the fact that the so-called October 29, 2013 medical assessment, if at all it exists, was not actually relayed to petitioner. To repeat, it is the issuance and the

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[37] *Rollo*, p. 266.
[38] *Id.*
[39] *Id.* at 267.
[40] G.R. No. 238842, November 19, 2018.
[41] See *Generato M. Hernandez vs. Magsaysay Maritime Corporation, Saffron Maritime Limited and/or Marlon R. Roño*, G.R. No. 226103, January 24, 2018, 853 SCRA 104, 113.

corresponding conveyance to the employee of the final medical assessment by the company-designated physician that triggers the application of Section 20(A)(3) of the 2010 POEA-SEC.

In ***Orient Hope Agencies, Inc. v. Jara***,[42] the Court held that the third-doctor rule does not apply when there is no valid final and definitive assessment from a company-designated physician, as in this case.

Moral and Exemplary Damages and Attorney's Fees

Moral damages are awarded as compensation for actual injury suffered and not as a penalty. The award is proper when the employer's action was attended by bad faith or fraud, oppressive to labor, or done in a manner contrary to morals, good customs, or public policy.[43] Bad faith is not simply bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.[44]

Exemplary damages, on the other hand are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions,[45] and may only be awarded in addition to the moral, temperate, liquidated or compensatory damages.[46] In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[47]

Here, respondents never evaded liability from petitioner's claims, albeit insisted that petitioner's disability should remain at grade 10. Respondents even provided and financed petitioner's surgery on the affected knee and the consequent therapy and treatment. Thus, respondents were never in bad faith in facilitating the repatriation and treatment of petitioner. For this, petitioner is not entitled to moral damages. Sans the award of moral damages, petitioner is likewise not entitled to exemplary damages. The labor arbiter, therefore, correctly denied petitioner's claim for moral and exemplary damages for lack of basis.

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[42] G.R. No. 204307, June 6, 2018.
[43] See *Montinola v. Philippine Airlines*, 742 Phil. 487, 497 (2014).
[44] See *Jebsen Maritime, Inc. v. Gavina*, G.R. No. 199052, June 26, 2019.
[45] See *Magsaysay Maritime Corp. v. Chin, Jr.*, 731 Phil. 608, 614 (2014).
[46] **Article 2229.** Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.
[47] Article 2332 of the Civil Code.

Even then, the fact that petitioner was compelled to litigate to protect his rights, the NLRC correctly awarded attorney's fees of ten percent (10%) of the total monetary award in accordance with Article 2208[48] of the New Civil Code.

In ***Pastor v. Bibby Shipping Philippines, Inc.***,[49] the Court denied therein petitioner's claims for moral and exemplary damages for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims. The Court, nevertheless, deemed it proper to award attorney's fees since petitioner was clearly compelled to litigate to satisfy his claim for disability benefits.

Lastly, the Court imposes on the monetary awards legal interest at six percent (6%) per annum from the date of finality of this decision until full payment pursuant to ***Nacar v. Gallery Frames***.[50]

Final Note

In disability compensation cases, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than one hundred twenty (120) days, or two hundred forty (240) days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.[51]

All told, Chan is rightfully entitled to total and permanent disability benefits.

ACCORDINGLY, the petition is **GRANTED** and the Decision dated June 29, 2017 and Resolution dated April 25, 2018 of the Court of Appeals in CA-G.R. SP No. 141340, **REVERSED**. The April 10, 2015 Resolution of the NLRC in NLRC LAC No. (M) 03-000258-15 is **REINSTATED** with **MODIFICATION,** imposing legal interest of six percent (6%) *per annum* on the total monetary award from finality of this decision until fully paid.[52]

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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

[49] G.R. No. 238842, November 19, 2018.

[50] 716 Phil. 267, 283 (2013).

[51] Supra note 30.

[52] See *Jessie C. Esteva v. Wilhelmsen Smith Bell Manning, Inc., et. al.*, G.R. No. 225899, July 10, 2019.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice