



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

RANILO BANDICO,

Petitioner,

G.R. No. 242096

Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., JJ.

**PHILIPPINE TRANSMARINE
 CARRIERS, INC., ROYAL
 CARRIBEAN CRUISES LTD.,
 and MR. CARLOS SALINAS,**

Respondents.

Promulgated:

February 3, 2021

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DECISION

DELOS SANTOS, J.:

The Case

For the Court’s consideration is a Petition for Review on *Certiorari*¹ seeking to reverse and set aside the Amended Decision² and the Resolution³ dated April 24, 2018 and September 13, 2018, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 128479 which reversed and set aside the Decision⁴ dated October 22, 2012 of the National Labor Relations Commission (NLRC). The NLRC affirmed the Decision⁵ dated June 29, 2012 of the Labor Arbiter (LA), granting Ranilo A. Bandico (petitioner) total and permanent disability benefits in the amount of US\$60,000.00.

¹ *Rollo*, pp. 16-39.

² *Id.* at 45-53; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ricardo R. Rosario (now a Member of the Court) and Ronaldo Roberto B. Martin, concurring.

³ *Id.* at 54-57.

⁴ *CA rollo*, pp. 42-50; penned by Commissioner Nieves E. Vivar-De Castro, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring.

⁵ *Id.* at 157-166; penned by Labor Arbiter Adolfo C. Babiano.

The Facts

Petitioner was hired by respondent Philippine Transmarine Carriers, Inc. (PTCI), for its foreign principal, Royal Caribbean Cruises, Ltd. (collectively, respondents) as an Oiler, on board the vessel MV Voyager of the Seas under an eight (8)-month contract,⁶ with a basic monthly salary of US\$452.00 exclusive of overtime pay and other benefits. After undergoing the rigid physical and medical examination, he was declared fit for sea duty, thus, petitioner boarded the vessel on August 2010.⁷

On February 10, 2011, petitioner narrated that as he was passing through the emergency exit to check on the Collecting Unit No. 2 in the Pump Room No. 1, he accidentally slipped off the metal ladder, thereby sustaining an extreme impact on his right knee and leg, particularly a contusion on his right knee, inflammation and severe pain in his right leg, lumbar and buttock region, coupled with difficulty in breathing. Despite his injuries, he was made to stay on board and was given oral medications by the ship doctor.⁸ Due to persistent pain, he again consulted the ship doctor and was advised to continue taking pain relievers and to see an offshore doctor on the next port.

On February 23, 2011, petitioner was examined by an offshore doctor in Roatan, Honduras, and was diagnosed with “abscess on his right knee secondary to post-traumatic cellulitis.” The doctor recommended that the abscess be drained but petitioner refused, thus, he was put on antibiotics and pain medication.⁹

On February 25, 2011, petitioner was again examined in Cozumel Medical Center, Mexico, and in the Medical Report,¹⁰ he was diagnosed with “post-traumatic prepatellar bursitis with secondary infection.” The attending physician advised him to undergo medical procedure to evacuate the abscess and remove the bursa, but petitioner refused. It was also explained to him that there are possible complications if he does not accept the procedure. Nonetheless, he still refused to undergo the procedure, thus, he was given oral medications.¹¹

On March 5, 2011, petitioner was medically repatriated to the Philippines. Upon repatriation, he was placed in the care of the company-designated physicians from Shiphealth, Inc. (Shiphealth), for medical tests

⁶ Id. at 91.

⁷ Id. at 43.

⁸ Id. at 115-116.

⁹ Id. at 242.

¹⁰ Id. at 243-244.

¹¹ Id. at 243.

and treatment.¹² The Magnetic Resonance Imaging (MRI) of petitioner's lumbosacral spine revealed that there was a disc herniation and flaval hypertrophy with secondary spinal canal and bilateral neural foraminal stenosis.¹³

On May 27, 2011, petitioner's attending spine surgeon advised him to undergo transforaminal lumbar interbody fusion L4-L5,¹⁴ as his pain has not improved with pain medications and physical therapy.¹⁵ However, petitioner refused to undergo surgery after it was explained to him that the procedure will only relieve him of the pain, and that it will not guarantee his complete recovery.¹⁶

On June 14, 2011, petitioner sought further medical opinion from the Philippine Orthopedic Institute, Inc., to which Orthopedic Surgeon Alan Leonardo R. Raymundo, M.D. (Dr. Raymundo), issued a Medical Report¹⁷ stating among others, that petitioner has a Straight Leg Raise Test (SLR test) with slight weakness of the extensor hallucis longus muscle on the right and slight weakening of the ankle evertors. Dr. Raymundo also noted that because of petitioner's present condition, he is "no longer fit to return to work."¹⁸

Petitioner alleged that demands were made for the satisfaction of his total disability benefits, but to no avail. Thus, on June 21, 2011, he instituted the instant complaint against herein respondents, together with Carlos C. Salinas (Salinas), Chairman of PTCI, for payment of total and permanent disability benefits, medical and hospitalization expenses, sickness allowance, moral and exemplary damages plus attorney's fees, and legal interests. He asserted that since his injury lasted for more than 120 days and that he has not been able to engage in any meaningful activity because of said injury, he is entitled to total and permanent disability benefits under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).¹⁹

Meanwhile, on June 25, 2011, the company-designated physicians issued a Final Medical Summary,²⁰ to wit:

¹² Id. at 115-A.

¹³ Id. at 127.

¹⁴ A transforaminal interbody lumbar fusion (TILF) is a surgical procedure that involves permanent union of some of the bones of the lower back (lumbar area). x x x [A TILF] procedure is done to permanently fuse some of the bones of the lower spine to remove the pressure (decompress) from the spinal cord and nerves. (Christiansen, S. (n.d.). What is Transforaminal Lumbar Interbody Fusion (TLIF). Verywell Health. Retrieved May 27, 2021, from <https://www.verywellhealth.com/transforaminal-lumbar-interbody-fusion-tlif-4783615>).

¹⁵ CA *rollo*, p. 128.

¹⁶ Id. at 115-A.

¹⁷ Id. at 129.

¹⁸ Id.

¹⁹ Id. at 116, 120.

²⁰ Id. at 104-106.

The **DISABILITY GRADING** closest to the functional disability of his spine problem based on the Amended POEA Contract, Section 32 for the Chest-Trunk-Spine (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted), is **moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk**, which is **8**.

The **DISABILITY GRADING** closest to the functional disability of his knee based on the Amended POEA Contract, Section 32 for the lower extremities (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted), is **ankylosis of a knee in genu valgum or varum**, which is **Grade 10**.

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Recommendations:

- **Patient advised transforaminal lumbar interbody fusion of L4-L5 but patient refused surgery**
- **NOT FIT FOR DUTY**
- **CASE CLOSED**²¹ (Emphases in the original)

In their Position Paper,²² respondents admitted the material allegations pertaining to petitioner's employment and his accident on board their vessel. However, they denied that they are liable for the payment of total and permanent disability benefits. They contend that under Section 20 (B) of the POEA-SEC, it is the company-designated physician that has the final say with regard to the health condition of the seaman.²³ Here, the company-designated physicians issued on June 25, 2011 their final medical assessment, wherein they gave petitioner a disability grading of 8, which is not total and permanent.²⁴

Respondents also averred that they were not remiss in their obligation with petitioner from the time of his accident up to the filing of the instant complaint. They narrated that petitioner was seen by offshore doctors in Honduras and Mexico and upon his repatriation, petitioner was subsequently referred to the company-designated physicians from Shiphealth. Petitioner was treated by the company-designated physicians and underwent physical therapy sessions from March 7, 2011 to June 22, 2011.²⁵ During his treatment, petitioner was advised to undergo spine and orthopedic surgery, but he declined. They further asserted that petitioner knows very well what the repercussions of rejecting the suggestion, but he chose not to comply with the orders of his physicians. Thus, he should suffer the consequences of his decisions.²⁶

²¹ Id. at 106.

²² Id. at 94-100.

²³ Id. at 97.

²⁴ Id. at 98.

²⁵ Id. at 95.

²⁶ Id. at 95-96, 98.

As to petitioner's claim for medical expenses, respondents denied liability. They claimed that they were not remiss in providing financial assistance to herein petitioner during his medical treatments as evidenced by the various checks issued in his favor.²⁷ Thus, respondents prayed that the instant complaint be dismissed for lack of merit.

The Ruling of the Labor Arbiter

In a Decision²⁸ dated June 29, 2012, the LA ruled in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering respondents jointly and severally pay complainant US\$60,000.00 representing his total and permanent disability compensation benefit, plus US\$6,000.00 as attorney's fees.

All other monetary claims are dismissed for lack of merit.

SO ORDERED.²⁹

In so ruling, the LA held that petitioner sustained an injury due to an accident while working on board his assigned vessel, during the effectivity of his shipboard employment contract, hence, compensable under the POEA-SEC.³⁰ The LA took into consideration that both the company-designated physicians and petitioner's chosen physician found him no longer fit for sea duty. In the Final Medical Summary issued by the company-designated physicians, they gave a disability grading in relation to petitioner's spine as "moderate rigidity or two-thirds (2/3) loss of motion or lifting power of the trunk, which is 8" and another disability rating in relation to his knee as "ankylosis of a knee in genevalgum or varum, which is Grade 10." Thus, petitioner's combined disabilities both in relation to his spine and knee amounted to a total and permanent disability which is supported by the final recommendation of "NOT FIT FOR DUTY." This is not to mention the fact that petitioner has been unable to resume his usual occupation as a seaman.³¹

The LA further held that although petitioner may have for several times refused the advised surgery, his refusal was understandable considering that the procedure will not guarantee his full recovery, but would merely diminish the pain. Based on the foregoing, the LA ruled that petitioner is entitled to a total and permanent disability compensation in the

²⁷ Id. at 99-100, 107-113.

²⁸ Id. at 157-166.

²⁹ Id. at 166.

³⁰ Id. at 163.

³¹ Id. at 162.

amount of US\$60,000.00 as provided for by the POEA-SEC.³²

The LA dismissed petitioner's claim for reimbursement of medical expenses and sick wages for lack of evidence. The records of the case showed that after petitioner's repatriation, he was immediately referred to a company-designated physician for treatment and that he received amounts presumably representing his sick wages. Petitioner's claim for moral and exemplary damages and legal interests were likewise dismissed. However, the LA ruled that petitioner is entitled to the payment of attorney's fees for having to secure the services of a counsel in order to recover what he is legally entitled to.³³

Aggrieved, respondents appealed before the NLRC.

The Ruling of the NLRC

In a Decision³⁴ dated October 22, 2012, the NLRC affirmed the appealed decision, *viz.*:

WHEREFORE, the [r]espondents' [a]ppeal is DENIED and the appealed Decision dated 29 June 2012 is AFFIRMED.

SO ORDERED.³⁵

The NLRC held that it was undisputed that petitioner sustained an injury while working on board his assigned vessel during the effectivity of his employment contract, hence, the injury is compensable under the POEA-SEC. The NLRC agreed with the findings of the LA that in the Final Medical Summary of the company-designated physicians, petitioner's combined disability renders him "not fit for duty." Thus, petitioner's incapacity/disability is considered as total and permanent, and therefore, entitled to the maximum compensation benefits.³⁶ Furthermore, the NLRC held that there was sufficient ground for petitioner's refusal to undergo surgery, as even the company-designated physicians told him that the surgery will only relieve him of the pain and will not guarantee his complete recovery to such state of being capable from going back to work.³⁷ Likewise, the NLRC sustained the award of attorney's fees in accordance with the existing jurisprudence in labor cases.³⁸

³² Id. at 163, 165.

³³ Id. at 165.

³⁴ Id. at 42-50.

³⁵ Id. at 49.

³⁶ Id. at 46, 47, 48.

³⁷ Id. at 48.

³⁸ Id. at 49.

Respondents moved for reconsideration³⁹ but was denied in a Resolution⁴⁰ dated November 26, 2012. Thus, they filed a Petition for *Certiorari*⁴¹ with a prayer for the issuance of temporary restraining order and/or writ of preliminary injunction before the CA.

During the pendency of the petition before the CA, upon the motion of petitioner,⁴² the LA issued a Writ of Execution⁴³ dated April 26, 2013. In compliance with the writ, respondents deposited the judgment award before the NLRC.⁴⁴

The Ruling of the CA

In a Decision⁴⁵ dated March 9, 2017, the CA affirmed the Decision of the NLRC with modification, thus:

WHEREFORE, premises considered, the instant [p]etition for [*certiorari*] is **PARTLY GRANTED** only insofar as relieving petitioner Carlos Salinas of solidary liability with petitioners Philippine Transmarine Carriers, Inc. and Royal Caribbean Cruises, Ltd. and [w]e **AFFIRM** [petitioner's] entitlement to his monetary claims as decreed by the NLRC and the Labor Arbiter.

SO ORDERED.⁴⁶

The CA sustained the findings of both the LA and the NLRC that petitioner was permanently disabled from employment because of the injury he sustained on board the vessel. No less than the company-designated physicians determined his unfitness for duty which assessment dovetailed with petitioner's own doctor-of-choice. The payment of his claims for total and permanent disability necessarily follows.⁴⁷

Furthermore, the CA rejected respondent's argument that petitioner should suffer the consequences of his refusal to undergo surgery or that he should be considered to have waived his claims for total and permanent disability, as petitioner's refusal was grounded on the explanation of the doctors that the surgery will only address the pain, it will not revert his original condition before the accident.⁴⁸

³⁹ Id. at 54-72.

⁴⁰ Id. at 52-53.

⁴¹ Id. at 3-31.

⁴² Id. at 436-439.

⁴³ Id. at 441-443.

⁴⁴ Id. at 444-447.

⁴⁵ Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam and Francisco P. Acosta, concurring; id. at 465-477.

⁴⁶ Id. at 477.

⁴⁷ Id. at 472.

⁴⁸ Id. at 474-475.

While the CA sustained the award of attorney's fees, it however held that Salinas was not solidarily liable for the monetary awards granted to petitioner since there was no evidence to prove that he neither acted beyond the scope of his authority nor he acted with malice or bad faith.⁴⁹

Undeterred, respondents moved for reconsideration.⁵⁰ On April 24, 2018, the CA rendered the assailed Amended Decision⁵¹ and held that petitioner is not entitled to total and permanent disability benefits, but only to partial disability benefits. The *fallo* reads:

WHEREFORE, petitioners' Motion for Reconsideration is **PARTLY GRANTED**. Consequently, the Decision dated March 9, 2017 of this Court is hereby **MODIFIED**, ordering Philippine Transmarine Carriers, Inc. and Royal Caribbean Cruises, Ltd. to jointly and severally pay private respondent Ranilo Bandico disability benefits corresponding to Grade 8 and Grade 10 under the 2010 POEA-SEC in the total amount of US\$26,870 or its Philippine Peso equivalent at the time of payment, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid, subject to restitution by the private respondent Ranilo Bandico of the appropriate amount to petitioners pursuant to the writ of execution below.

SO ORDERED.⁵²

In its re-examination of its previous Decision, the CA ruled that although the Final Medical Summary indicated that petitioner was not fit for sea duty, he is not entitled to total and permanent disability benefits pursuant to the Court's ruling in *Hernandez v. Magsaysay Maritime Corporation*,⁵³ *vis-à-vis* Section 32 of the POEA-SEC, in conjunction with Section 20 (B) (6), since petitioner's lumbar problem was coeval with a disability grading of 8 and disability grading of 10 for his knee injury. Likewise, the CA raised the absence of a dispute on the company-designated physicians' evaluation of petitioner's unfitness for work well within 120 days from his repatriation.⁵⁴

Petitioner moved for reconsideration⁵⁵ but was denied in a Resolution⁵⁶ dated September 13, 2018.

Hence, this appeal raising the following:

⁴⁹ Id. at 476-477.

⁵⁰ Id. at 481-498.

⁵¹ *Rollo*, pp. 45-53.

⁵² Id. at 52.

⁵³ G.R. No. 226103, January 24, 2018, citing *Splash Philippines, Inc. v. Ruizo*, 730 Phil. 162, 178-179 (2014) and *TSM Shipping Phils., Inc. v. Patiño*, 807 Phil. 666 (2017).

⁵⁴ *Rollo*, pp. 50-51.

⁵⁵ Id. at 58-66.

⁵⁶ Id. at 54-57.

Issues

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR [IN FINDING] THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN ITS FINDINGS OF FACT AND LAW DESPITE THE ABSENCE OF EVIDENCE SHOWING THAT SAID LABOR AGENCY HAD PATENTLY AND GROSSLY ABUSED ITS [DISCRETION] AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY, OR A VIRTUAL REFUSAL TO PERFORM THE DUTY ENJOINED OR ACT IN CONTEMPLATION OF LAW, OR THAT ITS POWER WAS EXERCISED IN AN ARBITRARY AND DESPOTIC MANNER BY REASON OF PASSION AND PERSONAL HOSTILITY.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN GRANTING RESPONDENTS['] PETITION FOR CERTIORARI AND DENYING HEREIN PETITIONER'S MOTION FOR RECONSIDERATION BY MODIFYING THE NLRC RESOLUTION DECLARING PETITIONER'S TOTAL AND PERMANENT DISABILITY AND DECLARING PETITIONER TO BE ENTITLED ONLY TO DISABILITY GRADING – IN UTTER DISREGARD OF PETITIONER'S ACTUAL INJURY, ITS NATURE AND THE RESULTING PERMANENT TOTAL DISABILITY.⁵⁷

Arguments of petitioner

In his petition for review on *certiorari*,⁵⁸ petitioner argued the following: *first*, the CA erred in finding that the NLRC committed grave abuse of discretion in the assailed decision, as respondents merely raised issues that purely involved misapprehension of facts and non-appreciation of evidence, which are not correctible in a petition for *certiorari* under Rule 65 of the Rules of Court. Thus, the CA went beyond the province of its jurisdiction when it issued the writ of *certiorari*,⁵⁹ *second*, he is entitled to total and permanent disability benefits since the extent of the damage to his back is so severe and despite the medication and physical therapy sessions he went through, his former physical status was not restored. The possibility of petitioner's future employment as a sea worker became remote and uncertain;⁶⁰ and *finally*, based on jurisprudence, the true test to determine the gravity of a worker's disability is the impairment or loss of one's earning capacity and not its mere medical significance.⁶¹

⁵⁷ Id. at 17-18.

⁵⁸ Id. at 16-39.

⁵⁹ Id. at 22-25.

⁶⁰ Id. at 27.

⁶¹ Id. at 27-29.

Arguments of respondents

In their Comment,⁶² respondents countered that the CA correctly ruled that petitioner is only entitled to partial disability benefits and not total and permanent disability benefits, to wit: *first*, the company-designated physicians gave petitioner a Grade 8 disability for his lumbosacral condition which is not work-related and Grade 10 only for his knee injury;⁶³ *second*, the company-designated physicians issued his final disability assessment well within the 120/240 period from the date of petitioner's repatriation, as prescribed under the POEA-SEC;⁶⁴ *third*, the records are bereft of evidence that petitioner is unable to work or that he solicited employment but was refused on account of his medical conditions;⁶⁵ and *finally*, herein petitioner's failure to comply with the conflict resolution under the POEA-SEC, by referring the dispute to a third doctor, renders the company-designated physicians' final assessment as final.⁶⁶

Reply of petitioner

In his Reply,⁶⁷ petitioner reiterated that the assessment of the company-designated physicians is not the only basis for the claim of disability benefits. The condition of petitioner, as well as his ability to go back to his usual job, should also be considered in rendering his disability benefits. The injury endured by petitioner may be considered as partial disability, however the same has rendered him incapable of rendering services as a seaman. His disability could now be considered as total and permanent because he can no longer perform his usual or customary job.⁶⁸ Therefore, he is entitled to the corresponding benefits in accordance with law and jurisprudence.

The Ruling of the Court

The petition is impressed with merit.

At the outset, the Court stresses that the review in this Rule 45 petition of the CA's ruling in a labor case via a Rule 65 petition carries a distinct approach. In a Rule 45 review, the Court examines the correctness of the CA's decision in contrast with the review of jurisdictional errors under Rule 65. Rule 45 limits the review to questions of law. Further, the Court set forth

⁶² Id. at 82-94.

⁶³ Id. at 82, 87.

⁶⁴ Id. at 85.

⁶⁵ Id. at 87.

⁶⁶ Id. at 88-90.

⁶⁷ Id. at 100-103.

⁶⁸ Id. at 100-101.

in *Madrio v. Atlas Fertilizer Corporation*.⁶⁹

In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.⁷⁰

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.⁷¹

After a careful review of the records, We find that the Decision of the NLRC was duly supported by substantial evidence and in accordance with the law and prevailing jurisprudence. The CA erroneously found grave abuse of discretion on the part of the NLRC in declaring that petitioner only suffered partial disability. Necessarily, the decision of the NLRC must be reinstated.

In *Gamboa v. Maunlad Trans, Inc.*,⁷² the Court held that:

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2 (a), Rule X of the Amended Rules on Employees Compensation. By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer.⁷³ (Citations omitted)

Since petitioner was hired in August 2010, the governing rule in his disability claim is Section 20 (B) of the 2000 POEA-SEC,⁷⁴ to wit:

SECTION 20. COMPENSATION AND BENEFITS –

X X X X

⁶⁹ G.R. No. 241445, August 14, 2019.

⁷⁰ Id., citing *Telephilippines, Inc. v. Jacolbe*, G.R. No. 233999, February 18, 2019.

⁷¹ *Telephilippines, Inc. v. Jacolbe*, id.

⁷² G.R. No. 232905, August 20, 2018.

⁷³ Id.

⁷⁴ POEA Memorandum No. 09, series of 2000.

B. 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 vessel;

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 the said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work, or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

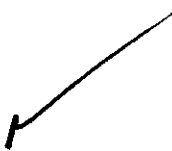
For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed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

4. Those illness not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work, but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

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 this 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. (Emphases ours)



For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract.⁷⁵

In the case at bar, it is undisputed that herein petitioner suffered a work-related injury while on board his assigned vessel, thus, compensable under the 2000 POEA-SEC. The pivotal issue is whether or not petitioner is entitled to total and permanent disability benefits.

Petitioner asserts that he is entitled to total and permanent disability benefits because of the severity of the injury he suffered while on board, despite medication and physical therapy sessions; there is no certainty that his former physical status will be restored to enable him to resume his customary work. As the true test to determine the gravity of worker's disability is the impairment or loss of one's capacity to earn and not to its mere medical significance.⁷⁶ While, respondents counter that petitioner is not entitled to total and permanent disability benefits but merely partial disability benefits in accordance with the assessment of the company-designated physicians.⁷⁷ Since the company-designated physicians issued his final disability grading well within the 120/240-day period, petitioner is clearly not entitled to total and permanent disability benefits⁷⁸

In *Maersk-Filipinas Crewing, Inc. v. Jaleco*,⁷⁹ the Court explained:

An employee's disability becomes permanent and total [only 1)] when so declared by the company-designated physician, or, [2)] in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment periods, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.⁸⁰

The case of *Olidana v. Jebsens Maritime, Inc.*,⁸¹ is instructive of when a seafarer may pursue an action for total and permanent disability benefits, thus:

Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a

⁷⁵ *Tagud v. BSM Crew Service Centre Phils., Inc.*, 822 Phil. 380, 391 (2017).

⁷⁶ *Rollo*, p. 27.

⁷⁷ *Id.* at 82.

⁷⁸ *Id.* at 85.

⁷⁹ 770 Phil. 50 (2015).

⁸⁰ *Id.* at 74.

⁸¹ 772 Phil. 234 (2015).

declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B (3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) **the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading**; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B (3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.⁸² (Emphasis supplied)

Here, respondents were correct that their company-designated physicians have timely issued their Final Medical Summary,⁸³ specifically on the 112th day from March 5, 2011, the date when petitioner was repatriated. The pertinent content of the said medical summary reads:

Upon review of this case, the following were taken into deliberation: (1) maximal medical interventions and adequate rehabilitative treatment for right knee and right lower extremity have already been undertaken; (2) residual right knee pain and leg numbness despite adequate rehabilitation, period to resolution of which are indeterminate; (3) right knee pain and lumbosacral pain may be worsened with the repetitive and strenuous movements related to his work; (4) refusal of patient to undergo contemplated spine surgery. Based on the foregoing, we deem the patient not fit for duty.

The **DISABILITY GRADING** closes to the functional disability of his spine problem based on the Amended POEA Contract, Section 32 for the Chest-Trunk-Spine (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted), is **moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk**, which is 8.

The **DISABILITY GRADING** closest to the functional disability of his knee based on the Amended POEA Contract, Section 32 for the lower extremities (Schedule of Disability or Impediment for Injuries

⁸² Id. at 249-250, citing *C.F. Sharp Crew Management Inc. v. Taok*, 691 Phil. 521, 538-539 (2012).

⁸³ *CA rollo*, pp. 104-106.

Suffered and Diseases Including Occupational Diseases or Illness Contracted), **ankylosis of a knee in genevalgum or varum**, which is **Grade 10**.

Final Diagnosis:

- **Pre-patellar bursitis, right**
- **s/p 8 sessions physical therapy (1st set)**
- **s/p 6 sessions physical therapy (2nd set)**
- **s/p 6 sessions physical therapy (3rd set)**
- **s/p 6 sessions physical therapy (4th set)**
- **Disc Dessication and Disc Herniation of L4-L5**

Recommendations:

- **Patient advised transforaminal lumbar interbody fusion of L4-L5 but patient refused surgery**
- **NOT FIT FOR DUTY**
- **CASE CLOSED**⁸⁴ (Emphases in the original)

In the case at bar, the submitted disability report by the company-designated physicians should be disregarded for being contradictory. As can be gleaned from the summary, petitioner was given a disability grading of “8” for his spine problem and a disability grading of “10” for his knee, and at the same time, he was declared not fit for duty. The disability grading in the Final Medical Summary clearly contradicts the recommendation of the company-designated physicians that he was not fit for sea duty. Consequently, the Court is more inclined to disregard the disability grading given and to sustain the finding that petitioner suffered from total and permanent disability, as he is no longer fit for duty.


The pronouncement in *Olidana* is controlling, thus:

The Court, nevertheless, is of the view that before the disability gradings under Section 32 should be considered, *these disability ratings 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 should be 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 cannot be seriously appreciated.

x x x x

As observed in *Maunlad Trans., Inc. v. Camoral*, it cannot be conclusively stated that a seafarer merely suffered a partial permanent disability when, at the same time, he was declared unfit for duty. A partial disability, which signifies a continuing capacity to perform his customary

⁸⁴ Id. at 106.



tasks, is starkly incompatible with the finding that a seafarer is unfit for duty.⁸⁵ (*Italics in the original*)


Here, the Final Medical Summary submitted by the company-designated physicians cannot be considered as complete and appropriately issued, as the disability grading contradicts the recommendation of not fit for duty. Therefore, there being no final and conclusive medical assessment of the company-designated physician between the 120 or 240-day period, the law steps in to declare that petitioner suffered total and permanent disability, thus, entitled to the corresponding disability benefits under the POEA-SEC.

The contention of respondents that petitioner must suffer the consequences of his refusal to undergo medical surgery as recommended by the company-designated physicians deserves scant consideration. The LA was correct when it held that petitioner's refusal was understandable considering that the procedure did not guarantee his full recovery but would only diminish the pain.⁸⁶

As petitioner cannot be expected to resume sea duties and pursue his usual work and earn therefrom because of the injury he sustained while on-board his assigned vessel, he is entitled to permanent and total disability benefits under Section 32 of the POEA-SEC.

WHEREFORE, in consideration of the foregoing, the instant petition for review on *certiorari* is **GRANTED**. The Amended Decision dated April 24, 2018 and the Resolution dated September 13, 2018 of the Court of Appeals in CA-G.R. SP No. 128479 are **REVERSED** and **SET ASIDE**. The Decision dated October 22, 2012 and the Resolution dated November 26, 2012 of the National Labor Relations Commission in LAC No. (OFW-M)-08-000733-12 are hereby **REINSTATED**.


SO ORDERED.


EDGARDO L. DELOS SANTOS
Associate Justice


⁸⁵ Supra note 81, at 245-247.

⁸⁶ CA *rollo*, p. 163.


WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



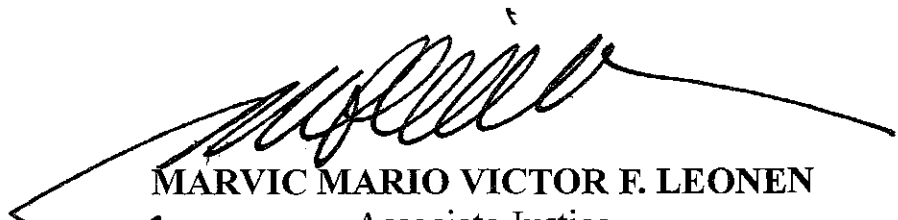
HENRI JEAN PAUL B. INTING
Associate Justice



JHOSEP LOPEZ
Associate Justice

ATTESTATION

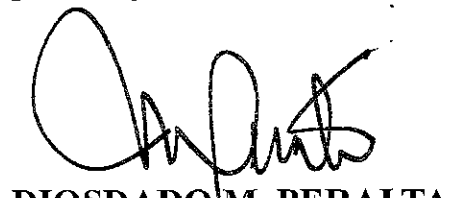
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
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.



DIOSDADO M. PERALTA
Chief Justice