Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LUISITO C. REYES,
Petitioner,

- versus -

JEBSENS MARITIME, INC. and ALFA SHIP & CREW MANAGEMENT GMBH,
Respondents.

G.R. No. 230502

Present:

GESMUNDO, *C.J.*,
Chairperson,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M., and
LOPEZ, J., *JJ.*

Promulgated:

FEB 15 2022

x----------x

DECISION

GESMUNDO, *C.J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Luisito C. Reyes *(petitioner)* against Jebsens Maritime, Inc. *(Jebsens)* and Alfa Ship & Crew Management GMBH *(Alfa;* collectively, *respondents)*, assailing the November 16, 2016 Decision[1] and March 9, 2017[2] Resolution of the Court of Appeals *(CA)* in CA-G.R. SP No. 142799, which affirmed the June 18, 2015[3] and July 30, 2015[4] Resolutions of the National Labor Relations Commission *(NLRC)*, denying petitioner's claim for total and permanent disability benefits.

---

[1] *Rollo*, pp. 41-53; penned by Associate Justice Jose C. Reyes, Jr. (now a retired Member of the Court), with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of the Court), concurring.
[2] Id. at 54.
[3] Id. at 224-233.
[4] Id. at 235-239.

Antecedents

Petitioner was hired by Alfa as Second Officer on September 16, 2013, through its local manning agent, Jebsens. His employment was covered by a standard employment contract for a period of six months with the vessel MV Pacific Fantasy, which was later renamed as MV Voge Fantasy.

Halfway through his contract, on December 26, 2013, he allegedly figured in an accident while on board the vessel. He slipped and fell, hitting his buttocks on the floor while releasing the tug line of the ship. He felt pain in his lumbar area, but he continued to work. He self-medicated and experienced slight relief. His lower back pain, however, persisted. He then requested a medical consultation.

On March 21, 2014, he was brought to a hospital in Sweden. Radiographs and CT scan of his lumbar spine revealed a L1 vertebra fracture. He was given pain medications and was advised to undergo physical therapy and to only take light jobs. In view of his medical condition, he was declared unfit to work and was repatriated on March 29, 2014.[5]

On April 2, 2014, he underwent an x-ray of his lumbar spine with UPMC Philippines *(UPMC)*, the result of which showed a "compression deformity of the L1 vertebral body," and was advised to undergo magnetic resonance imaging *(MRI)* of the lumbar area for further evaluation.[6]

On April 21, 2014, petitioner returned to UPMC for MRI of his lumbosacral spine which revealed the following findings: (1) mild to moderate chronic compression fracture of the L1 vertebra body; (2) non-specific signal abnormality involving the posterior aspects of the T12-L1 invertebral disc; and (3) minimal L1-L2 and L4-L5 disc bulge.[7]

On April 26, 2014, petitioner was subjected to bone mineral density measurement which found that he had low bone mass density (osteopenia).[8] Thereafter, he had a total of 12 sessions of physical therapy in June and July 2014. Petitioner felt slight relief immediately after said sessions, but the pain returned a few hours after each session.[9]

---

[5] Id. at 42.
[6] Id.
[7] Id.
[8] Id.
[9] Id.

On July 14, 2014, or 108 days from petitioner's repatriation, he was issued a final medical report with the following findings:

Final Diagnosis:

- healed Compression fracture, L1 secondary to Osteoporosis and
- s/p 2 sets of physical therapy (6 sessions each)

Recommendation:

- maximal medical improvement
- fit to work for the condition referred, case closure[10]

Petitioner was paid his sickness allowance for the duration of his treatment from March 29 until June 30, 2014.

However, petitioner was unsatisfied with the findings of the company-designated physician. He, thus, sought the opinion of a physician of his choice. On July 23, 2014, he consulted with the Department of Orthopedics at the Armed Forces of the Philippines Medical Center, through Dr. Manuel Fidel Magtira *(Dr. Magtira)*, due to recurring lower back pain. Dr. Magtira declared petitioner permanently unfit in any capacity for further sea duties after thorough history taking and physical examination.

Three months later, he consulted another physician who is an expert in the field, Dr. Noel Trinidad *(Dr. Trinidad)*, a Fellow of the Philippine Orthopedic Association and the Philippine College of Surgeons. After his examination, Dr. Trinidad issued a Medical Certificate[11] declaring that petitioner was permanently unfit to go back to work as a seaman.

Respondents, on the other hand, averred that petitioner already finished his contract on March 19, 2014, when the latter complained of back pains. They denied that petitioner suffered an injury due to an accident that occurred on board the vessel. When he complained of back pains, he was advised to undergo medical examination. Upon his repatriation and arrival in the Philippines on April 1, 2014, respondents immediately referred petitioner to the company-designated doctors at Shiphealth, Inc. led by Dr. Maria Gracia Gutay. Petitioner was submitted to thorough medical tests which revealed that he had compression fracture L1 secondary to osteoporosis.[12]

---

[10] Id. at 42-43.
[11] Id. at 75-76.
[12] Id. at 43.

Respondents further claimed that petitioner was given medications and advised to follow up with an orthopedic surgeon. He likewise underwent physical therapy. After a month, petitioner claimed reduction in his back pain. Further treatment was done. Repeat laboratory tests yielded normal results and that petitioner's compression fracture had healed. Petitioner was declared fit to work.[13]

Respondents paid petitioner's sickness allowance, but denied his claim for maximum disability benefits under a purported Collective Bargaining Agreement *(CBA)* because petitioner was declared fit to work and his condition was not the result of an accident. The CBA applied only in cases of accidents.[14]

Petitioner filed a complaint with the Arbitration Branch of the NLRC. Mediation conferences were held, but no amicable settlement was reached.

Petitioner argued that he is entitled to, among others, US$235,224.00 as total permanent disability benefits under the CBA, citing the injury he sustained during an alleged accident that took place while he was working on board the vessel, and that such injury impaired his earning capacity.

Respondents, for their part, countered the fact of petitioner's contract completion, that he did not suffer from any accident while on board the vessel, and that his illness was degenerative in nature.[15]

On March 27, 2015, the Labor Arbiter *(LA)* rendered a Decision[16] dismissing petitioner's complaint for lack of merit. The LA ruled that petitioner failed to prove by substantial evidence that he suffered a work-related injury during the term of his employment. Even assuming petitioner suffered compression fracture, he failed to show that such was related to his work on board the vessel as a seafarer.[17]

Petitioner appealed to the NLRC which rendered a Resolution[18] dismissing the appeal for lack of merit. It observed that nowhere in the medical reports of the company-designated physician was it stated that petitioner's illness had anything to do with his duties on board respondents' vessel. It was noted that his fracture had been treated and healed, and that he

---

[13] Id. at 44.
[14] Id.
[15] Id.
[16] Id. at 179-187.
[17] Id. at 45.
[18] Id. at 224-233.

was cleared for work on July 14, 2014, less than the 120/240-day period required since repatriation for maximum disability benefits.[19]

Further, respondents maintained that petitioner's claim that he suffered an injury during an accident on board the vessel remained unsubstantiated and was not corroborated by anyone on the ship. The NLRC subscribed to the observation of the LA that petitioner was a high-ranking official of the vessel who would have known the significance of putting the accident on record, but he did not.[20] The logbook entry only confirmed that petitioner's illness started on December 26, 2013, when he felt low back pain.[21]

The NLRC did not lend credence to the declaration of permanent disability and work-related injury made by petitioner's doctors of choice, Dr. Magtira and Dr. Trinidad, because they were made much later on July 23, 2014 and October 21, 2014, respectively, long after petitioner had disembarked from the vessel on March 29, 2014. They were also based on single consultations without adequate tests to support the same.[22]

Petitioner moved for reconsideration, but his motion was denied. He sought relief before the CA *via* a petition for *certiorari* under Rule 65.

The CA Ruling

The CA denied the petition and affirmed the resolutions of the NLRC. Similarly, the CA held that petitioner's assertion that he figured in an accident on board the vessel was not substantiated; thus, the provisions of the CBA were not applicable.[23] However, even if the accident was not substantially proven, petitioner could still seek relief from the provisions of the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC)*, which are deemed incorporated in the employment contract between petitioner and respondents. Pursuant to Section 20(B) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of the contract.[24]

---

[19] Id. at 230.
[20] Id. at 231.
[21] Id.
[22] Id. at 232.
[23] Id. at 47.
[24] Id. at 47-48.

The POEA-SEC defines work-related illness as those which result in disability or death by reason of an occupational disease listed under Sec. 32-A thereof. The same has created a disputable presumption of compensability for those illnesses which are not listed as an occupational disease. The burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. Only a reasonable proof of work-connection is required.[25]

According to the CA, the examinations and procedures petitioner underwent, as well as the diagnosis, showed a causal connection between his illness or injury and the nature of the work for which he had been contracted.[26] The reasonable connection between the nature of his work and the medical condition while on board were substantially proven. The burden to overcome the presumption is now shifted to respondents.

The CA opined that respondents failed to overcome said presumption. The medical report did not make any categorical statement as to the absence of work-relatedness of the injury sustained by petitioner. The disputable presumption that injury or illness that results in disability, or in some cases death, is work-related stands in the absence of contrary evidence.[27] This, however, does not automatically make petitioner entitled to his total and permanent disability benefits claim. The disability grade petitioner received, whether from the company-designated physician or from the third independent physician in case of conflict between findings of the former and the employee's chosen physician, shall be taken into consideration.

In this case, there was a huge disparity between the findings of the company-designated physician and that of the private doctors chosen by petitioner. The POEA-SEC provides that, in such a case, the opinion of a third doctor may be jointly agreed upon by the employer and the seafarer which opinion would be final and binding on them. Non-observance of the procedure would mean that the assessment of the company-designated physician prevails.[28]

Unfortunately, the CA held that petitioner failed to observe the third-doctor referral provision. Moreover, the diagnoses and findings of petitioner's doctors of choice were issued much later and after single consultations with petitioner without adequate tests to support the same. As between the company-designated doctor, who had all the medical records of

---

[25] Id. at 48.
[26] Id. at 49.
[27] Id. at 50.
[28] Id. at 51-52.

petitioner for the duration of his treatment, and petitioner's private doctors who merely examined him for a day, the former's finding must prevail.[29]

Petitioner's motion for reconsideration was denied. Hence, he filed the present petition raising, briefly, the following arguments:

1. Petitioner requested for referral to a third doctor and that it was respondents who failed to abide by such requirement;

2. There were serious doubts marring the findings of the company-designated physician;

3. Despite the finding of three (3) injuries, the company-designated physician assessed only one of those injuries; and

4. Petitioner has substantially proven by evidence that he suffered injury as a result of an accident.

In sum, the primary issue for resolution is whether or not petitioner is entitled to total and permanent disability benefits.

The Court's Ruling

The petition is partly meritorious.

At the outset, it must be stressed that in a petition for review on *certiorari*, only questions of law are entertained. Questions of fact, which would require a re-evaluation of the evidence, are inappropriate under Rule 45 of the Rules of Court. The jurisdiction of the Court under Rule 45, Sec. 1 is limited only to errors of law as the Court is not a trier of facts.[30] Like any other rules, there are recognized exceptions,[31] and this case is one of them.

---

[29] Id. at 52-53.

[30] *Lopez v. Saludo, Jr.*, G.R. No. 233775, September 15, 2021.

[31] *Soliva v. Tanggol*, G.R. No. 223429, January 29, 2020.

> x x x (a) when the findings are grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (k) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

For disability to be compensable under Sec. 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's contract.[32] In the present case, it is undisputed that petitioner's injury happened during the term of his contract while on board the vessel. The LA and the NLRC denied the disability benefits because petitioner failed to substantially show the causal connection between his work and his illness. The NLRC ruled that awards of compensation cannot rest on bare allegations, speculations or presumptions.[33] The CA, on the other hand, disagreed with the labor tribunals and came up with a contrary finding that petitioner's illness or injury was, in fact, work-related.

The Court, in *Sestoso v. United Philippine Lines, Inc.*,[34] citing *More Maritime Agencies, Inc. v. NLRC*,[35] held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is work-related or had been aggravated by the seafarer's working condition.

Under POEA Memorandum Circular No. 10, Series of 2010, referred to as the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels *(MC No. 10)* and deemed incorporated in every employment contract of seafarers, work-related illness is defined as any sickness as a result of an occupational disease listed under Sec. 32-A of the contract with the conditions set therein; while work-related injury is an injury arising out of and in the course of employment.

In the same MC No. 10, Sec. 20, par. A(4) categorically provides that those illnesses not listed in Sec. 32 of the contract are **disputably presumed as work-related**.

The law clearly laid down a legal presumption of work-related illness or injury in favor of seafarers. This legal presumption was borne by the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that **the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits.**[36] Thus, the burden is on the employer to disprove the work-relatedness, failing which,

---

[32] *Wilhelmsen Smith Bell Manning, Inc. v. Villaflor*, G.R. No. 225425, January 29, 2020.
[33] *Rollo*, p. 232.
[34] G.R. No. 237063, July 24, 2019.
[35] 366 Phil. 646, 654 (1999).
[36] *Romana v. Magsaysay Maritime Corp.*, 816 Phil. 194, 203-204 (2017).

the disputable presumption that a particular injury or illness that results in disability is work-related stands.[37]

Here, the labor tribunals placed the burden of disproving the legal presumption on the petitioner. The settled rule is, as discussed above, that the burden falls upon the employer. Unfortunately, records show that respondents failed to dispute the presumption of work-relatedness of petitioner's injury.

Nonetheless, the presumption of work-relatedness does not extend to the matter of compensability. Compensability pertains to the entitlement to receive compensation and benefits upon a showing that work conditions caused or at least increased the risk of the injury or illness.[38]

Petitioner's work included, among others: the assisting in cargo handling and operations; handling of the vessel, in docking, anchoring, piloting en route, in close quarters and open sea conditions; assisting in mooring and unmooring of the vessel in port and at off-shore locations; and the testing of equipment. The CA correctly observed that the examinations, procedures, and diagnosis have amply proven petitioner's work-related injury. The nature and demand of his work as a seafarer, which the CA found to have been physically demanding, aggravated his medical condition resulting in a fracture to his lumbar spine. Jurisprudence states that although the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability.[39]

Having shown that petitioner's injury is compensable because it has a causal connection with his work and he suffered the same during the term of his contract, the next question is: should petitioner be entitled to total and permanent disability benefits?

A seafarer's entitlement to disability benefits is not automatic simply because of a finding that his illness or injury is compensable. In *Gamboa v. Maunlad Trans, Inc.*,[40] the Court reiterated the settled rule 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 Arts.

---

[37] *Teodoro v. Teekay Shipping Philippines, Inc.*, G.R. No. 244721, February 5, 2020.
[38] *Romana v. Magsaysay Maritime Corp.*, supra note 36, at 204.
[39] *Fil-Star Maritime Corp. v. Rosete*, 677 Phil. 262, 272 (2011).
[40] G.R. No. 232905, August 20, 2018, 878 SCRA 180.

191 to 193)[41] of the Labor Code in relation to Sec. 2(a), Rule X[42] of the Amended Rules on Employee 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' CBA, if any, and the employment agreement between the seafarer and the employer.[43]

Medical findings of the company-designated physician are given weight as such physician is, under the law, obligated to arrive at a **definite assessment** of the seafarer's fitness or degree of disability within a period of 120 days from repatriation,[44] subject to extension of up to 240 days when further medical attention is necessary. It is the company-designated physician's duty to issue a final medical assessment of the seafarer's disability grade or his fitness to work. On the other hand, the law also requires the seafarer to 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

---

[41] **ART. 197. [191]** ***Temporary Total Disability.*** — (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: **the daily income benefit shall not be** less than Ten Pesos nor more than Ninety Pesos, nor **paid for a continuous period longer than one hundred twenty days**, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x

ART. 198. [192] ***Permanent Total Disability.*** — (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: *Provided*, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x 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.

x x x x

ART. 199. [193] ***Permanent Partial Disability.*** — (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability. (emphases in the original)

[42] Rule X

Temporary Total Disability

Section 2. *Period of entitlement.* — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness ***still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability*** in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (emphasis in the original)

[43] *Gamboa v. Maunlad Trans, Inc.*, supra note 40, at 194-196.

[44] Id. at 200.

compliance.[45]

As corollary, the seafarer may also consult a physician of his choice. The same law expressly provides that in case of disagreement or conflict between the findings of the company-designated physician and the seafarer's physician of choice, a third doctor may be jointly agreed upon by the parties. The findings of the third doctor shall be final and binding on both employer and seafarer. The Court has repeatedly emphasized that referral to a third doctor is mandatory, and the party who fails to abide thereby would be in breach of the POEA-SEC.[46]

In the present case, the company-designated physician issued a Final Medical Report[47] on July 14, 2014, within 108 days from petitioner's repatriation, that the latter had healed from compression fracture, after undergoing series of tests, medications, and 12 sessions of physical therapy. He was found to have attained maximal medical improvement and was deemed fit to work.[48] Petitioner's physician of choice, Dr. Magtira, however, issued a Medical Report[49] on July 23, 2014, with the findings that petitioner had lost his pre-injury capacity and was unfit to go back to his previous work due to the said impairment. Dr. Magtira declared petitioner to have permanent disability and permanently unfit in any capacity for further sea duties.[50]

The conflicting findings called for the referral to a third doctor jointly agreed upon by the parties and whose findings shall be final and binding upon them. The initiative for referral to a third doctor should come from the employee, *i.e.*, petitioner himself. *He must actively or expressly request for it.*[51] Consequently, the Minutes[52] of the Single Entry Approach *(SENA)* revealed that petitioner provided Jebsens with the second doctor's certificate and relevant CBA provision. Also, contrary to the CA's findings, petitioner expressly proposed the referral to a third doctor. It was respondents who refused this, claiming through their counsel, that they had not been given authority to refer the case to a third doctor.[53]

---

[45] Section 20(A)(3), Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, POEA Memorandum Circular No. 010-10, October 26, 2010.
[46] *United Philippine Lines, Inc. v. Maquiso*, G.R. No. 246895, March 11, 2020.
[47] *Rollo*, pp. 220-221.
[48] Id. at 221.
[49] Id. at 79-81.
[50] Id. at 81.
[51] *Ranoa v. Anglo-Eastern Crew Management Phils., Inc.*, G.R. No. 225756, November 28, 2019.
[52] *Rollo*, pp. 57-58.
[53] Id. at 57.

To reiterate, referral to a third doctor is mandatory in case of disagreements between the findings of the company-designated physician and the employee's physician of choice. Jurisprudence further holds that upon notification by the seafarer of his intention to refer the conflicting findings to a third doctor, the company carries the burden of initiating the process for referral to a third doctor commonly agreed upon between the parties.[54]

Respondents clearly failed to abide by the mandatory referral procedure under the law. As a result, the findings of the company-designated physician cannot be automatically deemed conclusive and binding.[55] Accordingly, the Court must now weigh the inherent merits of the medical findings presented by both sides.

We give greater weight and credence on the medical report of petitioner's physician, Dr. Magtira, that the former is deemed permanently disabled and unfit for any sea duties.

Although the CA observed that the diagnoses of Dr. Magtira and Dr. Trinidad, the second physician seen by petitioner, were made only after single consultations, We still find them to be properly supported; as they were based on the very same results of the extensive tests, procedures, and physical therapy sessions of petitioner, which respondents' company-designated physician relied upon. While the final diagnosis of the company-designated physician deemed petitioner fit for work, it was also noted therein that petitioner still reported episodes of numbness in the affected area. Although these episodes were rare, tolerable, and would be resolved at the end of the day, this observation is not insignificant in determining petitioner's fitness for sea duty, especially in view of the fact that petitioner sought a second medical opinion less than two weeks after his last treatment with the company-designated physician.

Additionally, the certification of the company-designated physician would defeat petitioner's claim while the opinion of the independent physicians would uphold such claim. The law looks tenderly on the laborer. Thus, where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.[56]

---

[54] *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428, 446 (2015).
[55] *United Philippine Lines, Inc. v. Maquiso*, supra note 46.
[56] *Nazareno v. Maersk Filipinas Crewing, Inc.*, 704 Phil. 625, 637 (2013); *HFS Philippines, Inc. v. Pilar*, 603 Phil 309, 320 (2009).

Finally, is petitioner entitled to total and permanent disability benefits under the alleged CBA provision he invoked?

We rule in the negative.

Petitioner, a Second Officer, invoked Sec. 21 of the CBA[57] in claiming total and permanent disability benefits in the amount of $235,224.00, which provides:

Disability
§21

a) A Seafarer who suffers injury as a result of an accident from any cause whatsoever whilst in the employment of the Company or arising from her/his employment with 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 shall, in addition to sick pay, be entitled to compensation according to the provisions of the Agreement.

b) The disability suffered by the Seafarer shall be determined by a Doctor appointed by the ITF, and the Company shall provide disability compensation to the Seafarer in accordance with the percentage specified in the table below which is appropriate to this disability.

DEGREE OF DISABILITY	**2012 RATE OF COMPENSATION**	
	RATINGS AB & below	OFFICERS & RATINGS above AB
%	US$	US$
50-100	156,816	235,224
x x x x		

with any differences, including less than 10% disability, to be pro-rata.

The compensation provided under this paragraph for 100% disability shall not exceed US$235,224 for Officers and $156,816 for Ratings for 2012, with lesser degrees of disability compensated for pro-rata.[58]

Petitioner refers to Sec. 21 to support his claim for disability benefits due to his accident while employed by respondents. It is, thus, incumbent upon petitioner to prove by substantial evidence that he figured in an accident on board the vessel. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[59]

---

[57] *Rollo*, pp. 77-78.
[58] Id. at 77.
[59] *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistics Systems, Inc.*, 805 Phil. 244, 260 (2017).

Petitioner failed to prove the fact of accident, either by documentary or testimonial evidence.

Petitioner claimed that on December 26, 2013, he slipped and fell on the floor on his buttocks while releasing a tug line of the ship. Surprisingly, no such accident was recorded in the ship records to validate petitioner's assertion; neither was it corroborated by anyone on the ship. The labor tribunals were correct in noting that petitioner was a high-ranking official of the vessel who would have known the significance of putting such accident on record; but he did not.[60] Petitioner alleged that the seaman's medical form indicated that he experienced pain in his lower back side after handling a tug line in December 2013.[61] Such entry in the form, however, does not conclusively reveal the occurrence of an accident.

Petitioner also cited an online article of the University of Maryland Medical Center entitled "*A Patient's Guide to Lumbar Compression Fracture*,"[62] to support his claim that his compression fracture was caused by an accident. Nevertheless, the same article emphasized that:

> **There is not one single cause of compression fractures**, though the word compression would indicate that the fracture occurs because of too much pressure being placed on the bone. If the bone is too weak to hold normal pressure, it may not take much pressure to cause the vertebral body to collapse. Most healthy bones can withstand a lot of pressure and the spine will bend to absorb the shock. However, if the force is too great for the vertebrae to sustain, one or more of them can fracture.[63] (emphasis supplied)

The same article further states that osteoporosis is a common cause of compression fracture, and trauma to the spinal vertebrae can also lead to minor or severe fractures.[64] Consequently, petitioner must indeed convincingly prove the fact of accident in order to claim total and permanent disability benefits under the CBA. Unfortunately, he failed to do so. The CBA provision, therefore, cannot apply here.

Nonetheless, petitioner is not without any recourse as the POEA-SEC also governs his employment contract. The POEA-SEC is imbued with public interest and is deemed incorporated in every employment contract of seafarers. As the Court gives credence to the assessment of petitioner's physicians of choice, he is entitled to the maximum total and permanent

---

[60] *Rollo*, p. 231.
[61] Id. at 415.
[62] https://www.umms.org/ummc/health-services/orthopedics/services/spine/patient-guides/lumbar-compression-fractures (last visited on January 12, 2022).
[63] Id.
[64] Id.

disability benefit of $60,000.00 provided under the POEA-SEC.

As regards moral and exemplary damages, We find that petitioner is not entitled thereto.

Moral damages are recoverable only if the party from whom it is claimed has acted fraudulently or in bad faith or in wanton disregard of his contractual obligations.[65] On the other hand, Art. 2229 in relation to Art. 2232 of the Civil Code, provides that exemplary damages may be awarded in addition to moral damages and if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[66]

In this case, respondents did not act oppressively or in bad faith. Respondents provided petitioner with sufficient and extensive medical treatments, before and upon repatriation, and paid him his sickness allowance in accordance with their CBA for the duration of his treatment. Hence, there is no basis for the award of moral and exemplary damages.

Be that as it may, We deem it proper to award attorney's fees in favor of petitioner at ten percent (10%) of the total monetary awards following Art. 2208 of the New Civil Code, "which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws."[67]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The November 16, 2016 Decision and March 9, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 142799, which affirmed the June 18, 2015 and July 30, 2015 Resolutions of the National Labor Relations Commission, are **REVERSED** and **SET ASIDE**. Respondents are jointly and severally liable to **PAY** Luisito C. Reyes the following:

1) Permanent and total disability benefit in the amount of US$60,000.00, or its peso equivalent at the time of payment; and,

2) Attorney's fees at the rate of ten percent (10%) of the total monetary award.

Respondents are likewise liable for legal interest at six percent (6%) *per annum* of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.

---

[65] *Yamauchi v. Suñiga*, 830 Phil. 122, 138 (2018).
[66] Article 2229, Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.
[67] *Cariño v. Maine Marine Phils., Inc.*, G.R. No. 231111, October 17, 2018.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
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.

ALEXANDER G. GESMUNDO
Chief Justice