FIRST DIVISION

G.R. No. 229179 – BENHUR SHIPPING CORPORATION/SUN MARINE SHIPPING S.A. AND EDGAR B. BRUSELAS, *petitioners, versus* **ALEX PEÑAREDONDA RIEGO,** *respondent.*

Promulgated:

MAR 29 2022

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* resolves to deny the instant Petition for Review on *Certiorari*[1] filed by petitioners, which assails the Decision[2] dated September 30, 2016 and Resolution[3] dated January 6, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142911, finding that respondent is entitled to total and permanent disability benefits and attorney's fees.

As narrated in the *ponencia*, respondent was working as Chief Cook on board the vessel of Sun Marine Shipping S.A., the foreign principal of Benhur Shipping Corporation (BSC). While on board the vessel, respondent felt abdominal and lower back pain. He was brought for a medical check-up in Thailand. Upon examination, he was recommended for repatriation. On December 15, 2013, he arrived in the Philippines and was endorsed to Dr. Robert D. Lim, the company-designated physician, for further medical treatment.[4]

Respondent underwent several medical examinations, treatments, and rehabilitation from December 16, 2013 until May 26, 2014, when the company-designated physician issued a final medical assessment indicating that respondent still complained of back pain despite rehabilitation and that his final disability grade under the Philippine Overseas Employment Administration (POEA) schedule of disabilities is at Grade 11 — one-third (1/3) loss of lifting power. Notably, on May 30, 2014, the company-designated physician issued a certification that respondent has undergone medical/surgical evaluation treatment from December 16, 2013 to present due to Hiatal Hernia; L4-L5, L5-S1 Disc Bulge.[5]

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1 *Rollo*, pp. 46-98.

2 Id. at 12-34. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Elihu A. Ybañez and Nina G. Antonio-Valenzuela concurring.

3 Id. at 36-41.

4 *Ponencia*, p. 2.

5 Id. at 2-5.

> **valid assessment from a company-designated physician, the mandatory rule on a third-doctor-referral will not apply here.**[16] (Additional emphasis supplied)

Consequently, the *ponencia* should have denied the instant petition for review based on the Court's rulings in *Elburg* and *Sea Power*. The discussion on the validity of the referral of the seafarer of his doctor's assessment to the employer, and whether the employer erred in not heeding such referral, to my mind, is a superfluity. It is unnecessary as the fact that the company-designated physician failed to issue a final and valid assessment within the period provided by law is already sufficient to award total and permanent disability benefits to the seafarer. However, the *ponencia* still proceeded to discuss the "referral to a third doctor" rule. Given this, I provide my positions below even though I find the discussions unnecessary.

The seafarer is required to send the medical report issued by his doctor to the employer.

I disagree with the *ponencia* that the seafarer is not required to attach the medical report issued by his chosen physician in the request for referral to a third doctor, it being sufficient that he has informed the employer of the assessment made by his chosen physician indicating his fitness to work or disability rating which is contrary to the assessment made by the company-designated physician.

To recall, the conflict resolution mechanism is enunciated under Section 20(A)(3) of the POEA-Standard Employment Contract (POEA-SEC), as amended, *viz.*:

> x x x x
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> 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.

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16 See *Sea Power Shipping Enterprises, Inc. v. Comendador*, supra note 14, at 12-13. Citations omitted.

The prescribed procedure for the conflict resolution has been laid out by the Court in the case of *Carcedo v. Maine Marine Philippines, Inc.*[17] (*Carcedo*), to wit:

> To definitively clarify how a conflict situation should be handled, **upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor** whose ruling, under the POEA-SEC, shall be final and binding on the parties. **Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.** In *Bahia*, we said:
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> > In the absence of any request from him (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.[18] (Emphasis supplied)

Further, in the case of *Gere v. Anglo-Eastern Crew Management Phils., Inc.*[19] (*Gere*), the Court obliged the company-designated physician not just to issue a final and valid assessment but also to ensure that the same is personally received by the seafarer or if not practicable, sent to him/her by other means allowed under the rules. The Court held:

> In following the foregoing guidelines, it must be emphasized that the company-designated physician must not only "issue" a final medical assessment of the seafarer's medical condition. He must also — and the Court cannot emphasize this enough — "give" his assessment to the seafarer concerned. That is to say that the seafarer must be fully and properly informed of his medical condition. The results of his/her medical examinations, the treatments extended to him/her, the diagnosis and prognosis, if needed, and, of course, his/her disability grading must be fully explained to him/her by no less than the company-designated physician.
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> **In this regard, the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to him/her by any other means sanctioned by present rules**. For indeed, proper notice is one of the cornerstones of due process, and the seafarer must be accorded the same especially so in cases where his/her well-being is at stake.

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17 G.R. No. 203804, April 15, 2015, 755 SCRA 543.

18 Id. at 566-567, citing *Formerly INC Shipmanagement, Incorporated (now INC Navigation Co. Philippines, Inc.) v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 452, further citing *Bahia Shipping Services, Inc. v. Constantino*, G.R. No. 180343, July 9, 2014, 729 SCRA 361, 373.

19 G.R. Nos. 226656 & 226713, April 23, 2018, 862 SCRA 432.

> A company-designated physician who fails to "give" an assessment as herein interpreted and defined fails to abide by due process, and consequently, fails to abide by the foregoing guidelines.
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> This elaboration acquires greater significance in light of Section 20(A)(3) of the Philippine Overseas Employment Administration-Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers Onboard Ocean-Going Ships (POEA Contract), which commences a process that the seafarer, the employers, and the latter's agents must abide by.[20] (Emphasis and underscoring in the original)

Based on the foregoing, the conflict resolution procedure is as follows: the employer's company-designated physician must submit a final and valid assessment of the seafarer's condition within the 120/240-day period. This assessment should be personally received by the seafarer or if not practicable, sent to the seafarer by any other means sanctioned by the rules. After receipt of the assessment, if the seafarer does not agree with the findings of the company-designated physician, he/she has the option to consult with his/her chosen doctor. And if the seafarer disagrees with the findings of the company-designated physician, the seafarer shall then signify his/her intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification of the contrary assessment and the request for referral to a third doctor, the employer is mandated to initiate the process for the selection of the third doctor.

Absent from the foregoing is the standard to be followed by the seafarer in signifying or communicating to the employer the assessment of his/her own doctor and his/her intention to resolve the conflict through a referral to a third doctor.

Here, the *ponencia* is of the view that the seafarer, in notifying the employer, needs only to indicate the assessment of his/her chosen doctor stating his/her fitness to work or disability rating. However, to my mind, this would result in an unfair situation where stringent guidelines are imposed on employers but the same is not required for seafarers.

Following the Court's pronouncements in *Carcedo* and *Gere*, it is my view that the seafarer, in notifying the employer for the purpose of initiating the conflict resolution mechanism, is required to duly and fully disclose the assessment of his/her chosen doctor by providing the employer a copy thereof. This is to equally apply the requirement of proper notice to both parties as held in the case of *Gere*. Just as the seafarer must be fully informed of the findings of the company-designated physician as to his/her medical condition, the employer has a similar right to be sufficiently informed by the seafarer of the contrary findings of his/her personal physician.

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20 Id. at 442-443.

The employer's failure to comply with the dispute resolution mechanism makes the assessment of the seafarer's doctor binding on it.

Anent the issue of effect of non-compliance of the employer in the conflict resolution mechanism, the *ponencia* holds that this failure gives the labor tribunals and the courts the power to review and resolve the conflicting findings of the company-designated physician and the seafarer's chosen doctor.

I again disagree.

The conflict resolution mechanism was placed to enable the parties to expeditiously settle disability claims in case of conflict between the findings of the company-designated physician and the seafarer's doctor.[21] It was intended to settle the conflicting findings voluntarily at the parties' level where the claims can be resolved speedily than if they were brought to court.[22] Its purpose is to establish a balance between the seafarer's right to receive a just compensation for his/her injuries and the employer's interest to determine the veracity of disability claims against it.[23]

In a number of cases, the Court established that the failure of the seafarer to inform the employer of the contrary assessment of his/her chosen physician within a reasonable time renders the findings of the company-designated physician conclusive and binding. The Court held that the failure of the seafarer to comply with the conflict resolution mechanism is tantamount to a breach of the provisions of the POEA-SEC and such failure should be taken against him/her.[24]

In *Ranoa v. Anglo-Eastern Crew Management Phils. Inc.*[25] (*Ranoa*), the Court found that the seafarer is only entitled to Grade 12 disability rating in accordance with the findings of the company-designated doctors because he inexplicably failed to comply with the POEA-SEC's mandated procedure for referral to a third doctor. The seafarer's non-compliance with the conflict resolution procedure renders conclusive the disability rating issued by the company-designated doctor.[26]

Similarly, in *Magsaysay Maritime Corporation v. Buico*[27] (*Magsaysay*), the Court reiterated that the failure of the seafarer to comply

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21 *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018, 873 SCRA 368, 395.

22 See *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53, 67.

23 *Magsaysay Mol Marine, Inc. v. Atraje*, supra note 21, at 395.

24 See *Doehle-Philman Manning Agency, Inc. v. Gatchalian, Jr.*, G.R. No. 207507, February 17, 2021, accessed at <https://sc.judiciary.gov.ph/19742/>.

25 G.R. No. 225756, November 28, 2019, 926 SCRA 526.

26 Id. at 542 and 546.

27 G.R. No. 230901, December 5, 2019, 927 SCRA 287.

with the requirement of referral to a third doctor is tantamount to a violation of the terms under the POEA-SEC. Consequently, without a binding third-party opinion, the final, accurate and precise findings of the company-designated physician prevail over the conclusion of the seafarer's chosen doctor.[28]

In the more recent cases of *Philippine Transmarine Carriers, Inc. v. San Juan*[29] (*Philippine Transmarine*) and *Idul v. Alster Int'l. Shipping Services, Inc.*,[30] as cited by the *ponencia*,[31] the Court has maintained that the failure of the seafarer to observe the mandatory procedure of the conflict resolution mechanism renders the findings of the company-designated physician conclusive and binding.

However, the Court has clarified in the case of *Dionio v. Trans-Global Maritime Agency, Inc.*[32] (*Dionio*) that the failure to refer the conflicting findings to a third doctor does not *ipso facto* render the conclusions of the company-designated physician conclusive and binding on the courts.[33] The Court therein ruled:

> It should be clarified, however, that the failure to refer the conflicting findings to a third doctor does not *ipso facto* render the conclusions of the company-designated physician conclusive and binding on the courts. As explained in *C.F. Sharp Crew Management, Inc. v. Castillo:*
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> > Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA-SEC. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.
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> Thus, while failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice gives the former's medical opinion more weight and probative value over the latter, still, it does not mean that the courts are bound by such doctor's findings, as the court may set aside the same if it is shown that the findings of the company-designated doctor have no scientific basis or are not supported by medical records of the seafarer.[34]

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28 Id. at 300.
29 G.R. No. 207511, October 5, 2020, accessed at <https://sc.judiciary.gov.ph/15335/>.
30 G.R. No. 209907, June 23, 2021, accessed at <https://sc.judiciary.gov.ph/21348/>.
31 *Ponencia*, p. 21.
32 G.R. No. 217362, November 19, 2018, 886 SCRA 47.
33 Id. at 58.
34 Id. at 58-59. Citations omitted.

To my mind, the same rule applied in *Ranoa*, *Magsaysay*, and *Philippine Transmarine* should apply in instances where it is the employer who failed to follow the dispute resolution mechanism under the POEA-SEC. Following the wisdom of the law and established jurisprudence and to accord fairness and balance between the rights of the seafarer and the manning agency/shipping company, the failure of any party to comply with the mandatory procedure of the conflict resolution mechanism renders the assessment of the compliant party's doctor conclusive and binding as against the erring party. However, this rule is still subject to the Court's pronouncement in *Dionio* that the findings are not conclusive and binding to the courts or to the other party if the same are clearly biased in favor of one party, or have no scientific basis or not supported by medical records of the seafarer.

In summary, when the non-compliance with the conflict resolution mechanism is due to the fault of the seafarer, the medical assessment of the company-designated physician is deemed conclusive and binding. However, when the failure to comply is due to the fault of the employer, the medical findings of the seafarer's doctor shall be conclusive and binding against the employer. The courts are obliged to uphold the conclusive and binding findings unless the same are tainted with bias or not supported by medical records or lack scientific basis, in which case, the courts are not precluded to review the conflicting findings and decide the case based on the totality of the evidence.

To conclude, I vote to **DENY** the instant Petition for Review on *Certiorari* filed by petitioners on the ground that the company-designated physician failed to issue a final and valid assessment within the prescribed period under the law. As such, the seafarer's disability is deemed total and permanent by operation of law.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice