



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RESTY S. CAAMPUED,
Petitioner,

G.R. No. 253756

Present:

- versus -

PERLAS-BERNABE, *SAJ.*, Chairperson,
LAZARO-JAVIER,
M. LOPEZ,
ROSARIO,
J. LOPEZ,* *JJ.*

**NEXT WAVE MARITIME
MANAGEMENT, INC., MTM
SHIP MANAGEMENT PTE.
LTD., and ARNOLD MARQUEZ,**
Respondents.

Promulgated:

MAY 12 2021

X-----X

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari*¹ seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 155268:

1. Decision² dated February 10, 2020, affirming the dismissal of the claim for total and permanent disability benefits of Resty S. Caampued (petitioner); and

* Designated as additional member per S.O. No. 2822 dated April 7, 2021.

¹ *Rollo*, pp. 11-47.

² Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Marlene B. Gonzales-Sison and Louis P. Acosta, *id.* at 82-95.

2. Resolution³ dated October 2, 2020, denying petitioner's motion for reconsideration.

Antecedents

On March 29, 2016, respondent Next Wave Maritime Management, Inc., for and on behalf of its principal, respondent MTM Ship Management Pte. Ltd., hired petitioner as Engine Fitter of its vessel "MV Red Cedar" for ten (10) months with a monthly salary of USD649.00.⁴

Prior to his deployment, petitioner underwent routine Pre-Employment Medical Examination (PEME), after which, he was declared fit for sea duties with prescribed medication for hypertension.⁵

Petitioner's responsibilities included strenuous physical activities such as: (a) fabrication and shaping of steel, aluminum, and other materials; (b) lifting of metals and materials for fabrication; (c) daily maintenance and repair of ship's engine, air compressor, and other auxiliary machinery on board; (d) setting up and operating manually controlled machines in skilled precision; (e) maintenance, repair and alteration of vessel machinery; (f) carrying and lifting heavy-duty tools and equipment during maintenance and repair; (g) alignment and securing holding fixtures, cutting tools, and other materials onto vessel machines; (h) assisting the second or third engineer in overhauling ship's engine; and (i) other all around strenuous duties as instructed by the supervisor. To carry out these duties, he had to stand for most of the day and constantly moved around.⁶

During the second week of May 2016, when petitioner was only two (2) months on board, the chief engineer tasked him to assist in the repair of the ship's generator. In the process, he was directed to pull the lining of the generator's piston. In a squatting position, he forcefully pulled the piston lining upward. Suddenly, he heard a clicking sound and felt something snap on his back. Shortly thereafter, he suffered mild pain on his lower back. When he reported it to his supervisor, he was given pain reliever and ordered to continue working. Days after, petitioner still suffered from severe low back pain. The chief engineer gave him some more pain reliever and advised him to take a rest until they arrived in Africa.⁷

In Africa, on June 1, 2016, petitioner was seen at the Welwitschia Hospital where he was diagnosed with "*lower back muscle spasm and*

³ *Id.* at 55-57.

⁴ *Id.* at 225, 230 and 282.

⁵ *Id.* at 225.

⁶ *Id.* at 225-226.

⁷ *Id.* at 226.

Thoracolumbar spondylodiscitis complicated by grade 2 L5-S1 spondylolisthesis; L5-S1 bilateral spondylolysis; L4-5 and L5-S1 intervertebral foraminal attenuation most likely the cause for sciatica.” His attending physician Dr. Blazic-Van Zyl opined that he may need to undergo surgical treatment and recommended his repatriation.⁸

Thus, on June 6, 2016, petitioner got medically repatriated. The following day, company-designated physician Dr. Natalio Alegre (Dr. Alegre) of St. Luke’s Medical Center evaluated him and ordered for an x-ray and Magnetic Resonance Imaging (MRI) of the lumbosacral spine. The x-ray showed the following findings:⁹

DEGENERATIVE DISK, T12-L1, L1-L2, L4-L5 and L5-S1
MILD COMPRESSION DEFORMITY, L2
HYPERTROPHIC OSSEOUS CHANGES
GRADE ONE ANTEROLISTHESIS, L5 OVER S1 WITH
SPONDYLOSIS

The MRI, on the other hand, revealed the following impressions:¹⁰

Left paravertebral soft tissue mass, L3-L4 with epidural extension, marrow infiltration and severe canal stenosis. This may present an infectious versus malignant process. Recommend biopsy.
Mild compression deformity, L3
Grade 1 spondylolisthesis, L4 over L5
Desiccated disks, L3-L4 and L4-L5

After a biopsy of his left paravertebral soft tissue mass, it was concluded that petitioner had chronic granulomatous inflammation with necrosis or spinal tuberculosis. According to Dr. Alegre, spinal tuberculosis is a disease which originates from primary complex or tuberculosis that had been acquired from childhood, which develops over time. Thus, spinal tuberculosis is not work-related. Such finding and conclusion was reflected in the Medical Report dated August 4, 2016.¹¹

Respondents averred that the nature of petitioner’s illness was properly explained to him. Since petitioner’s illness was found to be non-work-related, respondents stopped giving petitioner medical assistance.¹²

Petitioner, however, claimed that despite multiple lumbar spine injuries, respondents only addressed and evaluated the left paravertebral soft tissue mass at L3-L4. His other spinal injuries were not addressed, treated,

⁸ *Id.* at 226.

⁹ *Id.* at 227.

¹⁰ *Id.*

¹¹ *Id.* at 228, 231, 292, and 426.

¹² *Id.* at 231.

and assessed, despite his repeated request. He, therefore, questioned respondents' decision to stop giving his medical assistance. But respondents did not respond.¹³

At any rate, he continued to seek medical treatment for his other spinal injuries, which, according to petitioner, continued to cause him great pain. He underwent treatment at the Philippine General Hospital and personally shouldered all expenses. Due to money constraints, however, he eventually stopped seeking medical help and simply took a rest at home hoping that his condition would heal over time.¹⁴

Petitioner, however, continued to suffer from severe lower back pain. Consequently, in January 2017, he was forced to consult another orthopedic specialist, Dr. Renato A. Runas (Dr. Runas). After physical examination and review of his medical records, Dr. Runas opined that petitioner's back pain is most likely caused by the displacement of the L4 vertebra over the L5. Lifting heavy objects and prolonged sitting and standing may worsen the discomfort. As a result, petitioner would no longer be able to carry out his standard duties as seaman. In fact, he is no longer fit for sea duties in any capacity.¹⁵

Petitioner consequently sued respondents for total and permanent disability benefits. The parties failed to amicably settle during the conciliation and mediation conferences.¹⁶

Ruling of the Labor Arbiter

By Decision¹⁷ dated September 5, 2017, Labor Arbiter Thomas T. Que, Jr. (Labor Arbiter Que, Jr.) granted petitioner's claim for total and permanent disability benefits, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered finding Complainant entitled to total and permanent disability benefits of US\$60,000[.00] and sickness allowance of \$3,000[.00], plus moral and exemplary damages of P250,000.[00] each and attorney's fees equal to 10% of the total judgment awards. Correspondingly, all herein Respondents are made jointly and severally liable to pay the same to the Complainant.

All other claims are dismissed for lack of merit.

SO ORDERED.¹⁸

¹³ *Id.* at 227-228.

¹⁴ *Id.* at 228.

¹⁵ *Id.* at 228 and 423.

¹⁶ *Id.* at 224.

¹⁷ *Id.* at 224-245.

¹⁸ *Id.* at 245.

Labor Arbiter Que, Jr. noted the undisputed fact that prior to embarking respondents' vessel, petitioner did not show any signs of spinal tuberculosis. He only showed signs after he pulled the piston lining. His PEME even showed that he had no limitations or restrictions on fitness or any back injury. It can be deduced, then, that the cause of petitioner's illness was his strenuous work on board respondents' vessel. In any event, the touchstone of liability is not certainty, but mere possibility of work-relation.¹⁹

More, Labor Arbiter Que, Jr. ruled that respondents failed to address all of petitioner's injuries. It noted that respondents altogether ignored petitioner's spinal spondylolisthesis. Respondent failed to assess and give a definite disability grading as regards this illness. By operation of law, therefore, this disability is considered total and permanent.²⁰

Ruling of the National Labor Relations Commission (NLRC)

On appeal, NLRC reversed through its Decision²¹ dated December 18, 2017, to wit:

WHEREFORE, [premises] considered, respondents' Appeal is **GRANTED in PART**. The Decision of Labor Arbiter Thomas T. Que, Jr. dated September 5, 2017 is hereby **REVERSED and SET ASIDE**. The complaint for permanent disability compensation is **DISMISSED** for lack of merit. However, respondents Next Wave Maritime Management and/or Arnold Marquez and/or MTM Ship Management are ordered to pay complainant, jointly and severally, the Philippine Peso equivalent at the time of payment of US\$1,298.00 by way of sickness wages.

SO ORDERED.²²

The NLRC held that petitioner failed to present any substantial evidence to establish his claim that he sustained his spinal injuries because of his work aboard respondents' vessel. There was even no record that he indeed suffered back pain after pulling the piston lining of the ship's generator. Neither the attending physician in Africa nor the company-designated physician said anything about the alleged incident involving the piston lining. More, per the clinical discharge summary issued by St. Luke's Medical Center, petitioner had history of low back pain as early as January 2016. Thus, petitioner's back pain was a pre-existing condition. For concealing this condition, petitioner is disqualified for any compensation

¹⁹ *Id.* at 233-241.

²⁰ *Id.* at 241-243.

²¹ Penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Mercedes R. Posada-Lacap, *id.* at 190-201.

²² *Id.* at 200.

under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).²³

Nevertheless, it affirmed petitioner's entitlement to sickness wages reckoned from his repatriation on June 6, 2016 to August 4, 2016 when his condition was declared as not work-related.

In its Resolution²⁴ dated January 29, 2018, the NLRC denied petitioner's motion for reconsideration.²⁵

The Court of Appeals' Ruling

In its assailed Decision²⁶ dated February 10, 2020, the Court of Appeals affirmed. It held that petitioner failed to prove a reasonable connection between his work as an engine fitter and his spinal tuberculosis. Aside from his bare allegations, no competent and independent evidence was proffered to corroborate his claim. Too, as between the medical findings and conclusions of Dr. Alegre and Dr. Runas, the former must prevail as the person who monitored petitioner's condition. The declaration of Dr. Runas that petitioner was unfit to serve as a seaman in any capacity was primarily anchored on petitioner's narrative.²⁷

The Court of Appeals gave credence to the common opinion of Dr. Alegre and Dr. Runas that spinal tuberculosis originates from primary complex that travels through the spine in its dormant phase and gradually develops. Given petitioner's short service with respondents, there is basis in Dr. Alegre's findings that the infection was already existing even prior to petitioner's deployment aboard respondents' vessel. Too, as correctly noted by the NLRC, petitioner had a history of back pain as early as January 2016.²⁸

Through its assailed Resolution²⁹ dated October 2, 2020, the Court of Appeals denied petitioner's motion for reconsideration.³⁰

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

²³ *Id.* at 198 and 422.

²⁴ *Id.* at 170-173.

²⁵ *Id.* at 174-188.

²⁶ *Id.* at 82-95.

²⁷ *Id.* at 89-91.

²⁸ *Id.* at 91-93.

²⁹ *Id.* at 55-57.

³⁰ *Id.* at 65-78.

*Petitioner's Position*³¹

Petitioner asserts that he is entitled to total and permanent disability benefits. He alleges that aside from the report saying that his spinal tuberculosis was not work-related, no final and definite medical assessment was issued, hence, by operation of law, his illness is already considered total and permanent.³²

Too, it is undeniable that prior to boarding respondents' vessel, he was declared fit to work. He had no history of spine conditions. It is but logical to conclude, then, that his spinal injuries were sustained, or at least aggravated, by his strenuous work on board. Settled is the rule that mere probability and not the ultimate degree of certainty is the touchstone or test of proof in compensation proceedings.³³

The lack of specific record on the ship's logbook as regards the incident does not preclude his claims. No less than this Court ruled in past cases that the absence of any accident report does not by itself constitute competent evidence that no accident has occurred. In any case, respondents did not deny the incident that happened.³⁴

Further, Dr. Alegre and Dr. Edgardo Antonio Del Rosario (Dr. Del Rosario), being both general surgeons, have no specialized knowledge on his condition. Their assessment, therefore, is inconclusive.³⁵

*Respondents' Position*³⁶

In their Comment dated March 12, 2021, private respondents maintain that petitioner cannot claim disability benefits. They emphasize that petitioner was diagnosed with tuberculosis of the spine which is different from pulmonary tuberculosis. Petitioner's disease is a reactivation of a latent tuberculosis infection from childhood, thus, is not work-related. The illness being not work-related, the same is not compensable.³⁷ Too, there was no proof that petitioner sustained his lower back concerns while he was working on board respondents' vessel. To be sure, petitioner did not present any accident report which would support his claim of the events allegedly leading to his spinal disease.³⁸ More, despite his illness not being work-related, the company even accorded him three (3) months treatment and paid him sickness allowance during that period. They, therefore, should not be made to pay more than what is legally due petitioner.³⁹

³¹ See Petition for Review on *Certiorari* dated November 17, 2020, *id.* at 11-46.

³² *Id.* at 23-27.

³³ *Id.* at 31-34.

³⁴ *Id.* at 35.

³⁵ *Id.* at 39.

³⁶ *Id.* at 475-485.

³⁷ *Id.* at 475-476.

³⁸ *Id.* at 479-480.

³⁹ *Id.* at 480-481.

Issues

1. Is petitioner guilty of material concealment of a previous medical condition?
2. Is petitioner entitled to total and permanent disability benefits?

Ruling

To begin with, not being a trier of facts, it is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that the factual findings of the Court of Appeals are conclusive and binding on this Court. By way of exception though, the Court may proceed to probe and resolve factual issues where, as in this case, the factual findings of the Court of Appeals and NLRC are contrary to the findings of the labor arbiter.⁴⁰

The employment of seafarers is governed by the contracts they sign at the time of their engagement. So long as the stipulations in said contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.⁴¹ Petitioner's employment then is governed by the contract he executed with respondents on March 29, 2016 and the POEA-SEC.

First Issue

No material concealment

The Court of Appeals affirmed the NLRC's finding that petitioner's back pain was allegedly already existing as early as January 2016; and that petitioner purportedly did not disclose his back pain history which supposedly amounted to material concealment of a pre-existing illness. Both the Court of Appeals and the NLRC thus concluded that petitioner is disqualified from claiming any compensation or benefits under the POEA-SEC.

We do not agree.

Pursuant to the 2010 POEA-SEC, an illness shall be ***considered as pre-existing*** if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the **advice of a medical doctor on treatment** was given for such continuing illness or condition; or (b) the seafarer had been **diagnosed and has knowledge** of such illness or

⁴⁰ See *Status Maritime Corporation v. Sps. Delalamon*, 740 Phil. 175, 189 (2014).

⁴¹ *C.F Sharp Crew Management, Inc. v Legal Heirs of the Godofredo Repiso*, 780 Phil. 645, 666 (2016).

condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.⁴² Fraudulent misrepresentation means that a person not only failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. In fine, the falsity must be coupled with intent to deceive and to profit from that deception.⁴³

On this score, respondents harp on the following entry in the Discharge Report dated July 25, 2016⁴⁴ issued by St. Luke's Medical Center, viz.: petitioner "*has a history of low back pain, PS 7/10, with no consult done. He self-medicated with pain reliever. Seven months prior, there was persistence of symptoms, which prompted consult where MRI done showed soft rumor mass.*" According to respondents, petitioner concealed "his history of low back pain" from them, hence, the latter cannot claim any compensation or benefits under the 2010 POEA-SEC for disability benefits.

But this conclusion does not find support in the records. On its face, the certification itself does not indicate how this conclusion was drawn – did petitioner himself admit to the attending doctor that he had a "history of low back pain" and had self-medicated with pain relievers? And did the attending doctors have supporting records in his possession which he used in drawing this conclusion? If so, what were these records? These questions are begging to be answered but the records do not provide any answers at all.

What the records actually reveal is that petitioner passed the PEME prior to boarding respondents' vessel and was in fact declared fit to work by the company-designated physician.⁴⁵ Also, prior to boarding respondents' vessel, petitioner had no impediment or restrictions in his actions due to joint or muscle pain in any part of his body. It was only after the incident on board involving the piston lining when he started to exhibit limited trunk motion due to pain. And when he subsequently got examined by Dr. Runas, the latter keenly noted:

At present, Seaman Caampued is still having persistent pain on the lower back. Pain is associated with numbness at the lateral aspect of the left leg which worsens affecting the thigh, gluteal area and lower back during prolonged standing and walking. Pain is very intense in the morning and has a very hard time standing up.

On physical examination, forward and backward trunk motion is limited because of pain. There is paraspinal muscle tenderness and spasm. No gibbus noted. SLR is equivocal on the right. Tight hamstring muscle is also noted on the [sic] both lower extremities. He has difficulty standing from a sitting position. He is ambulatory with a slight limp and walks with a slow pace.⁴⁶

⁴² *Philsynergy Maritime, Inc. v. Gallano*, 832 Phil. 922, 937 (2018).

⁴³ *Manansala v. Marlow Navigation Phils., Inc.*, 817 Phil. 84, 98 (2017).

⁴⁴ *Rollo*, p. 422.

⁴⁵ *Id.* at 414.

⁴⁶ *Id.* at 301-302.

Verily, as between the unsubstantiated certification on petitioner's so called undisclosed history of a pre-existing illness cannot prevail over the ample evidence on record that: a) petitioner was in fact found to be fit to work and had no impediment or restrictions in his actions due to joint or muscle pain in any part of his body when he boarded respondents' vessel; b) it was only after the incident on board involving the piston lining that he started to exhibit limited trunk motion due to pain; and c) Dr. Runas noted that when he examined petitioner after repatriation, the latter still had persistent pain on the lower back and had difficulty in his movements.

In any event, even assuming that petitioner had a pre-existing back pain, there is no showing that he "*deliberately concealed*" his condition for a malicious purpose. It was not shown either that he had the "*intent to deceive*" and to "*profit from that deception.*" Consequently, petitioner cannot be considered guilty of concealment as to disqualify him from claiming disability benefits.

Second Issue

Entitlement to total and permanent disability benefits

The POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time petitioner was employed in 2016, sets the procedure for disability claims, *viz.*:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The

period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

On compensable diseases, the 2010 POEA-SEC states:

SECTION 32 – A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

To reiterate, prior to assuming his duties as Engine Fitter aboard respondents' vessel in March 2016, petitioner was declared fit to work after PEME with the company-designated physician. Petitioner showed no signs of any spinal injuries before he boarded the vessel. His back pain and limited lumbar movement started only after he forcefully pulled the piston lining of the ship's generator. And these symptoms persisted way beyond the time he got medically repatriated. Considering that petitioner was asymptomatic prior to boarding and that his symptoms began to manifest only after that particular incident on board and persisted way beyond his

Medical repatriation, it is reasonable to claim a causal relationship between petitioner's illness and his work as Engine Fitter of respondents' vessel. In *Magat v. Interorient Maritime Enterprises, Inc.*⁴⁷ the Court held that Magat was entitled to permanent disability benefits when after passing his PEME, he developed heart ailment, thus:

The above findings of the Labor Arbiter and the NLRC clearly show how petitioner acquired or developed his illness during the term of his contract. The CA reversed the NLRC decision by ruling that nothing in the records, documentation or medical report, show that petitioner contracted his illness aboard M/T North Star, however, despite such, the fact that petitioner was able to pass his PEME without any finding that he had a pre-existing heart ailment before boarding the vessel and later on finding, after the termination of his contract that he has acquired the said heart ailment, one can conclude that such illness developed while he was on board the same vessel. The work assigned to the petitioner (*i.e.*, painting the ship's pump room), poor diet, advanced age, the stressful nature of his employment, and repeated hiring of his services by respondents, would all lead to the conclusion that the work of petitioner as Able Seaman caused or contributed even to a small degree to the development or aggravation of complainant's heart disease. In determining whether a disease is compensable, it is enough that there exists a reasonable work connection. It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty is the touchstone.

Further, we note the apt observation of Labor Arbiter Que, Jr., which respondents have not refuted, that aside from spinal tuberculosis, petitioner also suffers from multiple spinal injuries, more particularly, degenerative disc and spondylolisthesis. Petitioner's degenerative disc is supported by petitioner's initial x-ray which showed the following impressions:⁴⁸

Narrowed disk spaces are appreciated at T12-L1, L1-L2 and L4-L5 as well as L5-S1.

Anterior wedging deformity is observed at L2.

x x x x

There is break / irregularity in the posterior element of L5. x x x

Hypertrophic changes are exhibited in the lumbar vertebrae.

x x x x

There is anterior displacement of L5 over S1 even on flexion and extension views.

x x x x

⁴⁷ 829 Phil. 570, 583 (2018)

⁴⁸ *Rollo*, pp. 418-419.

IMPRESSION

DEGENERATIVE DISK, T12-L1, L1-L2, L4-L5 and L5-S1
 MILD COMPRESSION DEFORMITY, L2
 HYPERTROPHIC OSSEOUS CHANGES
 GRADE ONE ANTEROLISTHESIS, L5 OVER S1 WITH
 SPONDYLOLYSIS

Thus, the first medical report issued by Dr. Alegre clearly showed the following assessment: *Degenerative Disc Disease, T12 to S1 and Compression Deformity, L2.*⁴⁹

Petitioner's MRI, on the other hand, revealed the following impressions:⁵⁰

Left paravertebral soft tissue mass, L3-L4 with epidural extension, marrow infiltration and severe canal stenosis. This may represent an infectious versus malignant process. Recommend biopsy.
 Mild compression deformity, L3
 Grade 1 spondylolisthesis, L4 over L5
 Desiccated disks, L3-L4 and L4-L5

Consequently, Dr. Alegre's second medical report reflects the following assessment:⁵¹

Low Back Pain secondary to Spondylolisthesis L5S1, Grade 1
 Soft Tissue Mass L3 with Extension into Epidural Space

In sum, petitioner suffered from at least three (3) spinal conditions, *i.e.*, degenerative disc, spondylolisthesis, and spinal tuberculosis. For purposes of determining whether petitioner is entitled to total and permanent disability benefits, we must take into account all these conditions.

Degenerative disc and spondylolisthesis

In *Chan v. Magsaysay Corporation*,⁵² the Court reiterated the steps that must be done in disability compensation proceedings, *viz.*:

1. The company-designated physician **must issue a final medical assessment** on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

⁴⁹ *Id.* at 286.

⁵⁰ *Id.* at 421.

⁵¹ *Id.* at 287.

⁵² G.R. No. 239055, March 11, 2020, citing *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 363 (2015).

2. **If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;**
3. If the company-designated physician fails to give his assessment within the period of 120 days **with a sufficient justification** (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be **extended to 240 days**. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. **If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.** (Emphasis supplied)

Here, despite the findings that petitioner has degenerative disc and spondylolisthesis, respondents only treated and based their findings of non-compensability on petitioner's spinal tuberculosis. Notably, petitioner repeatedly asked that respondents likewise get him treated and medically assessed for his degenerative disc and spondylolisthesis. But respondents simply ignored his pleas. As a result, petitioner's degenerative disc and spondylolisthesis remained untreated and unresolved. Consequently, no medical assessment and certificate were issued to him for these conditions. On this score, the Court's pronouncement in *Ampo-on v. Reinier Pacific International Shipping, Inc.*⁵³ is *apropos*:

The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. As case law holds, **a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.**

Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent. (Emphasis supplied)

In sum, without a valid final and definitive assessment from the company-designated doctors within the mandatory 120/240-day period, as in

⁵³ G.R. No. 240614, June 10, 2019.

this case, the law already steps in to consider a seafarer's disability as total and permanent.⁵⁴

Further, spinal disc degeneration/desiccation or osteoarthritis is a compensable disease under the POEA-SEC. The Court explained in *Centennial Transmarine, Inc. v. Quiambao*⁵⁵ that degenerative disc disease is a spinal condition caused by the breakdown of the intervertebral discs which results in the loss of flexibility and ability to cushion the spine. When discs degenerate, the vertebral bodies become closer together and this increased bone on bone friction causes the wearing away of protective cartilage and results in the condition known as osteoarthritis. The degenerating discs place excessive stress on the joints of the spine and the supporting ligaments, which, overtime, can lead to the formation of osteoarthritis. Osteoarthritis is a stage of degenerative disc disease. Spondylosis, on the other hand, is a term used to describe osteoarthritis of the spine.

Under Section 32-A (21) of the 2010 POEA-SEC, osteoarthritis is expressly considered as an occupational disease when contracted in any occupation involving any of the following: (a) joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics; (b) minor or major injuries to the joint; (c) excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities; (d) extreme temperature changes (humidity, heat and cold exposures); and (e) faulty work posture or use of vibratory tools.

As Engine Fitter, petitioner was constantly exposed to strenuous work. His responsibilities uncontestedly included several strenuous physical activities such as: (a) fabrication and shaping of steel, aluminum, and other materials; (b) lifting of metals and materials for fabrication; (c) setting up and operating manually controlled machines in skilled precision; (d) carrying and lifting heavy-duty tools and equipment during maintenance and repair; and (e) other all around strenuous duties as instructed by supervisor. To carry out these duties, he had to stand for most of the day and constantly moved around.⁵⁶ Such strenuous activities could have led to or at least aggravated petitioner's condition, thus making it a compensable work-related illness. In *Talaroc v. Arpaphil Shipping Corporation*,⁵⁷ the Court ordained:

In similar vein, the Court finds that the NLRC correctly ruled that petitioner's illnesses were work-related.

As a rule, a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. Under the 2010 POEA-SEC, a "work-related illness" is defined as "any

⁵⁴ See *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.

⁵⁵ 763 Phil. 411, 420-421 (2015).

⁵⁶ *Rollo*, pp. 225-226.

⁵⁷ 817 Phil. 598, 615-616 (2017).

sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied.” Corollarily, Section 20 (A) (4) thereof further provides that “[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.”

Records reveal that petitioner’s back pain—generalized disc bulge and disc protrusion, non-listed illnesses – occurred only while he was on board the vessel. **While said illness was claimed to be degenerative in nature, the company doctor herself acknowledged that it may be aggravated or precipitated by heavy work or lifting/pushing or pulling of heavy objects, a manual task basically demanded from a seafarer. Since there was no proof to show that these activities were not performed by petitioner while he was on board or were not part of his duties while the ship was at berth as advanced by respondents, it can be safely concluded that the arduous nature of his job may have caused or at least aggravated his condition more so since he was declared fit to work prior to his deployment, hence, work-related.** Jurisprudence provides that “[p]robability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information,” as in this case. (Emphasis supplied)

Applying *Talaroc* to the present case, petitioner’s claim for total and permanent disability benefits should be granted.

Spinal tuberculosis

In any event, respondents continue to harp on the findings of Dr. Alegre⁵⁸ and Dr. Del Rosario⁵⁹ that petitioner’s other illness, known as spinal tuberculosis, originates from previous infection in the lungs which was likely acquired during childhood. It becomes dormant and reactivates later in life with no known cause. Respondents conclude, therefore, that petitioner’s illness was not work-related but a disease previously contracted.

Even assuming, however, that petitioner’s condition was pre-existing, this does not negate the declaration of such illness as work-related. The Court, in *Corcoro, Jr. v. Magsaysay Mol Marine, Inc.*⁶⁰ explained that when it is shown that the seafarer’s work may have contributed to or aggravated any pre-existing disease, the illness shall be compensable, *viz.*:

We are unconvinced by MMMI’s claim that Alfredo’s illness is not work-related. The company anchors its position on the “not work related” assessment of the company-designated physician and the fact that Alfredo suffers from a pre-existing coronary hypertension. While Alfredo has a pre[-]existing illness, such does not prove that his working condition did not aggravate the illness. It is settled that when it is shown that the seafarer’s work may have contributed to the establishment or, **at the**

⁵⁸ *Rollo*, pp. 294-295.

⁵⁹ *Id.* at 296-297.

⁶⁰ G.R. No. 226779, August 24, 2020.

very least, aggravation of any pre-existing disease, the condition/illness suffered by the seafarer shall be compensable. Here, Alfredo's tasks as Messman required physical labor. He explained that he performed a wide variety of responsibilities from cleaning in the vessel to lifting heavy loads as a porter. His work definitely produced stress and strain normally resulting in the wear and tear of the body. As his coronary hypertension was declared by the company-designated physicians as "cleared" in the PEME, it is highly probable that the strain of Alfredo's work aggravated his pre-existing condition that caused his heart attack episodes on board the vessel. We have held that "only reasonable proof of work-connection and not direct causal relation is required to establish compensability." Aside from the fact that Alfredo's condition is listed as an occupational disease, the undisputed fact that his pre-existing condition is controlled prior to deployment, but he later suffered episodes of heart attack on board the vessel, reasonably establish the work-relatedness of his illness.

More, as with petitioner's degenerative disc and spondylolisthesis, respondents similarly failed to issue a final and definitive medical assessment on petitioner's spinal tuberculosis. As borne out by the records, respondents stopped paying sickness allowance to petitioner and denied his claim for total and permanent disability benefits based alone on the medical report issued by Dr. Alegre which declared petitioner's spinal tuberculosis to be not work related.⁶¹ Notably, however, this medical report falls short of being final and definite.

In *Gere v. Anglo-Eastern Crew Management Phils., Inc.*⁶² the Court decreed 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 the seafarer, the diagnosis and prognosis, if needed, and, of course, the seafarer's disability grading must be fully explained to him/her by no less than the company-designated physician.

Here, Dr. Alegre only issued a medical report addressed to Crew Operations Manager Captain Arnold Marquez. As in *Gere*, this medical report cannot be regarded as anything more than an internal communication between the company-designated physician and respondent Next Wave. Further, petitioner was not even furnished a copy of said medical report. Respondents did not deny this. They simply posited that the assessment was explained to petitioner.

In other words, no final and definitive assessment was issued regarding any of petitioner's illnesses. Again, without a valid final and

⁶¹ *Rollo*, p. 292.

⁶² 830 Phil. 695, 706 (2018).

definitive assessment from the company-designated physician, petitioner's temporary and total disability, by operation of law, became permanent and total.⁶³

All told, we hold that the Court of Appeals committed reversible error when it affirmed the erroneous, nay, baseless findings and conclusions of the NLRC and denied petitioner's claim for total and permanent disability benefits.

Considering that petitioner was impelled to litigate to protect his rights and interests, he is entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award. The claims for moral and exemplary damages, however, is denied for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims. This is in accord with the Court's pronouncement in *Pastor v. Bibby Shipping Philippines, Inc.*⁶⁴

ACCORDINGLY, the petition is **GRANTED**. The Decision dated February 10, 2020 and Resolution dated October 2, 2020 of the Court of Appeals in CA-G.R. SP No. 155268 are **REVERSED and SET ASIDE**. Respondents Next Wave Maritime Management, Inc., MTM Ship Management Pte. Ltd., and Arnold Marquez, are ordered to jointly and severally **PAY** petitioner Resty S. Caampued the following:

1. US\$60,000.00 or its Philippine Peso equivalent at the time of payment for total and permanent disability rating in accordance with the 2010 POEA-SEC;
2. Ten percent (10%) of the monetary award as attorney's fees; and
3. Six percent (6%) legal interest *per annum* on the total monetary award from finality of this decision until fully paid.⁶⁵

SO ORDERED.

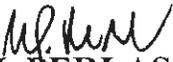

AMY C. LAZARO-JAVIER
Associate Justice

⁶³ *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 407 (2018).

⁶⁴ See G.R. No. 238842, November 19, 2018.

⁶⁵ See *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, G.R. No. 225899, July 10, 2019.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


MARIO Y. LOPEZ
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson – Second Division



CERTIFICATION

Pursuant to Section 13, Article VII 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

