Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEONARDO L. JUSTO,
Petitioner,

-versus-

TECHNOMAR CREW MANAGEMENT CORP., TECHNOMAR SHIPPING, INC., and TERESITA B. MALAGIOK,
Respondents.

G.R. No. 255889

Present:

LEONEN, *S.A.J.*,
Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
JUL 26 2023

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DECISION

LOPEZ, M., *J.*:

The Petition for Review on *Certiorari*[1] before the Court assails the Decision[2] dated October 19, 2020 and the Resolution[3] dated February 18, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 164029 which reversed the Decision[4] dated September 27, 2019 of the Panel of Voluntary Arbitrators (PVA) granting petitioner total and permanent disability benefits.

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1 *Rollo*, pp. 10-29.

2 *Id.* at 33-44. Penned by Associate Justice Francisco N. Diamante, with the concurrence of Associate Justices Florencio M. Mamauag, Jr. and Carlito B. Calpatura.

3 *Id.* at 46-47.

4 *Id.* at 269-279. Signed by Chairman MVA Conor Wesley P. Gacutan and MVA Romeo Cruz, Jr., with dissenting opinion by MVA Israel G. Khan, Jr. stating that the amount of disability compensation should be based on the Philippine Overseas Employment Administration-Standard Employment Contract as there was no proof presented regarding the "accident" to justify the application of the parties' Collective Bargaining Agreement.

ANTECEDENTS

On March 27, 2018, petitioner Leonardo L. Justo (Leonardo) was hired by respondent Technomar Crew Management Corp. in behalf of its principal, Technomar Shipping, Inc., as cook for M/V New Yorker for a period of nine months with a basic monthly wage of USD 715.00.[5] Leonardo was covered by a Panhellenic Seamen's Federation–International Bargaining Forum Collective Bargaining Agreement (CBA),[6] effective from the date of his employment.[7] He was declared fit to work on March 5, 2018.[8] As a cook, his duties included maintenance and cleaning of the galley/kitchen area, carrying of provisions to the ship's ripper/refrigeration room, and planning for the procurement of food provisions of the vessel.[9] Sometime in the first week of June 2018, while preparing food, Leonardo heard a loud metallic sound after a cargo hold fell directly above the galley where he was working.[10] This was followed by a high tune ringing in his right ear, accompanied by blurring of vision and headache.[11] On June 14, 2018,[12] he was brought to a hospital in Sweden and was diagnosed with *infected external auditory canal and perforated tympanic membrane on his right ear.*[13] Leonardo was advised to undergo surgery and was made to wear earplugs.[14] Due to the persistent ringing sensation in his right ear, Leonardo had another check-up in a hospital in France on June 19, 2018.[15] He was similarly advised to undergo surgery to address his perforated right eardrum.[16]

On July 22, 2018, Leonardo was repatriated.[17] Upon arrival on July 23, 2018, he reported to respondents and was brought to the NGC Hospital where he was seen by the company doctor, Dr. Nicomedes G. Cruz (Dr. Cruz).[18] Dr. Cruz referred Leonardo to an ENT specialist, who then advised him to undergo pure tone audiometry, speech audiometry, and tympanometry.[19] Leonardo's pure tone audiometry result came out the next day and showed *mild conductive hearing loss on the right ear and severe hearing loss on the left ear.*[20] On August 1, 2018, Leonardo underwent CT scan of the temporal

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5 *Id.* at 34.
6 *Id.* at 164–211-A.
7 *See id.* at 104.
8 Incorrectly dated in Petition for Review filed before the CA and Position Paper submitted to the National Conciliation and Mediation Board by respondents. *See id.* at 64 & 91, in relation to Leonardo's employment contract at 104.
9 *Id.* at 34.
10 *Id.* at 35.
11 *Id.* at 118.
12 Incorrectly dated in the Petition for Review on *Certiorari* filed before the Court by Leonardo and the Decisions of the CA and the NCMB. *See id.* at 13, 35, 49, in relation to the Medical Report dated June 14, 2018 at 115–116.
13 *Id.* at 35.
14 *See* Medical Report dated July 23, 2018. *id.* at 118.
15 Incorrectly dated in the Petition for Review on *Certiorari* filed before the Court by Leonardo. *See id.* at 13, in relation to the Medical Report dated June 19, 2018 at 117.
16 *Id.* at 35.
17 *Id.* at 255.
18 *Id.* at 35.
19 *See* Medical Report dated July 23, 2018; *id.* at 118.
20 *See* Medical Report dated July 24, 2018; *id.* at 119.

lobe[21] at the Manila Doctors Hospital.[22] The result showed that he had *chronic right mastoiditis, chronic left tympanomastriditis with possible cholesteatoma formation versus granulation tissue,* and a *high riding right jugular bulb.*[23] During Leonardo's August 3, 2018 follow-up, the company doctor reported that Leonardo's *left hearing acuity is severe and may improve with hearing aid.* It was recommended that Leonardo undergo tympanomastoid surgery on his right ear.[24] On August 17, 2018, he underwent a right ear tympanoplasty to restore his hearing ability.[25] He was discharged on August 20, 2018[26] and reported for follow up check-ups.[27] On November 7, 2018, Dr. Cruz issued in favor of Leonardo a disability assessment of Grade 11 impediment — one-half loss of the sense of hearing in one ear.[28] On December 7, 2018, Dr. Cruz issued a final medical report stating that Leonardo was "Fit to Resume Sea Duties" and that his hearing has been preserved.[29] Leonardo was asked to sign the certificate of fitness to work, but he refused. Instead, Leonardo consulted with another doctor, Dr. Danilo Q. Reyno (Dr. Reyno). On January 14, 2019, Dr. Reyno declared Leonardo totally and permanently disabled as a seafarer.[30] The Disability Report[31] stated the following:

> The perforation of the tympanic membrane of the right ear preserved the remaining hearing on said area, but the patient still complain[s] of a severe hearing loss on his left ear. **He is also experiencing an on and off pain on both ears aggravated by exposure to loud sounds.**
>
> Thus[,] the environmental noise pollution on his workplace may and will aggravate his present condition. Plus[,] the profound hearing loss on his left ear[,] along with the moderate hearing loss on his right[,] [is] such a handicap on the workplace. **Thus[,] the hearing loss [in] the left ear [is] a total and permanent disability.**[32] (Emphasis supplied)

In a letter[33] dated January 17, 2019, Leonardo, through counsel, requested from respondents a referral to a third doctor. Attached to the letter was the Disability Report of Dr. Reyno. Despite receipt of the letter, Leonardo claimed that respondents did not reply.[34] Thus, he filed a Notice to Arbitrate[35] with the PVA of the National Conciliation and Mediation Board for payment of total and permanent disability benefits. After a series of mandatory conferences, the parties were not able to settle. Hence, they were required to submit their respective position papers.[36]

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21 *Id.* at 35.
22 *See* Medical Certificate dated September 28, 2018; *id.* at 215.
23 *Id.* at 13.
24 *See* Medical Report dated August 3, 2018; *id.* at 122.
25 *Id.* at 35.
26 *See* Medical Certificate dated September 28, 2018; *id.* at 215.
27 *See* Medical Reports (variously dated); *id.* at 125–135, & 137–139.
28 *See* Medical Report dated November 7, 2018; *id.* at 136.
29 *Id.* at 35.
30 *Id.* at 36.
31 *Id.* at 217–219.
32 *Id.* at 219.
33 *Id.* at 216.
34 *Id.* at 147.
35 *Id.* at 140.
36 *Id.* at 36.

In his Position Paper,[37] Leonardo averred that he was entitled to total and permanent disability benefits in the amount of USD 102,308.00, pursuant to the provision of the CBA.[38] He also maintained that his hearing disability was caused by an accident that happened on board the vessel of respondents while he was performing his job.[39] Leonardo also insisted that sense of hearing was indispensable in his job as a seafarer[40] and that the profound hearing loss on his left ear, along with moderate hearing loss on his right ear, incapacitated him to resume his duties as a seafarer.[41] Moreover, he asserted that he was entitled to attorney's fees and damages owing to the bad faith of respondents in deliberately disregarding his medical and financial needs.[42]

In their Position Paper,[43] respondents countered that Leonardo was declared fit to work by the company doctor, but he refused to sign the certificate of fitness to work.[44] Contrary to Leonardo's claim, respondents did not disregard his request for a third-doctor referral.[45] Further, in their Reply[46] to Leonardo's position paper, respondents insisted that their willingness to refer Leonardo's case to a third doctor was evidenced by the minutes[47] of the mandatory conferences before the PVA.[48] It was recorded therein that respondents submitted the Proposed Guidelines for Third Doctor Referral;[49] that Leonardo was supposed to file his comment on the proposed guidelines on June 19, 2019;[50] and that the parties agreed that the findings of the third doctor would be submitted to the PVA on July 5, 2019.[51] Respondents also coordinated with Leonardo's representatives on July 1, 2019 as to his availability for the third-doctor referral, but they were informed that Leonardo could not be reached because of a typhoon in his province. The counsel for the respondents replied that they would wait for Leonardo's advice as to his availability, but they never heard from Leonardo.[52] Thus, respondents argued that the disability rating, or the fit to work assessment by the company doctor should prevail.[53] Moreover, they contended that the findings of the company doctor were more reliable because it was arrived at after several months of treatment and medical evaluation, compared to the evaluation of Leonardo's personal doctor, which was reached after only one examination.[54]

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37 *Id.* at 141–161.
38 *Id.* at 155–157.
39 *Id.* at 148.
40 *Id.* at 150.
41 *Id.*
42 *Id.* at 157–158.
43 *Id.* at 90–100.
44 *Id.* at 92.
45 *Id.* at 97.
46 *Id.* at 220–232.
47 Minutes of the Conference dated June 11 and 19, 2019; *id.* at 256–257.
48 *Id.* at 222.
49 Minutes of the Conference dated June 11, 2019; *id.* at 256.
50 *Id.*
51 Minutes of the Conference dated June 19, 2019; *id.* at 257.
52 *See id.* at 258–259.
53 *Id.* at 222.
54 *Id.* at 225.

RULING OF THE PANEL OF VOLUNTARY ARBITRATORS

On September 27, 2019, the PVA rendered a Decision[55] granting Leonardo's Complaint. The PVA ruled that it cannot be bound by the findings of the company doctor just because there was no referral to a third doctor.[56] Consequently, the PVA considered the inherent merits of the company doctor's assessment that Leonardo was fit to work, *vis-à-vis* the findings of the private doctor that he was totally and permanently disabled, thus ruling:

> Complainant insists that as early as the proceedings before the Grievance Machinery, he already expressed his willingness to refer the case to the third doctor. Said request was reiterated during the conferences before this Board. He also claims that he furnished Respondents of the copy of the contrary assessment of his doctor who examined him. On the other hand, Respondents contend that the affirmance of the findings of the company-designated doctor is in order because there was no referral of the conflicting medical findings to a third doctor.
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> This Office cannot be bound by the findings of the company-designated doctor by reason of the absence of a third doctor's opinion. x x x
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> x x x x
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> This Board finds for the Complainant.
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> It is undisputed that Complainant's exposure to the loud noise brought about by an accident above his workplace has resulted in the loss of his hearing. **The ENT specialist from [sic] the company-designated doctor noted that it was not only his right ear which was affected but also his left which is even more severe.** In fact, the ENT specialist **suggested the use of [a] hearing aid.** Without doubt, the hearing loss suffered by the Complainant is related to and was aggravated by his work as a seaman.
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> x x x x
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> It is noteworthy that in the management of the hearing loss of the left ear of the complainant, the ENT specialist advised him to wear a hearing aid. We are aware that the use of a hearing aid will not cure the defect in his hearing and is only palliative in nature. In other words, it only lessens the severity of the hearing loss but will not be curing it. The function of the hearing aid is to amplify or make sounds accessible only at selected frequencies to enable the person to overcome his hearing loss at a particular range. As such, the use of [a] hearing aid cannot correct a hearing loss and cannot be relied upon to improve speech perception or the ability to understand speech. **Also noteworthy is the ENT specialist's advi[c]e for speech [and] pure tone [audiometry] on December 8, 2018. No further medical report was advanced by respondents from this last advi[c]e of the ENT specialist. The palliative nature of the use of hearing aid in the medical condition of the Complainant was duly established by no less than the company-designated physician's [sic] ENT specialist who pointed out that the hearing aid will improve his hearing. This clinical**

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55 *Id.* at 269–277.

56 *Id.* at 273.

assessment only bolsters the fact that the hearing loss or deficiency of the complainant is already at the critical stage, next to total deafness.

With such extent of disability, it is highly unlikely that the Complainant can still perform his work as a seaman efficiently even with the use of hearing aid. Exposure to loud sounds can permanently damage his nerve and eventually lead to a complete and permanent deafness. Thus, as aptly opined by Dr. Reyno, Complainant is totally and permanently disabled.

x x x x

Anent the claim for moral and exemplary damages, we also find for the Complainant. We are of the view that Respondents' **failure to mention the hearing loss of Complainant's left ear is breach of their obligation**. Their act appeared to have prevented Complainant from claiming his disability benefits under the prevailing laws and jurisprudence. Thus, it is only proper that Complainant be awarded moral and exemplary damages in the amount of [PHP] 50,000.00 each.

Complainant is further entitled to attorney's fees equivalent to 10% of the total judgment award. Undeniably, Complainant was forced to litigate in order to protect his rights and interests under the law.

WHEREFORE, premises considered, the complaint is hereby GRANTED. Complainant is found to be totally and permanently disabled and Respondents are hereby held solidarily liable to pay Complainant the amount of US[D] 102,308.00 for total and permanent disability benefits, [PHP] 50,000.00 by way of moral damages, and 10% of the total judgment award by way of attorney's fees.

SO ORDERED.[57] (Emphasis supplied, citations omitted)

Respondents moved for reconsideration, but their Motion[58] was denied.[59]

Aggrieved, respondents filed a Petition for Review[60] before the CA. They argued that the PVA heavily relied on the findings of the seafarer's doctor which was a product of a single medical examination.[61] Respondents further averred that the PVA disregarded the fact that the non-referral to the third doctor was the fault of Leonardo.[62] Anent the ruling that the company-designated physician issued a fit-to-work certification without the result of the December 2018 pure tone audiometry, respondents maintained that Leonardo was cleared by their ENT Specialist on December 2, 2018. He was declared fit to work given that "*[n]o disability was accorded to the seafarer because so far as the right ear is concerned, the problem and the cause of his repatriation (right ear full with perforated tympanic membrane) has been addressed and corrected.*"[63] Respondents also claimed that the PVA's basis

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57 *Id.* at 273–277.
58 *Id.* at 280–300.
59 *Id.* at 303–304.
60 *Id.* at 60–87.
61 *Id.* at 69–70.
62 *Id.* at 64–68.
63 *Id.* at 71. *See* Certification dated August 30, 2019; *id.* at 255.

for awarding disability compensation, which was the loss of hearing on the left ear, was neither the cause, nor related to the cause of repatriation.[64] Lastly, respondents argued that Leonardo's continued unemployment was his choice and there was no sufficient proof that the use of a hearing aid would affect his work as a seafarer.[65]

Pending resolution of the Petition for Review, respondents manifested to the CA that they have issued a check in the amount of USD 113,653.29 in favor of Leonardo, in full satisfaction of the judgment award, as per the Writ of Execution dated February 6, 2020. Leonardo, assisted by counsel, was made to understand that the payment was without prejudice to the outcome of the Petition for Review.[66]

RULING OF THE COURT OF APPEALS

On October 19, 2020, the CA issued the assailed Decision,[67] which set aside the PVA's judgment and dismissed Leandro's Complaint. The CA ruled that Leonardo failed to comply with the conflict resolution procedure under the CBA and the Philippine Overseas Employment Administration–Standard Employment Contract (POEA-SEC) regarding the third doctor referral.[68] For this reason, the fit to work assessment by the company physician, Dr. Cruz, prevails.[69] The CA also deleted the moral damages and attorney's fees awarded to Leonardo.[70] The CA justified:

> Here, while Justo sent a letter to petitioners that he is demanding that he be referred to a third doctor to confirm his alleged disability, and which demand, petitioners easily agreed to, Justo failed to present himself for consultation with the appointed third doctor. That petitioners agreed to Justo's demand for a third doctor referral is evinced by the Proposed Guidelines for Third Doctor Referral prepared by the former. Moreover, as shown in the Minutes of the Proceedings before the Panel, the parties were required to submit the findings of the third doctor on July 5, 2019, but records apparently show that despite follow-ups on the part of petitioners [with] Justo, through his representative, regarding his consult with the third doctor, they could not get hold of him. It is not enough for Justo to demand that his case be referred to a third doctor, it is also incumbent upon him to show up for consultation. After all, the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.
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> In the case at bench, there is no evidence on record that would indicate that Dr. Cruz acted with clear bias against Justo. Justo was assessed by an ENT Specialist and was subjected to a leng[th]y evaluation and treatment. He was even made to undergo surgery to fix his perforated

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64 *Id.* at 70–75.
65 *Id.* at 76–77.
66 *Id.* at 38.
67 *Id.* at 33–44.
68 *Id.* at 39–40.
69 *Id.* at 41–42.
70 *Id.* at 42.

> eardrum. As shown in the Medical Report that Dr. Cruz issued after each check up with Justo, all the latter's concern[s] were immediately addressed. **Justo never complained that his left ear [was] bothering him or that something [was] wrong with it. It was always his right ear that he had [a] problem with. In fact, the diagnosis which led to his repatriation was "eardrum perforation, right ear."**
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> Thus, as between the Disability Report issued by Justo's doctor[,] that was prepared after a one-day consultation[,] and the 21 Medical Reports of Dr. Cruz[,] which monitored the health condition of Justo, from the time he was repatriated until he was cleared by the ENT specialist, We are inclined to give weight to the fit to work assessment made by Dr. Cruz.
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> x x x x
>
> **WHEREFORE**, in view of the foregoing, the Petition for Review is **GRANTED**. The assailed Decision dated September 27, 2019 and Amended Resolution dated January 22, 2020 of the Panel of Voluntary Arbitrators (Panel), National Conciliation and Mediation Board, in MVA-086-RCMB-NCR-131-03-05-2019, are **REVERSED** and **SET ASIDE** and another one rendered **DISMISSING** the Complaint. Respondent Leonardo L. Justo is ordered to return to petitioners the entire judgment award paid by petitioners by virtue of the Writ of Execution issued by the NCMB-Panel of Voluntary Arbitrators on February 6, 2020 upon finality of this Decision.
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> **SO ORDERED.**[71] (Emphasis supplied, citations omitted)

Petitioner's Motion for Reconsideration[72] was denied.[73] Hence, the instant Petition for Review.[74]

Leonardo contends that the CA erred in reversing the Decision of the PVA. The assessment of the company doctor should not be conclusive upon the courts because it is biased, as his services is paid for by the company.[75] The hearing disability he suffered as a result of the accident on board the vessel of the respondents had permanently and totally incapacitated him to work as a seafarer, which entitles him to the benefits under the CBA.[76] He seasonably informed respondents of the findings of his personal doctor, but respondents did not assent to his request for a referral to a third doctor.[77]

In their Comment[78] to the Petition, respondents argue that Leonardo's claim is based on the mistaken notion that the disability of his left ear is work-related.[79] However, it is on record that Leonardo was repatriated due to the perforation of his right ear membrane, which was already medically resolved.

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71 *Id.* at 40–43.
72 *Id.* at 308–314.
73 *Id.* at 46–47.
74 *Id.* at 10–31.
75 *Id.* at 16–17.
76 *Id.* at 20–26.
77 *Id.* at 26–27.
78 *Id.* at 346–361.
79 *Id.* at 349–350.

In this regard, hearing loss on Leonardo's left ear was neither the cause, nor related to the cause of repatriation.[80] It also could not be ascertained if he suffered the disability of his left ear while he was on board the vessel.[81] Lastly, the non-referral of Leonardo's case to a third doctor is attributable to himself.[82] Thus, the CA correctly reversed the PVA's award of disability benefits.

RULING OF THE COURT

The Petition is meritorious.

At the outset, a Rule 45 review by the Court in labor cases does not delve into factual questions or evaluation of the evidence submitted by the parties.[83] However, an exception to this rule is when the findings of fact of the CA and labor tribunals are conflicting.[84] In view of the contrary findings of the CA and the PVA in this case, the exception applies and we will proceed to determine Leonardo's entitlement to total and permanent disability benefits.

Leonardo claims total and permanent disability benefits under Section 25.1 of the CBA[85] that was deemed incorporated in his employment contract.[86] The provision states:

> 25.1 A seafarer who suffers permanent disability **as a result of an accident** whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to wil[l]ful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.[87] (Emphasis supplied)

A seafarer's entitlement to disability benefits is governed not only by medical findings but also by contract and by law.[88] The relevant contracts are (a) the POEA-SEC, which is a standard set of provisions deemed incorporated in every seafarer's contract of employment; (b) the CBA, if any; and (c) the employment agreement between the seafarer and his employer. By law, the Labor Code provisions on disability apply with equal force to seafarers.[89] In particular, Section 20(A), paragraph 3 of the 2010 POEA-SEC provides:

3. x x x x

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80 *Id.* at 350–352.
81 *Id.* at 352.
82 *Id.* at 355.
83 *Magsaysay Mol Marine, Inc. v. Atraje*, 836 Phil. 1061, 1074 (2018) [Per J. Leonen, Third Division].
84 *Torreda v. Investment and Capital Corp. of the Phils.*, 839 Phil. 1087, 1097 (2018) [Per J. Gesmundo, Third Division].
85 *Rollo*, p. 176.
86 *Id.* at 104.
87 *Id.* at 176.
88 *Doehle-Philman Manning Agency, Inc. v. Gatchalian, Jr.*, G.R. No. 207507, February 17, 2021 [Per J. M. Lopez, Second Division].
89 *Wilhelmsen-Smith Bell Manning, Inc. v. Vencer*, G.R. No. 235730, March 17, 2021 [Per J. J. Lopez, Third Division].

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
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> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer.** The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

After medical repatriation, the law requires that the company-designated physician assess the seafarer's fitness to work or the degree of their disability. If the seafarer disagrees with the findings of the company-designated physician, the seafarer may choose their own doctor to dispute such findings. If the findings of the company-designated physician and the seafarer's doctor of choice are conflicting, the matter is then referred to a third doctor, whose findings shall be binding on both parties.[90]

The referral to a third doctor has been held by the Court to be mandatory on account of the provision under the POEA-SEC that the company-designated doctor's assessment should prevail by default. In other words, the company could insist on its disability rating even against a contrary opinion by another doctor. This rule applies unless the seafarer expresses their disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.[91]

In the very recent case of *Bunayog v. Foscon Shipmanagement, Inc.*,[92] the Court provided the guidelines in case the seafarer requests for a referral to a third doctor and the employer either accedes, or denies the request, and the consequences thereof:

> *First*, a seafarer who receives a contrary medical finding from his or her doctor must send to the employer, within a reasonable period of time, a written request or demand to refer the conflicting medical findings of the company-designated physician and the seafarer's doctor of choice to a third doctor, to be mutually agreed upon by the parties, and whose findings shall be final and binding between the parties.
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> *Second*, the written request must be accompanied by, or at the very least, must indicate the contents of the medical report or medical abstract from his or her doctor, to be considered a valid request. Otherwise, the

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90 *Bunayog v. Foscon Shipmanagement, Inc.*, G.R. No. 253480, April 25, 2023 [Per J. Gaerlan, *En Banc*].

91 *Benhur Shipping Corporation v. Riego*, G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division].

92 *Bunayog*, *supra* note 90.

written request shall be considered invalid and as if none had been requested.

Third, in case where there was no request for a third doctor referral from the seafarer or there was such a request but is deemed invalid, the employer may opt to ignore the request or demand or refuse to assent, either verbal or written, to such request or demand without violating the pertinent provision of the POEA-SEC. Accordingly, if a complaint is subsequently filed by the seafarer against the employer before the labor tribunal, and the parties, after a directive from the LA pursuant to NLRC *En Banc* Resolution No. 008-14, fail to secure the services of a third doctor, the labor tribunals shall hold the findings of the company-designated physician final and binding, unless the same is found to be biased, *i.e.*, lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings [of the company shall be considered by the tribunals or court.

If, however, the parties were able to secure the services of a third doctor during mandatory conference, the latter's assessment of the seafarer's medical condition should be considered final and binding.

Fourth, in case of a valid written request from the seafarer for a third doctor referral, the employer must, within 10 days from receipt of the written request or demand, send a written reply stating that the procedure shall be initiated by the employer. After a positive response from the employer, the parties are given a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her assessment. The assessment of the third doctor shall be final and binding.

In case, however, where the parties fail to mutually agree as to the third doctor who will make a reassessment, a complaint for disability benefits may be filed by the seafarer against the employer. The labor tribunals shall then consider and peruse the inherent merits of the respective medical findings of the parties' doctors before making a conclusion as to the condition of the seafarer.

Fifth, if, however, the employer ignores the written request or demand of the seafarer, or sends a written reply to the seafarer refusing to initiate the referral to a third doctor procedure, or sends a written reply giving its assent to the request beyond 10 days from receipt of the written request or demand of the seafarer, the employer is considered in violation of the POEA-SEC. The seafarer may now institute a complaint against his or her employer.

Sixth, upon the filing of the complaint and during the mandatory conference, the LA shall give the parties a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her reassessment.

***Seventh*, if the services of a third doctor were not secured on account of the employer's refusal to give heed to the LA's request or due to the failure of the parties to mutually agree as to the third doctor who will make a reassessment, the labor tribunals should make conclusive between the parties the findings of the seafarer's physician of choice, unless the same is clearly biased[,] *i.e.*, lacking in scientific basis or unsupported by the medical records of the seafarer. In such a**

> **case, the inherent merits of the respective medical findings and the totality of evidence shall be considered by the labor tribunals or courts.** This is in conjunction with Our earlier ruling that the employer's failure to respond to the seafarer's valid request or demand for a third doctor referral should be taken against the employer.
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> **If, however, the failure to refer the seafarer's condition to a third doctor after directive from the LA was due to the fault of the seafarer, that is, the seafarer refuses to comply therewith, then the labor tribunals and the courts should make conclusive between the parties the findings of the company-designated physician, subject to the exception in *Dionio*.**
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> *Eight*, if, despite the employer's failure to respond to the seafarer's valid request or demand to refer his or her condition to a third doctor, the parties, during mandatory conference, were able to secure the services of a third doctor, and the latter was able to make a reassessment on the seafarer's condition, the third doctor's findings should be final and binding between the parties. In such a case, the employer's refusal to respond to the seafarer's valid request for a third doctor referral should be considered immaterial.[93] (Emphasis supplied, citations omitted)

Here, Leonardo disagreed with the fit-to-work assessment by the company doctor. He then consulted with Dr. Reyno, his physician of choice, who declared him to be totally and permanently disabled. He consequently wrote a letter to respondents requesting for a referral to a third doctor, attaching the medical evaluation of Dr. Reyno.[94] Accordingly, Leonardo complied with the procedural requirements laid down in *Bunayog* by signifying his intent to pursue the third-doctor referral mechanism.

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.[95] In this case, the minutes of the mandatory conferences held on June 11 and 19, 2019 showed that respondents agreed to Leonardo's request for referral to a third doctor by submitting to the PVA their proposed guidelines. The PVA then set the date for the submission of the findings of the third doctor on July 5, 2019.[96] On July 1, 2019, respondents inquired about Leonardo's availability for the consultation to the third doctor. However, Leonardo could not be contacted because of a typhoon in his province, as shown in the printed copy[97] of the exchange of messages between respondents and Leonardo's representatives. Based on this, the CA declared that respondents did not neglect their obligation and it was Leonardo who refused to cooperate with respondents regarding the referral to a third doctor.[98]

We do not agree.

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93 *Id.*

94 *Rollo*, p. 36.

95 *Reyes v. Jebsens Maritime, Inc.*, G.R. No. 230502, February 15, 2022 [Per C.J. Gesmundo, First Division].

96 Minutes of the Conference dated June 11 and 19, 2019; *rollo*, pp. 256–257.

97 *Id.* at 258–259.

98 *Id.* at 40.

The guidelines laid down in *Bunayog* did not encompass a situation wherein the seafarer's request for a third-doctor referral was granted by the employer and yet the consultation failed to materialize due to circumstances beyond the seafarer's control, as in this case. Nevertheless, by way of analogy, the Court will apply the seventh guideline in *Bunayog*, in relation to *Dionio v. Trans-Global Maritime Agency, Inc.*[99]

In *Dionio*, we held that failure to refer the conflicting findings to a third doctor does not *ipso facto* render the assessment of the company-designated physician conclusive and binding on the courts.[100] While it is generally accorded more weight, the medical opinion of the company-designated physician may still be set aside if it is shown that the findings have no scientific basis or are not supported by the medical records of the seafarer.[101] In such instance, the inherent merits of the respective medical findings of both doctors shall be considered by the tribunals or court.[102]

Here, the assessment of the company doctor, Dr. Cruz, that Leonardo was fit to work is belied by the findings of the company's own ENT specialist. Contrary to the CA's ruling that there is nothing wrong with Leonardo's left ear, a careful analysis of tests results and procedures administered to Leonardo showed that the hearing loss on his left ear was diagnosed as early as July 24, 2018, or two days after repatriation.[103] At that time, the ENT specialist already noted that Leonardo's pure tone audiometry showed *mild conductive hearing loss on the right ear and* ***severe hearing loss on the left ear***.[104] Later, on August 3, 2018, the ENT reported that Leonardo's ***left hearing acuity is severe and may improve with hearing aid***.[105] As pointed out by the PVA, the recommendation to use a hearing aid is palliative in nature because the device will not cure Leonardo's hearing loss. The clinical assessment from the ENT

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99 843 Phil. 409 (2018) [Per. J. J. Reyes, Jr., Third Division].

100 *Id.* at 420.

101 *Id.* at 420–421.

102 *Id.* at 421.

103 *See* Medical Report dated July 24, 2018; *rollo*, p. 119.

104 *Id.* The Medical Report states:

> "Patient came in for follow up. He notes ringing on the right ear when he is speaking and with noise. His pure tone audiometry shows ***mild conductive hearing loss on the right ear and severe hearing loss on the left ear***, speech reception threshold [c]onformed with puretone average on both ears, word recognition presented at the most comfortable level scored 100% on the right ear suggestive of good speech understanding and 64% on the left ear suggestive of moderate difficulty in speech understanding, tolerance level obtained beyond 100 dB on both ears, impedence test result showed type B on the right ear and type A on the left ear. He was seen by ENT specialist and noted that the patient complains of noise intolerance right, but this is the better hearing ear. ENT suggests referral to an ENT specialist for definitive management. ENT suggests CT scan of the temporal bone, plain for further evaluation." (Emphasis supplied)

105 *See* Medical Report dated August 3, 2018; *id.* at 122. The Medical Report states:

> "Patient came in for follow up. He has no pain on the right ear, but complains of tinnitus and a decreased hearing acuity. He was seen by our ENT specialist. A tympanomastoid surgery of the right ear is recommended. ***Left hearing acuity is severe and may improve with hearing aid***. Patient was referred to our Cardiologist prior to surgery." (Emphasis supplied)

specialist only bolsters the fact that his hearing loss is already at the critical stage, akin to total deafness.[106]

Relative to this, the Court sees that the perforation of Leonardo's right eardrum, which was the cause of his repatriation, was medically resolved during the post-repatriation surgery.[107] Nevertheless, the evidence shows that the loss of hearing on his left ear was simply dismissed by the company-designated doctor. This cannot be countenanced.

In *Blue Manila, Inc. v. Jamias*,[108] the Court stressed that there is nothing in Section 20(A) of the POEA-SEC that would suggest, not even remotely, that the medical treatment to be given to the seafarer must be limited or confined to the cause of repatriation, thus:

> Clearly, any illness complained of, and/or diagnosed during the mandatory PEME under Section 20 (A) is deemed existing during the term of the seafarer's employment, and the employer is liable therefor. This is true, regardless of whether the existing illness was the immediate cause of a medical repatriation. Likewise, it matters not that there was no statement about Jamias' lower back pain in the ship captain's report, or in the records of the offshore hospital. Precisely, the law requires the conduct of a PEME within 3 days upon repatriation because offshore hospitals are mostly concerned with emergency medical situations, and rarely provide a comprehensive assessment of the seafarer's actual condition, or existing illnesses. It is also inconceivable why the employer, in this case, referred the seafarer to undergo a PEME if he still complains of, and is suffering from his back ailment.
>
> Relative to this, the Court stresses that the mandatory PEME under Section 20 (A) is not an empty ritual. Under the POEA-SEC, company-designated physician is primarily responsible to determine the disability grading or fitness to work of seafarers. Nonetheless, to be conclusive and binding, the medical assessment or report of the company-designated physician must be complete and definite for the purpose of ascertaining the degree of the seafarer's disability benefits. A final and definite disability assessment must truly reflect the extent of the sickness or injuries of the seafarer, and his, or her capacity to resume work as such. Failing which, the disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered by the seafarer.[109]

Although Leonardo was medically repatriated due to the perforation in his right ear, this does not mean that the post-employment medical examination (PEME) and treatment should be confined to this illness. This is especially true in this case wherein the profound hearing loss on his left ear was immediately detected two days upon repatriation.[110] Moreover, as correctly held by the PVA, on December 3, 2018, the company's ENT specialist advised Leonardo to undergo another test for speech and pure tone

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106 *Id.* at 275.
107 *See* Medical Reports (variously dated), *id.* at 125–135 & 137–139.
108 G.R. Nos. 230919 & 230932, January 20, 2021 [Per J. M. Lopez, Second Division].
109 *Id.*
110 *See* Medical Report dated July 24, 2018; *rollo*, p. 119.

audiometry.[111] The test was conducted on December 13, 2018 which confirmed that he has mild to moderate hearing loss on his right ear, and sensorineural hearing loss of the left ear. The speech audiometry on the left ear could not be tested due to the severity of the hearing loss.[112] However, these test results were preempted by the issuance by Dr. Cruz of a Fit-to-Work Certification dated December 7, 2018.[113]

To be sure, the unceremonious issuance of a Fit-to-Work Certification by Dr. Cruz, without first addressing or without any definite declaration as to Leonardo's left ear hearing loss, is not the final medical assessment envisioned by law. It is an abdication of the company-designated doctor's obligation under the POEA-SEC to issue a final, conclusive, and definite assessment to determine a seafarer's fitness or unfitness to work. There is, therefore, no occasion for the application of the mandatory third-doctor referral mechanism in this case because the act of Dr. Cruz effectively converted Leonardo's temporary total disability to permanent total disability.[114] We stress that this finding of permanent and total disability remains regardless of the classification of the injury, or the disability grading under the POEA-SEC, because it is not the injury *per se* that is compensated but the seafarer's incapacity to work.[115] As the Court held in *Dionio*:

> It is the avowed policy of the State to give maximum aid and full protection to labor. Thus, the Court has applied the Labor Code concept of disability to Filipino seafarers. Case law has held that "the notion of disability is intimately related to the worker's capacity to earn, and what is compensated is not his injury or illness but his inability to work resulting in the impairment of his earning capacity. Thus, disability has been construed less on its medical significance but more on the loss of earning capacity."[116]

With regard to the correct amount of disability compensation, the record is devoid of testimonial or documentary evidence to show that Leonardo's illness was the result of an accident. To recall, Leonardo alleges that he heard a very loud metallic sound from a cargo hold that collapsed on the floor above the galley where he was working. He maintains that such loud sound damaged his sense of hearing causing his disability.[117] Fundamentally, the burden of proof belongs to the seafarer as the party making the crucial allegation to establish that the disability was due to an accident on board the vessel.[118] In this case, apart from the medical reports issued by the offshore doctors and the company physicians, Leonardo failed to present any evidence to prove that he suffered an accident on board M/V New Yorker, which would have justified his disability claim under the CBA. As such, the Court deems it

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111 *See* Medical Report dated December 3, 2018; *id.* at 138. The Medical Report states: Patient "still complains episodes of tinnitus. On examination, he is noted with intact tympanic membrane. He was seen by ENT and advised for [s]peech and pure tone."

112 *Id.* at 271.

113 *Id.* at 35.

114 *Blue Manila, Inc. v. Jamias*, G.R. Nos. 230919 & 230932, January 20, 2021 [Per J. M. Lopez, Second Division].

115 *Magsaysay Mol Marine, Inc., supra* note 83, at 1081.

116 *Dionio, supra* note 99, at 422.

117 *Rollo*, pp. 20–21.

118 *Reyes, supra* note 95.

proper to apply the POEA-SEC and grant him instead permanent and total disability benefits in the amount of USD 60,000.00.

As regards the PVA's award of moral damages due to the supposed breach of obligation of the respondents, suffice it to state that respondents are not in bad faith since they did not refuse to provide medical care and treatment to Leonardo. While it may be argued that medical results that are not within the normal range should have required further medical evaluation and treatment, the employer's failure to do so only constitutes negligence,[119] but not malice or bad faith. Hence, Leonardo is not entitled to moral damages. However, since Leonardo was compelled to litigate to protect his rights, we sustain the PVA's award of attorney's fees of 10% of the total monetary award in accordance with Article 2208[120] of the Civil Code.[121]

Considering that respondents already paid the amount of USD 113,653.29 as full settlement of the judgment award of the PVA, as per the Manifestation filed before the CA on May 20, 2020,[122] Leonardo is ordered to refund to respondents the amount in excess of the USD 60,000.00 awarded to him as permanent and total disability benefits, as well as the PHP 50,000.00, representing moral damages.

ACCORDINGLY, the Petition for Review is **GRANTED**. The Decision dated October 19, 2020 and the Resolution dated February 18, 2021 of the Court of Appeals in CA-G.R. SP No. 164029 are **REVERSED**. The Decision dated September 27, 2019 of the Panel of Voluntary Arbitrators, which awarded total and permanent disability benefits to petitioner Leonardo L. Justo, is **REINSTATED with modification** in that the amount of permanent and total disability compensation is reduced to USD 60,000.00 as per the POEA-SEC. The award of PHP 50,000.00 representing moral damages is **DELETED** for lack of sufficient basis. The rest of the disposition remains.

Upon finality of this Decision, petitioner Leonardo L. Justo is ordered to immediately **REFUND** to respondents the amount in excess of the USD 60,000.00 awarded to him as permanent and total disability benefits, as well as the PHP 50,000.00 representing moral damages.

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119 *Mutia v. C.F. Sharp Crew MGT., Inc.*, G.R. No. 242928, June 27, 2022 [Per J. M. Lopez, Second Division] at 10. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

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

121 *See Chan v. Magsaysay Maritime Corp.*, G.R. No. 239055, March 11, 2020 [Per J. Lazaro-Javier, First Division].

122 *Rollo*, p. 33.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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 M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VII, Section 13 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.

ALEXANDER G. GESMUNDO
Chief Justice