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TIME: _____

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE TRANSMARINE
CARRIERS, INC. AND/OR
SEASPAN CREW
MANAGEMENT LTD. AND/OR
CARLOS SALINAS,

Petitioners,

G.R. No. 234365

Present:

GESMUNDO, C.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

ALLAN N. TENA-E,

Respondent.

Promulgated:

JUL 06 2022 *mtb/mbk*

X-----X

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ seeks to annul the April 4, 2017 Decision² and the September 14, 2017 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 147227, which affirmed the May 30, 2016 Decision⁴ and the June 30, 2016 Resolution⁵ of the National Labor Relations Commission (NLRC) in NLRC LAC OFW (M) 03-000212-16.

¹ *Rollo*, pp. 33-53.

² *Id.* at 63-75. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Renato C. Francisco.

³ *Id.* at 77-79. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Renato C. Francisco.

⁴ *CA rollo*, pp. 46-66. Penned by Commissioner Leonard Vinz O. Ignacio and concurred in by Presiding Commissioner Grace M. Venus and Commissioner Bernardino B. Julve.

⁵ *Id.* at 39-44. Penned by Commissioner Leonard Vinz O. Ignacio and concurred in by Presiding Commissioner Grace M. Venus and Commissioner Bernardino B. Julve.

The Factual Antecedents

On July 8, 2014, petitioner Philippine Transmarine Carriers, Inc. (PTCI) hired respondent Allan N. Tena-e (Allan) as a seafarer for and in behalf of its foreign principal, Seaspan Crew Management Limited (Seaspan), under a nine-month contract with a monthly salary of US\$575.00.⁶ After undergoing his pre-employment medical examination, Allan boarded the vessel M/V Mol Efficiency.

On October 5, 2014, while on cargo-watch duty, Allan figured in an accident when a turnbuckle fell on his right shoulder. Upon feeling extreme pain and swelling on his shoulder, he reported the incident to the ship captain, and was referred to the medical staff for treatment. In the October 11, 2014 Medical Report,⁷ Allan was declared unfit for sea duty due to his displaced right clavicular fracture. The following day, he was taken to a hospital in Panama where the attending physician gave him a similar diagnosis.⁸

On October 20, 2014, Allan was medically repatriated to the Philippines. The following day, he was immediately referred to ShiptoShore Medical Assist (ShiptoShore) and St. Luke's Medical Center (St. Luke's) for examination, management, and treatment. In a Medical Report⁹ dated October 22, 2014, company-designated doctors John Ericson T. Sañez (Dr. Sañez) and Marilar F. De Guzman (Dr. De Guzman), diagnosed Allan with a fractured and displaced right clavicle. Thereafter, Allan was placed under the care of an Orthopedic Shoulder Specialist. In a Medical Report dated October 23, 2014,¹⁰ Allan was advised to continue wearing a clavicular strap for two to three months and do home exercises, with formal rehabilitation to begin on the third month. Notwithstanding the treatment, Allan continued to feel pain, discomfort, swelling, and limited range of motion on his right collarbone. To address this, he was given a treatment plan consisting of home exercises, regular x-rays, and therapy sessions.

From November 2014 to March 2015, Allan continued with his therapy and rehabilitation as supervised by the company-designated doctors, who issued medical reports on the following dates:

1. November 17, 2014¹¹
2. December 2, 2014¹²

⁶ Id. at 108.

⁷ Id. at 133.

⁸ Id. at 196.

⁹ Id. at 134.

¹⁰ Id. at 136-137.

¹¹ Id. at 136-137.

¹² Id. at 140-141.

3. January 12, 2015¹³
4. February 5, 2015¹⁴
5. March 16, 2015¹⁵

In the Medical Report dated March 16, 2015,¹⁶ Dr. Sañez and Dr. De Guzman made an interim assessment of Disability Grade 12 with the following findings:

At present, patient started to engage in his regular activities and simulate his work on board as an able-bodied seaman. However, patient still complains of pain graded 5/10 on certain movements of the right shoulder and prolonged carrying of loads, which spontaneously resolves with rest.

x x x x

As previously advised, projected return to full load capacity is anywhere from 4 to 6 months post trauma event.

Patient will be further observed as he was advised to continue with his usual activities while using the prescribed medicated patch.

INTERIM DISABILITY GRADE: 12 – collarbone fracture, but able to raise arm above shoulder level

Impression:

Fracture, closed, complete, displaced, middle third of clavicle, radiographically healed.

The patient's medical condition is work-related.

Plan:

For re-evaluation with Orthopedic-Shoulder specialist tentative 13 April 2015.¹⁷
(Emphasis in the original)

On March 26, 2015, Allan, through counsel, sent a letter¹⁸ to Dr. Sañez asking if further treatment was still needed beyond the 120-day period after his repatriation, considering that he was still under persistent pain. He requested a response from ShiptoShore before April 7, 2015, but his query was left unanswered.¹⁹

¹³ Id. at 142-143.

¹⁴ Id. at 144-145.

¹⁵ Id. at 146-147.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 205.

¹⁹ Id.

On April 18, 2015, Allan consulted his physician of choice and Orthopedic Specialist, Dr. Rogelio Catapang, Jr. (Dr. Catapang Jr.). In a Medical Report²⁰ dated April 18, 2015, Dr. Catapang Jr. declared Allan unfit for sea duty. The next day, Allan also consulted Rehabilitation Medicine Expert, Dr. Francis N. Pimentel (Dr. Pimentel), who similarly declared him unfit for sea duty with permanent disability.²¹

On April 20, 2015, Allan initiated Single-Entry Approach (SEnA) proceedings before the National Capital Region (NCR) Arbitration Branch of the NLRC to claim permanent and total disability benefits.²² Subsequently, on July 24, 2015, Allan filed a Complaint²³ against herein petitioners and Carlos Salinas (Salinas), as representative of PTCI, for disability benefits, unpaid sick wages, reimbursement for transportation and medical expenses, as well as damages with attorney's fees. Both parties appeared during the preliminary conference where Allan moved for the appointment of a third doctor. However, the Labor Arbiter (LA) denied the request.²⁴

After failing to settle during the preliminary mandatory conference, the parties submitted their respective position papers. In petitioners' Position Paper,²⁵ they averred that Allan abandoned his treatment by not showing up on the date of his follow up check-up. In effect, they claimed that Allan forfeited his right to claim for disability benefits pursuant to Section 20 (a), no. 3, par. (3) of the Philippine Overseas Employment Administration-Standard Employment Central (POEA-SEC). They also argued that Allan's complaint was prematurely filed, considering that the latter was still undergoing treatment, and no final disability assessment by the company-designated physician has been issued.²⁶

Petitioners alleged that Allan can no longer claim for sickness allowance since they already paid him ₱99,686.69 for the period of October 13, 2014 – February 9, 2015.²⁷ In the same vein, they contended that Allan is not entitled to damages and attorney's fees since they constantly dealt with respondent in good faith.²⁸

Additionally, petitioners argued that Salinas was wrongly impleaded in the case. As a mere officer of PTCI, he has a separate and distinct personality from the corporation.²⁹

²⁰ Id. at 206-207.

²¹ Id. at 208-211.

²² Id. at 148-149.

²³ Id. at 106-107.

²⁴ *Rollo*, p. 67.

²⁵ *CA rollo*, pp. 110-127.

²⁶ Id. at 115-122.

²⁷ Id. at 150-156.

²⁸ Id. at 123-124.

²⁹ Id. at 125-126.

In Allan's Position Paper,³⁰ he maintained that he is entitled to total and permanent disability benefits. He argued that 181 days have lapsed since his repatriation and PTCI still failed to issue a final assessment of his disability. Thus, his disability became total and permanent after the lapse of 120 days considering that he is unable to engage in gainful employment.³¹

As to his claim for sickness allowance, Allan admitted that PTCI already partially paid him. Nevertheless, he averred that there is still a remaining balance left to be paid.³²

Lastly, Allan alleged that PTCI fraudulently and wantonly disregarded its duty which forced him to litigate his claims. As such, he is entitled to damages and attorney's fees.³³

Ruling of the Labor Arbiter

In the December 28, 2015 Decision,³⁴ the LA ruled in favor of Allan. Contrary to petitioners' claim, Allan did not abandon his treatment since he was not informed whether his follow-up check-up on April 13, 2015 would push through. Allan's March 26, 2015 letter showed his willingness to be further treated and evaluated. The absence of a final assessment by the company-designated physician after the lapse of the 240-day period from repatriation entitled Allan to total and permanent disability benefits by operation of law.

On the other hand, Allan's claim for damages was denied for lack of factual basis. Nevertheless, attorney's fees were awarded in favor of Allan since he was compelled to hire the services of a counsel to protect his right.

The dispositive portion of the Arbiter's Decision reads:

ACCORDINGLY, the respondents Philippine Transmarine Carriers Inc. and Seaspam Crew Link [are] hereby ordered to pay complainant in solidum the amount of USD60,000.00 representing his disability benefit and; ten percent (10%) representing attorney's fees.

SO ORDERED.³⁵

Aggrieved, petitioners appealed³⁶ to the NLRC.

³⁰ Id. at 158-192.

³¹ Id. at 175-188.

³² Id. at 189.

³³ Id. at 189-191.

³⁴ Id. at 67-80; penned by Labor Arbiter Michelle P. Pagtalunan.

³⁵ Id. at 80.

³⁶ Id. at 342-364.

Ruling of the National Labor Relations Commission

In its May 30, 2016 Decision,³⁷ the NLRC affirmed the LA's Decision. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the Appeal dated 18 February 2016 is **DENIED**. The assailed Decision dated 28 December 2015 is **AFFIRMED**.

SO ORDERED.³⁸

Discontented, petitioners elevated the matter to the CA.³⁹

Ruling of the Court of Appeals

In its April 4, 2017 Decision,⁴⁰ the CA denied the appeal. It agreed with the findings of the lower tribunals that Allan did not abandon his treatment. It held that the use of the word "tentative" on the date of his follow-up check-up meant that the said check-up may or may not push through. As such, a prior confirmation was necessary. It noted that Allan even wrote a letter to confirm his further evaluation and treatment, which was left unanswered by the company-designated doctors.

Moreover, it found that Dr. Sañez failed to issue a final assessment within the 120/240-day period from the date Allan was repatriated. The interim disability rating of Grade 12 given by Dr. Sañez appears to have no conclusive findings supporting it since Allan was still undergoing evaluation and therapy when such disability rating was issued.

The *fallo* of the CA's Decision reads:

WHEREFORE, the foregoing considered, the Petition for *Certiorari* is **DENIED**. The Decision dated 30 May 2016 and Resolution dated 30 June 2016 of public respondent are **AFFIRMED**.

SO ORDERED.⁴¹

Petitioners filed a Motion for Reconsideration,⁴² which was later denied.⁴³

³⁷ Id. at 46-66.

³⁸ Id. at 66.

³⁹ Id. at 3-30.

⁴⁰ *Rollo*, pp. 63-75

⁴¹ Id. at 27.

⁴² Id. at 80-96.

⁴³ Id. at 77-79.

Hence, the present Petition for Review on *Certiorari*.⁴⁴ Petitioners maintain that Allan abandoned his treatment when he did not report to the medical facility on April 13, 2015 as scheduled. They opine that although the word “tentative” appeared on the March 16, 2015 Medical Report, it is more logical to assume that the appointment would push through rather than be postponed. They also contest the award of attorney’s fees in favor of Allan for lack of basis.

Issue

The issue for resolution is whether Allan is entitled to permanent total disability benefits.

Our Ruling

The petition is meritorious.

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties’ contracts, and by the medical findings. Section 20 (A) of the 2010 POEA-SEC,⁴⁵ which is the rule applicable to this case since Allan was employed in 2014, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract, to wit:

SEC. 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:

x x x x

2. x x x 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

⁴⁴ Id. at 33-53.

⁴⁵ AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS, POEA MEMORANDUM CIRCULAR NO. 010-10, October 26, 2010.

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)

In relation thereto, Section 2, Rule X of the Amended Rules on Employees' Compensation implementing Title II, Book IV of the Labor Code, provides:

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

In *Elburg Shipmanagement Phils., Inc. v. Quiogue*,⁴⁶ the rules governing claims for total and permanent disability benefits are summarized as follows:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules shall govern:

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;

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

⁴⁶ 765 Phil. 341 (2015).

diagnosis and treatment shall be extended to 240 days. The employer has the

4. burden to prove that the company-designated physician has sufficient justification to extend the period; and

5. 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.⁴⁷

In the case at bar, Allan was placed under the care of the company-designated doctors from October 2014 to March 2015. During this time, he underwent therapy and rehabilitation under the supervision of ShiptoShore's Orthopedic Shoulder Specialist. In fact, he had good callus formation and showed improvement from displaying a limited range of motion after his injury to showing full range motion during his January 2015 checkup.⁴⁸ By February, Allan was able to carry objects with his right upper extremity with level at one to two out of 10. He was scheduled for another re-evaluation with possible clearance on March 2, 2015. In the last Medical Report issued by the company-designated doctors dated March 16, 2015, Allan continued to show improvement but still continued to feel pain. Dr. Sañez reiterated that Allan's projected return to full load capacity would be four to six months from October. Dr. Sañez also gave Allan an interim assessment of "*Disability Grade 12 - collarbone fracture, but able to raise arm above shoulder level*" with a re-evaluation tentatively scheduled on April 13, 2015. It was also explicitly stated in the medical report that Allan will be "further observed as he was advised to continue with his usual activities while using the prescribed medicated patch." At this point, Allan's treatment already went beyond 120-day period, and the doctor's findings and schedule for re-evaluation clearly constitute a significant act that justified the extension of petitioner's treatment period to 240 days.⁴⁹

Notably, Dr. Sañez only issued an interim assessment, which is not the final and definitive assessment required under the law. A final and definitive disability assessment is required in order to truly reflect the extent of the illness of the seafarer, and his or her capacity to resume work as such. To be conclusive, the medical assessments or reports should be complete and definite to afford the appropriate disability benefits to seafarers.⁵⁰ However, We cannot fault PTCI for its company-designated physician's failure to issue a final and definitive disability assessment. Dr. Sañez had until June 17, 2015, or before the lapse of 240 days from repatriation, within which to issue his final assessment. However, Allan did not appear on the scheduled re-evaluation on April 13, 2015 making it impossible for Dr. Sañez to examine him.

⁴⁷ Id. at 362-363.

⁴⁸ CA rollo, p. 144.

⁴⁹ See *Pastor v. Bibby Shipping Philippines, Inc.*, 843 Phil. 503, 518 (2018).

⁵⁰ See *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 400 (2018).

As to Allan's contention that he wrote a letter through his counsel to confirm the need for continued treatment without receiving a reply from Dr. Sañez, We cannot take such fact against PTCI. Under Section 20 (A) of the 2010 POEA-SEC, it is the seafarer's duty to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, except when he is physically incapacitated to do so **and** he shall also regularly report 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.⁵¹ Here, Allan regularly appeared for his monthly check-ups from November 2014 to March 2015. It was only during his April 2015 schedule that he suddenly did not show up. Notably, in the last medical report issued, it was clearly stated that Allan was still under further observation as he was advised to continue his usual activities with the medical patch and scheduled for re-evaluation the following month. Thus, it behooves Allan to appear on his scheduled April 13, 2015 appointment as it is the seafarer's duty and burden to report to his regular check-ups. Here, he did not even attempt to appear on his scheduled check-up nor did he even exert any effort to call Dr. Sañez' office if he really wanted to find out if his check-up would push through. It has also not escaped this Court's mind that Allan's counsel wrote to Dr. Sañez on March 26, 2015 to confirm if further treatment was needed beyond the 120-day period, and **not to confirm if the April 13, 2015 schedule would push through.** To consider such letter as an act of confirming the April 13, 2015 appointment would be too speculative. Moreover, the 120-day period from Allan's repatriation fell on February 17, 2015. Nevertheless, Allan continued to show up during his check-up for the month of March as scheduled, which was already beyond the 120-day period. It is quite baffling why Allan had to engage the services of a counsel as early as March 26, 2015 to confirm if further treatment was needed when: (1) he was already continuing treatment beyond the 120-day period; (2) the 240-day period had not yet lapsed and he was informed that he still needed further evaluation; and (3) he had not yet sought the opinion of a physician of his own choice. Accordingly, this Court deems Allan's March 26, 2015 letter redundant because he has already been continuing treatment beyond the 120-day period. In any case, the last medical report issued clearly stated that he needed to be further observed and re-evaluated after using the prescribed medicated patch.

While the date written in the March 16, 2015 Medical Report had the word "tentative" written, it only meant that the date was not fixed, or still subject to change.⁵² However, the nomenclature is not at issue because whether or not the date was tentative or fixed, what is clear is that Allan still needed further

⁵¹ Section 20 (A) of the 2010 POEA-SEC.

⁵² Merriam-Webster Dictionary.

treatment. Thus, to the mind of this Court, April 13, 2015 was the date of Allan's re-evaluation, unless otherwise changed by Dr. Sañez. There being no change in the date communicated to Allan, he should have appeared during the date of his re-evaluation. To stress, it is the seafarer's responsibility to report to his regular check-ups.

The case of *Lerona v. Sea Power Shipping Enterprises, Inc.*⁵³ is instructive:

In *C.F. Sharp Crew Management, Inc. v. Orbeta*, We held that a seafarer commits medical abandonment when he fails to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability. Section 20 (D) of the 2000 POEA-SEC provides that "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties. x x x" **A seafarer is duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability rating by the company-designated physician.**

In this case, after undergoing several tests, petitioner was placed under observation. **Dr. Gonzales advised him to return for his medical clearance on October 23, 2009, or 71 days from his repatriation, but petitioner did not do so.** He argues that he could still feel the symptoms of his ailment despite having been cleared by respondents' cardiologist from coronary arterial disease on October 15, 2009. Hence, he was prompted to consult another doctor. However, while indeed a seafarer has the right to seek the opinion of other doctors under Section 20 (B) (3) of the 2000 POEA-SEC, this is on the presumption that the company-designated physician had already issued a certification on his fitness or disability and he finds this disagreeable. **As case law holds, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period.** In case the company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled. **When petitioner chose not to show up at the appointed date of consultation, effectively preventing Dr. Gonzales from making a fitness or disability assessment, he breached his duty under the 2000 POEA-SEC. Without any final assessment from the company-designated physician, petitioner's claim for permanent total disability benefits must fail.**⁵⁴ (Citations omitted, emphasis supplied)

In *New Filipino Maritime Agencies, Inc. v. Despabeladeras*,⁵⁵ We held:

⁵³ G.R. No. 210955, August 14, 2019.

⁵⁴ *Lerona v. Sea Power Shipping Enterprises, Inc.*, G.R. No. 210955, August 14, 2019.

⁵⁵ 747 Phil. 626, 640 (2014).

The CA even cited one of the instances enumerated in the case of *C.F. Sharp Crew Management, Inc. v. Taok (C.F. Sharp Crew Management)* when a seafarer may be allowed to pursue an action for permanent disability benefits. In the said case, the failure of the company-designated physician to issue a declaration as to a seafarer's fitness to engage in sea duty or disability even after the lapse of the 120-day period with no indication that further medical treatment would address his temporary total disability justified an extension of the period to 240 days. The citation, however, finds no application in this case, where the company-designated physician cannot be faulted for not issuing disability assessment or fit-to-work declaration. At that time, which was within the 240-day period, Michael was still undergoing treatment by the company doctors. The orthopedic surgeon noted that Michael's fracture was healing and there was greater probability of a fit for work declaration. After the lapse of 120 days, the treatment period was considered extended as Michael was advised to continue medical therapy to improve his condition to which he agreed. There was, thus, an indication that further therapy sessions would address his temporary disability. He was expected to return for his therapy session, but he failed to do so. Clearly, under the circumstances, the 240-day extension period was justified.

There being no assessment, Michael's condition cannot be considered a permanent total disability. Temporary total disability only becomes permanent when declared by the company physician within the period he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or permanent disability.⁵⁶

Based on the foregoing, Allan breached his duty by not showing up on his scheduled April 13, 2015 appointment thereby effectively preventing Dr. Sañez from making a final disability assessment. Since Allan was still undergoing treatment by the company doctor and has been showing signs of improvement, and was even asked to come back for possible clearance, there was an indication that further treatment would address his temporary disability. This Court emphasizes that a temporary total disability only becomes permanent if the company-designated physician declares it to be so within the 120-day period, or 240-day period, provided the extension was justified in the latter case, or after the lapse of such periods, and no declaration is made by the company-designated physician.⁵⁷ The mere lapse of the 120/240-day period does not automatically entitle a seafarer to total and permanent disability benefits.

In any case, as between the medical reports issued by the company-designated physicians, on one hand, and Allan's own physicians of choice, on the other, the former must prevail. As explained in *Philman Marine v. Cabanban*:⁵⁸

⁵⁶ *Id.*

⁵⁷ See *Santiago v. Pacbasin ShipManagement, Inc.*, 686 Phil. 255, 267 (2012).

⁵⁸ 715 Phil. 454 (2013).

In several cases, we held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability. In *Coastal Safeway Marine Services, Inc. v. Esguerra*, the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Ruben D. Andrada v. Agemar Manning Agency, Inc., et al.*, the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report x x x [outlining] the alleged findings and medical history x x x obtained after x x x [one examination]." ⁵⁹

In the case at bar, a careful review of the medical reports of Allan's physicians of choice reveals that the findings were merely based on general impressions after conducting a single physical examination. In fact, no other tests were conducted to ascertain Allan's condition. This is in stark contrast with the various medical reports issued by Dr. Sañez, who has personal knowledge of Allan's actual medical condition, having closely, meticulously, and regularly monitored it, and actually treated Allan's illness from October 2014 to March 2015. Moreover, Dr. Catapang Jr. and Dr. Pimentel did not issue any disability grading.

Furthermore, Dr. Catapang Jr. and Dr. Pimentel's reports also contain contrary findings as to whether Allan underwent therapy. In Dr. Catapang Jr.'s report, it states that:

x x x [C]onservative treatment was applied by immobilization with clavicular strap. He was referred to Rehab Section for physiotherapy but still complains of on and off pain of the right shoulder.

Physical examination revealed a well-developed, well-nourished ambulatory patient. Pertinent physical examination revealed; limitation of movement, shoulder abduction is limited at the right shoulder, deformity noted at the right collar bone. Patient has difficulty of performing exercises of the right extremity for long periods of time. He cannot lift heavy objects with his right hand.

x x x x

Mr. Tena-e continues to complain and suffer from shoulder pain, right. The pain is worse by prolonged use of his right extremity. He has difficulty in doing simple mechanical work. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation.

⁵⁹ Id. at 476-477.

Result of the x-ray of the right clavicle done at St. Luke's Medical Center dtd 03 Feb 2015:

Impression:

Marked overriding and inferior displacement of the distal fractured fragment with periosteal callus formation, right clavicular mid shaft.

x x x x

Mr. Tena-e sustained a disabling injury in his dominant arm. With his present condition, he will not be able to perform his pre injury work, because of the physical demands it entails. He is UNFIT to resume his duties as a seaman.⁶⁰ (Emphasis in the original, underscoring supplied)

On the other hand, Dr. Pimentel's report states:

He had his monthly follow up with his attending physician [wherein] monthly xrays were done. **Neither physical therapy nor medications were given to the patient.** In March of 2015, he was informed to report at his office for instructions if he would still continue with his medical follow up.

At present he still has shoulder pain aggravated by lifting activities. He cannot perform heavy lifting and overhead lifting.

Diagnostic test available to the patient is an x-ray done at St. Luke's dated February 3, 2015. Impression was marked overriding and inferior displacement of the distal fractured fragment with callus formation, right clavicle mid shafts.

Present physical examination of the patient reveals the following:

1. 4/5 muscle grade right shoulder muscles
2. Limited range of motion right shoulder on internal rotation

x x x x

x x x When he arrived in the Philippines no surgical nor medical intervention was done except for monthly x-rays. If surgery was not considered here in the Philippines, physical therapy could have helped in improving the shoulder range of motion and in strengthening the shoulder of his dominant extremity. These could have given him a better chance to regain his previous level of function and eventually for him to return to work.

x x x At present he cannot perform heavy lifting and overhead lifting which is part of his daily activities as a seafarer. He is not fit for sea duty with permanent disability.⁶¹ (Emphasis supplied)

⁶⁰ *CA rollo*, p. 206-207.

⁶¹ *Id.* at 209-211.

Under these circumstances, the assessment of Dr. Sañez should be given more credence for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of Allan's private physicians that was issued after a single examination and based on Allan's existing medical records. In other words, Dr. Sañez is more qualified to assess Allan's disability.

Therefore, the NLRC gravely abused its discretion in disregarding the POEA-SEC rules which provide that it is the seafarer's duty to attend regular check-ups, and by not finding that Allan abandoned his treatment which effectively prevented Dr. Sañez from making an assessment when he failed to show up on the scheduled April 13, 2015 appointment. At most, Allan is only entitled to disability benefits equivalent to Grade 12 under the POEA-SEC, as reflected in the last report by Dr. Sañez.

As to the award of attorney's fees in favor of Allan, We find the same unwarranted. Attorney's fees are recoverable only when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.⁶² Since Allan did not appear during his scheduled re-evaluation, which is within the 240-day period, PTCI is not guilty of any act or omission constituting bad faith. Hence, Allan's claim for attorney's fees must be denied.

To conclude, it must be stressed that while the Court adheres to the principle of liberality in favor of the seafarer, it cannot allow claims for compensation based on whims and caprices. When the evidence presented negates compensability, the claim must fail, lest it causes injustice to the employer.⁶³

WHEREFORE, the instant Petition is **GRANTED**. The April 4, 2017 Decision and the September 14, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 147227 awarding Allan N. Tena-e total and permanent disability benefits, are **SET ASIDE**. Petitioners Philippine Transmarine Carriers, Inc. and Seaspan Crew Management LTD. are hereby **ORDERED** to jointly and severally pay **ALLAN N. TENA-E** the amount of US\$5,225.00 (US\$50,000.00 x 10.45%) or its equivalent in Philippine Currency at the time of payment, corresponding to Grade 12 Disability under the Philippine Overseas Employment Administration-Standard Employment Contract. The original award of attorney's fees in respondent's favor is **DELETED**.

The amounts due to **ALLAN N. TENA-E** shall earn interest at the rate of six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

⁶² See *Anuat v. Pacific Ocean Manning, Inc.*, 836 Phil. 618, 640 (2018).

⁶³ *Francisco v. Bahia Shipping Services, Inc.*, 650 Phil. 200, 207 (2010).

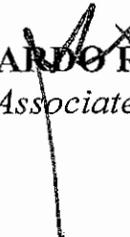
SO ORDERED.

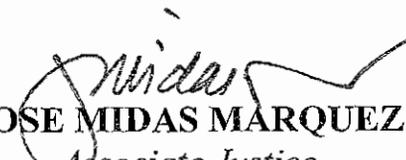

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson


RODIL N. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

