Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SHARPE SEA PERSONNEL, INC., MONTE CARLO SHIPPING, and MOISES R. FLOREM, JR., Petitioners,	**G.R. No. 206113** Present: VELASCO, JR., *J.*,* BERSAMIN, *Acting Chairperson,*** LEONEN, MARTIRES, and GESMUNDO, *JJ.*
-versus-	
MACARIO MABUNAY, JR., Respondent.	**Promulgated:** November 6, 2017

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DECISION

LEONEN, *J.*:

The company-designated physicians' failure to arrive at a final and definite assessment of a seafarer's fitness to work or level of disability within the prescribed periods means that the seafarer shall be deemed to be totally and permanently disabled.

This resolves the Petition for Review on Certiorari[1] filed by petitioners Sharpe Sea Personnel, Inc. (Sharpe Sea), Monte Carlo Shipping (Monte Carlo) and Moises R. Florem, Jr. (Florem) assailing the Court of Appeals October 24, 2012 Decision[2] and March 8, 2013 Resolution[3] in CA-

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* On official leave.

** Designated Acting Chairperson per S.O. No. 2506 dated October 27, 2017.

1 *Rollo*, pp. 10–26.

2 Id. at 30–50. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by

G.R. SP No. 123318. The Court of Appeals reversed the National Labor Relations Commission November 29, 2011 Resolution[4] in NLRC NCR Case No. OFW(M)01-01153-10 (NLRC LAC No. OFW(M)11-000929-10).

On March 23, 2009, Macario G. Mabunay, Jr. (Mabunay) entered into a contract of employment[5] with Sharpe Sea, an agent for C.F. Sharp & Company Pte. Ltd/Monte Carlo.[6] Sharpe Sea was represented by its fleet manager, Florem.[7] Mabunay was hired as an oiler for a period of nine (9) months aboard M/V Larisa, with a total monthly salary of US$1,083.00.[8]

On April 14, 2009, Mabunay boarded M/V Larisa.[9]

The following day, Mabunay slipped and hit his back on the purifier, while he was cleaning the second floor of the engine room. He lost consciousness when he fell and when he awoke, his back was numb and he had difficulty getting up.[10]

That night, Mabunay informed a certain 2nd Engineer Castro of his accident. However, 2nd Engineer Castro directed him to continue with his assigned duties.[11]

Despite the persistent pain in his back and numbness in his legs, Mabunay continued working from April 16, 2009 to April 18, 2009, until Chief Engineer Manuel De Leon allowed him to have a medical checkup when the ship docked in Nanjing, China.[12]

On April 23, 2009, Mabunay was brought to Nanjing Hospital for a medical checkup and he was diagnosed with chest and spinal column bone damage. He was declared unfit to work by his attending physician.[13]

On April 29, 2009, Mabunay was medically repatriated to Manila.[14]

Associate Justices Ramon M. Bato, Jr. and Zenaida T. Galapate-Laguilles of the Special Sixteenth Division, Court of Appeals, Manila.

3 Id. at 28. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Ramon M. Bato, Jr. and Zenaida T. Galapate-Laguilles of the Former Special Sixteenth Division, Court of Appeals, Manila.

4 Id. at 224–231.

5 Id. at 51.

6 Id. at 79 and 196.

7 Id. at 203.

8 Id. at 51 and 139.

9 Id. at 139.

10 Id. at 79 and 139.

11 Id. at 80 and 140.

12 Id. at 80–82 and 140.

13 Id. at 88.

14 Id. at 140.

On April 30, 2009, Mabunay reported to Sharpe Sea's office and was told to report to Dr. Nicomedes G. Cruz (Dr. Cruz), a company-designated physician.[15]

From April 30, 2009 to June 3, 2009,[16] Mabunay was confined at Manila Doctors Hospital. He was diagnosed with "Cervical Spondylosis, C4C5; Thoracolumbar Spondylosis; and Mild chronic compression fracture of T12 & L1 vertebral bodies."[17] He was provided with a cervical collar and lumbosacral corset, told to continue his physical therapy, and advised to come back on July 7, 2009 for further checkup.[18]

On August 14, 2009, after it was noted that Mabunay was not responding to physical therapy, Dr. Cruz recommended that Mabunay undergo a discectomy "for decompression of cervical area with fusion and bone grafting and fixation of cervical plates and screws."[19]

On November 24, 2009, Mabunay underwent surgery and Dr. Cruz observed that Mabunay "tolerated the procedure well."[20]

On December 5, 2009, Mabunay was discharged from the hospital.[21]

On January 21, 2010, Mabunay filed a complaint[22] against Sharpe Sea, Monte Carlo, and Florem for the payment of his medical expenses, total disability benefits, damages, and attorney's fees.

On June 3, 2010,[23] Mabunay sought the opinion of Dr. Alan Leonardo R. Raymundo (Dr. Raymundo), an orthopedic surgeon, who diagnosed him with "herniated disc, C4-C5" and opined that he was unfit to work as a seaman in his present condition:[24]

DIAGNOSIS: HERNIATED DISC, C4-C5

RECOMMENDATION:

> I have advised the patient that to this present orthopedic condition, he is not fit to return to work as a seaman.[25]

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15 Id.
16 Id. at 64–67.
17 Id. at 67.
18 Id.
19 Id. at 69.
20 Id. at 71.
21 Id. at 140.
22 Id. at 281–283.
23 Id. at 140.
24 Id. at 100.
25 Id. at 100.

On July 2, 2010, Mabunay sought the opinion of another orthopedic surgeon, Dr. Rommel F. Fernando (Dr. Fernando) who also found him unfit to work:

> This is to certify that MACARIO MABUNAY 32M is under my care for:
>
> Cervical Stenosis s/p C4 partial corpectomy, C3-C5 anterior fusion (Nov 2009)
> Rule out Adjacent Segment Cervical Stenosis
> Lumbar Stenosis with Neurogenic Claudication (L5 nerve root)
>
> His current condition and predicament makes him UNFIT TO WORK until such time as further work ups (MRI, repeat xrays, etc) can be done to better establish the cause of his symptoms and treat him accordingly.[26]

On September 14, 2010, the Labor Arbiter[27] ruled in Mabunay's favor and directed Sharpe Sea to pay him permanent and total disability benefits.

The Labor Arbiter concluded that the company-designated physicians and Mabunay's personal physicians found that he was unfit for sea duty because he still needed regular medical checkups and treatment.[28]

The Labor Arbiter rejected Sharpe Sea's claim that its company-designated physicians assessed Mabunay with a disability rating of Grade 8 since it was not supported by the records.[29]

The Labor Arbiter emphasized that from April 23, 2009, when Mabunay was found unable to work by his attending physician in Nanjing Hospital, up to July 2, 2010, when Dr. Fernando examined him and still found him unable to work, more than 240 days had already elapsed.[30] Nonetheless, the Labor Arbiter pointed out that even if Mabunay's personal physicians' assessment were disregarded, Mabunay had proven that he was unable to perform his function as an oiler for more than 120 days. This already constituted permanent disability, which would merit the award of total and permanent disability benefits.[31] However, the Labor Arbiter denied Mabunay's claims for medical expenses and future medical expenses for being bereft of factual bases.[32]

The Labor Arbiter also dismissed Sharpe Sea's argument that it should no longer be held liable for any claims against it in light of the Affidavit of

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26 Id. at 101.
27 Id. at 139–145. The Decision, docketed as NLRC NCR Case No. OFW(M)-01-01153-10, was penned by Labor Arbiter Lutricia F. Quitevis-Alconcel.
28 Id. at 143.
29 Id.
30 Id. at 143–144.
31 Id. at 144.
32 Id.

Assumption of Responsibility[33] it executed with Benhur Shipping Corporation (Benhur). The Labor Arbiter stated that Mabunay was not privy to the agreement between Sharpe Sea and Benhur, which happened after Mabunay signed his contract of employment; hence, Sharpe Sea should still be held liable for the award in Mabunay's favor.[34]

The dispositive portion of the Labor Arbiter Decision read:

> **WHEREFORE**, in light of the foregoing, judgment is hereby rendered ordering respondent **SHARPE SEA PERSONNEL, INC.** to pay complainant Macario G. Mabunay, Jr. the amount of **SIXTY THOUSAND US DOLLARS (US$60,000.00)** for permanent and total disability benefits plus ten percent (10%) thereof as attorney's fees.
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> Other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.
>
> **SO ORDERED.**[35] (Emphasis in the original)

Both Sharpe Sea and Mabunay filed their respective memoranda on appeal[36] to the Labor Arbiter Decision.

On June 22, 2011, the National Labor Relations Commission (NLRC)[37] affirmed with modification the Labor Arbiter Decision by deleting the award for attorney's fees.

The NLRC upheld the Labor Arbiter's finding that the records were bereft of evidence to support Sharpe Sea's claim that its company-designated physicians gave Mabunay a disability rating of Grade 8.[38] In contrast, Mabunay adequately proved that his private physicians both assessed him to be unfit for work.[39]

However, the NLRC dismissed Mabunay's claims for reimbursement of medical expenses and future medical expenses because, aside from the computations he himself or his private physicians prepared, he was unable to substantially corroborate his claim of medical expenses.[40] The NLRC

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33 Id. at 63.
34 Id. at 144.
35 Id. at 144–145.
36 Id. at 146–156 and 170–174.
37 Id. at 196–204. The Decision, docketed as NLRC NCR Case No. OFW (M) 01-01153-10 [NLRC LAC No. 11-000929-10-OFW], was penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco of the First Division, National Labor Relations Commission, Quezon City.
38 Id. at 200.
39 Id. at 200–201.
40 Id. at 202.

likewise dismissed Mabunay's claims for moral damages and attorney's fees.[41]

Finally, the NLRC ruled that Florem, Sharpe Sea's fleet manager, cannot be held personally liable in the absence of evidence that he had a direct hand in denying Mabunay's disability claims.[42]

The *fallo* of the NLRC Decision read:

> WHEREFORE, the instant appeal of the respondents is PARTLY GRANTED and complainant's partial appeal is DISMISSED. Accordingly, the Decision of the Labor Arbiter dated September 14, 2010 is AFFIRMED but modified insofar as that the attorney's fees [are] deleted for lack of merit.
>
> SO ORDERED.[43]

Both Sharpe Sea and Mabunay moved to reconsider[44] the NLRC Decision.

On November 29, 2011, the NLRC modified[45] its June 22, 2011 decision by reducing the award of US$60,000.00 it earlier granted to Mabunay, to US$16,795.00, corresponding to a Grade 8 disability rating.[46]

The NLRC noted that Sharpe Sea attached a medical report dated August 18, 2009 from Dr. Cruz, which supported its claim that a company-designated physician had diagnosed Mabunay with a Grade 8 disability.[47]

The NLRC pointed out that while Dr. Cruz's medical report might not have been presented before the Labor Arbiter, it was not disputed that Mabunay was under the care of Dr. Cruz from the time he was medically repatriated.[48]

The NLRC likewise stated that *NYK-Fil Ship Management, Inc. v. Talavera* upheld the award of a Grade 8 disability benefit for a spinal injury similar to Mabunay's.[49]

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41 Id. at 203.
42 Id. at 203–204.
43 Id. at 204.
44 Id. at 205–211 and 215–222.
45 Id. at 224–231. The Resolution was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioner Perlita B. Velasco of the First Division, National Labor Relations Commission, Quezon City.
46 Id. at 230.
47 Id. at 225–226.
48 Id. at 226.
49 Id. at 228–229.

The *fallo* of the NLRC Resolution read:

> WHEREFORE, premises considered, the Decision of this Commission is MODIFIED. Complainant Macario Mabunay, Jr. is declared to be entitled only to US$16,795.00 corresponding to Grade 8 disability grading under the POEA Standard Employment Contract. Complainant is likewise awarded attorney's fees corresponding to ten percent (10%) of said award.
>
> **SO ORDERED.**[50] (Emphasis in the original)

Mabunay filed a Petition for Certiorari[51] with the Court of Appeals, assailing the June 22, 2011 Decision and November 29, 2011 Resolution of the NLRC.

On October 24, 2012, the Court of Appeals[52] partially granted Mabunay's Petition.

The Court of Appeals ruled that Sharpe Sea failed to adequately explain why it only submitted the medical report with the Grade 8 disability rating in its Motion for Reconsideration of the NLRC Decision. It rebuked the NLRC for failing to rule on the admissibility of the belatedly filed evidence.[53]

The Court of Appeals also ruled that Mabunay was entitled to attorney's fees, moral, and exemplary damages since Sharpe Sea acted with bad faith in belatedly submitting a Grade 8 disability rating.[54] Finally, it granted Mabunay's claim for actual expenses in the form of transportation expenses, magnetic resonance imaging, and doctor's fees since they were adequately supported with receipts.[55]

The *fallo* of the Court of Appeals Decision read:

> **ACCORDINGLY**, the petition is **PARTLY GRANTED**. The Decision dated September 14, 2010 of Labor Arbiter Lutricia Quitevis-Alconcel in NLRC NCR Case No. OFW (M)-01-01153-10 is **REINSTATED** with **MODIFICATION AWARDING** petitioner Macario Mabunay, Jr. P50,000.00 as moral damages, P50,000.00 as exemplary damages, P36,305.00 as transportation expenses, and P7,300.00 as MRI expenses.

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50 Id. at 230.
51 Id. at 232–260.
52 Id. at 30–50.
53 Id. at 46.
54 Id. at 48–49.
55 Id. at 49.

SO ORDERED.[56] (Emphasis in the original)

On March 8, 2013, the Court of Appeals[57] denied Sharpe Sea's Motion for Reconsideration.[58]

On April 12, 2013, petitioners filed their Petition for Review on Certiorari before this Court.[59]

In the Petition, petitioner Sharpe Sea states that its co-petitioner Monte Carlo is no longer its principal and that the other co-petitioner Florem is no longer its employee.[60]

Petitioners claim that under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), for a disability compensation to be validly awarded, the illness or injury must have been suffered during the seafarer's employment, with a company-designated physician determining his disability rating.[61] They point out that respondent has signed this contract.

Petitioners insist that the Court of Appeals erred in disregarding the Grade 8 disability rating given to respondent by Dr. Cruz, since this had the effect of disregarding the terms and conditions of the POEA-SEC.[62]

Petitioners assert that a seafarer's inability to perform his job for more than 120 days cannot be found in the POEA-SEC, the law between the contracting parties. Instead, it is the POEA-SEC itself that provides the requisites for the determination and award of disability compensation.[63] Petitioners posit that Article 192(c)(i) of the Labor Code, which provides for total and permanent disability if the worker is unable to perform his job for more than 120 days, is only applicable to claims before the Employees Compensation Commission and not to claims covered by the POEA-SEC.[64]

Furthermore, petitioners likewise assert that the POEA-SEC mandates a company-designated physician to conduct the medical evaluation and provide the disability grading, if applicable. The POEA-SEC provides a procedure for resolution should the seafarer disagree with the company-

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56 Id. at 49–50.
57 Id. at 28.
58 Id. at 461–471.
59 Id. at 10–26.
60 Id. at 12.
61 Id. at 16.
62 Id. at 16–17.
63 Id. at 17.
64 Id.

designated physician's assessment. However, respondent failed to comply with this established procedure; thus, he should be bound by the company-designated physician's assessment of a Grade 8 disability rating.[65]

Petitioners stress that the disability compensation scheme for seafarers is governed by a special law, the POEA-SEC, in recognition of the reality that "seafarers belong to a class of their own"; hence, the POEA-SEC provisions on disability compensation should be applied by the courts.[66]

Petitioners likewise claim that they are not guilty of bad faith since they shouldered respondent's treatment and rehabilitation expenses; therefore, the award of damages and attorney's fees was baseless.[67]

Petitioners state that the belated submission of the medical certificate with Grade 8 rating was because respondent's medical treatment was extended due to his back operation. Petitioners aver that they never intended to conceal respondent's medical condition.[68]

As directed by this Court,[69] the parties exchanged pleadings.[70]

After giving due course to the petition, this Court[71] directed the parties to file their respective memoranda.

In respondent's Memorandum,[72] he insists that he repeatedly requested Dr. Cruz and Dr. Leonido Castillo (Dr. Castillo), the company-designated physicians, to assess the degree of his disability but they refused to do so. Left with no other choice, he consulted with Dr. Raymundo and Dr. Fernando, who both concluded that he was unfit to work as a seaman.[73]

Respondent contends that Dr. Cruz abdicated the duty imposed on him by the POEA-SEC when he refused to timely issue an assessment of respondent's disability grading.[74]

Respondent also points out that it was impossible to engage the opinion of a third doctor jointly agreed upon by the parties, as required by

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65 Id. at 17–18.
66 Id. at 17.
67 Id. at 19–20.
68 Id. at 20–21.
69 Id. at 480 and 509.
70 Id. at 486–505 and 511–518.
71 Id. at 551.
72 Id. at 564–590.
73 Id. at 567–569.
74 Id. at 581–582.

the POEA-SEC, since 240 days had already lapsed since his repatriation, without Dr. Cruz issuing a disability assessment.[75]

Respondent emphasizes that petitioners failed to adequately explain their belated submission of Dr. Cruz's medical report with an interim assessment of Grade 8. The medical report was dated August 18, 2009, yet it was only submitted on July 19, 2011.[76]

To support his claims for damages, respondent adopts the findings of the Court of Appeals and also refers to the inhuman treatment he experienced aboard M/V Larisa, where he was expected to continue working despite informing his superior that he was under extreme pain. Furthermore, his medical treatment was stopped even if he had not yet fully recuperated.[77]

In their Memorandum,[78] petitioners continue to assert that the Grade 8 disability rating issued by Dr. Cruz should enjoy primacy over the findings of respondent's private physicians.[79]

Petitioners also deny that they acted in bad faith or in an oppressive or malicious manner against respondent, since they shouldered all his medical expenses and were merely acting within the rights provided them by the POEA-SEC.[80]

This Court resolves the following issues:

First, whether or not the Grade 8 disability rating of the company-designated physician should be upheld over the contrary findings of respondent's private physicians; and

Second, whether or not there is sufficient basis for the award of damages and attorney's fees.

I

As part of a seafarer's deployment for overseas work, he and the vessel owner or its representative local manning agency are required to execute the POEA-SEC. Containing the standard terms and conditions of seafarers' employment, the POEA-SEC is deemed included in their contracts

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75 Id. at 582–583.
76 Id. at 579–580.
77 Id. at 586.
78 Id. at 552–563.
79 Id. at 556–559.
80 Id. at 559–560.

of employment in foreign ocean-going vessels.[81]

Petitioner Sharpe Sea and respondent Mabunay entered into a contract of employment on March 23, 2009;[82] hence, the 2000 POEA-SEC is the applicable version.

Section 20(B) provides the two (2) requisites of compensable disability:

> SECTION 20. COMPENSATION AND BENEFITS. —
> . . . .
>
> B. 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:[83] (Emphasis supplied)

It is not disputed that respondent encountered an accident a day after he boarded M/V Larisa.[84] Upon repatriation and after careful monitoring, Dr. Cruz recommended that he undergo "discectomy for decompression of cervical area with fusion and bone grafting and fixation of cervical plates and screws."[85] In other words, respondent underwent spine surgery and had cervical plates and screws attached on parts of his cervical discs to remove the pressure on his nerve root or spinal cord.[86]

Petitioners insist that the Grade 8 disability rating issued by Dr. Cruz should be adhered to, as provided for under Section 20(B)(3) of the POEA-SEC, the governing law between the parties. Section 20(B)(3) reads:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
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> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the

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81 *Wallem Maritime Services, Inc. v. Tanawan*, 693 Phil 416, 426 (2012) [Per J. Bersamin, First Division].
82 *Rollo*, p. 51.
83 POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (2000), sec. 20 (B).
84 *Rollo*, pp. 87–88.
85 Id. at 69.
86 *NHS choices*, available at <https://www.nhs.uk/Conditions/Lumbardecompressivesurgery/Pages/Surgery.aspx> (last accessed on October 30, 2017).

> agency within the same period is deemed as compliance. 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.

Petitioners fault respondent for not consulting a third doctor when his private physicians disagreed with the Grade 8 disability assessment of the company-designated physician.

Petitioners fail to convince.

Petitioners repeatedly claimed before the proceedings in the labor tribunals that Dr. Cruz gave respondent a Grade 8 disability assessment, yet the records show that petitioners failed to substantiate their claim. The Labor Arbiter stated:

> A perusal over the records shows that respondents' allegation that their company-designated physicians' assessment of complainant's disability Grading 8, was not submitted. *It is not in the records.*[87] (Emphasis supplied)

The NLRC then affirmed the Labor Arbiter's findings that petitioners failed to support their claim of respondent's Grade 8 disability assessment:

> Despite the company[-]designated doctor's finding that complainant was suffering from the aforequoted illness, there is no evidence on record that complainant was given a disability grading of grade 8 as claimed by the respondents. *The record of the case does not show any proof of such disability grading given by the company[-]designated physician.*[88] (Emphasis supplied)

However, petitioners somehow managed to produce proof of Dr. Cruz's Grade 8 medical report with the disability assessment and attached it to their Motion for Reconsideration[89] of the NLRC Decision. Furthermore, petitioners did not explain in its Motion why Dr. Cruz's medical report[90] dated August 18, 2009 was only submitted into evidence two (2) years after, or on July 19, 2011.

While it is true that technical rules of evidence are not binding in labor

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87 *Rollo*, p. 143.
88 Id. at 200.
89 Id. at 205–211.
90 Id. at 212.

cases and the NLRC is not precluded from receiving evidence for the first time on appeal, the delay in the submission of evidence must be adequately explained.[91]

Petitioners half-heartedly tried to explain the belated filing of the medical certificate in its Petition:

> Petitioners submitted with their Motion for Reconsideration that was filed with the NLRC, the medical certificate of Respondent stating forth therein that his disability grading is a Grade 8. However, the fact that Respondent was given a Grade 8 disability rating was earlier mentioned by Petitioners in their Comment On/Opposition to the Partial Appeal of Respondent that was also filed with the NLRC. *The belated submission of the medical certificate is due to the fact that Respondent's medical treatment was extended since Respondent needed the aforecited procedure, discectomy, in order to treat his spondylosis.*[92] (Emphasis supplied)

Respondent filed his complaint[93] on January 21, 2010. When mediation proceedings before the Labor Arbiter failed, the parties were directed to file their respective position papers. On July 8, 2010, petitioners filed their Position Paper,[94] to which they could have attached the medical report with the disability rating. However, they failed to do so.

Petitioners could have also attached the medical report in their Memorandum on Appeal[95] dated October 26, 2010, or in their Comment[96] dated November 5, 2010 to respondent's appeal. Again, they failed to do so. Petitioners failed to clarify why a document available as early as August 18, 2009 was only submitted into evidence on July 19, 2011, giving rise to a reasonable suspicion that it was nonexistent on the date indicated in the medical report.

Manning and shipping companies are always in a better position than their employees in accessing, preserving, and presenting their evidence. In this case, despite the uncontested disability of the employee, he presented all his evidence, even going to the extent of consulting two (2) other doctors after the company-designated physicians refused to provide a disability rating.

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91 *Philippine Telegraph and Telephone Corp. v. National Labor Relations Commission*, 262 Phil 491, 498–499 (1990) [Per J. Regalado, Second Division]; *Tanjuan v. Philippine Postal Savings Bank Inc.*, 457 Phil 993, 1004–1005 (2003) [Per J. Panganiban, Third Division]; *Misamis Oriental II Electric Service Cooperative v. Cagalawan*, 694 Phil 268, 281 (2012) [Per J. Del Castillo, Second Division].

92 Id. at 20–21.

93 Id. at 281–283.

94 Id. at 52–61.

95 Id. at 146–156.

96 Id. at 175–180.

This Court notes that petitioners' actuation on the belated presentation of a suspiciously ante-dated medical certificate borders on a contemptuous act that, under ordinary circumstances, may amount to disciplinary charges against counsel.

Nonetheless, even if this Court accepted petitioners' explanation on the belated submission of the disability rating into evidence, it is worthy to note that Dr. Cruz only issued an interim disability rating:

> The *interim disability grading* under the POEA schedule of disabilities is Grade 8 total stiffness of the neck due to fracture or dislocation of the cervical spines.[97] (Emphasis supplied)

Magsaysay Maritime Corp. v. Cruz[98] emphasized that a company-designated physician is expected to come up with a definite assessment of a seafarer's fitness or lack of fitness to work or to determine the seafarer's degree of disability within a period of 120 or 240 days from repatriation.[99] *Magsaysay Maritime Corp.* stated that an interim disability grading is merely an initial prognosis and does not provide sufficient basis for an award of disability benefits, thus:

> Notably, the September 5, 2008 Report provides: "Interim Disability Grade: If a disability grading will be made today[,] our patient falls under 'Moderate rigidity of two thirds loss of motion or lifting power' — Grade (8) eight." *Being an interim disability grade, this declaration is an initial determination of respondent's condition for the time being.* It is only an initial prognosis of the health status of respondent because after its issuance, respondent was still required to return for re-evaluation, and to continue therapy and medication; as such, *it does not fully assess respondent's condition and cannot provide sufficient basis for the award of disability benefits in his favor.*
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> Moreover, in *Carcedo v. Maine Marine Philippines, Inc., the Court did not give credence to the disability assessment given by the company-designated doctor as the same was merely interim and not definite.* This is because after its issuance, Dario A. Carcedo (seafarer therein) still continued to require medical attention. Similarly, herein respondent needed further treatment and physical therapy even after the Interim Disability Grade was given by the company-designated doctor on September 5, 2008.[100] (Emphasis supplied, citations omitted)

After Dr. Cruz issued the interim disability rating of Grade 8, respondent underwent a discectomy where Dr. Cruz's only feedback was that respondent "tolerated the procedure well."[101] This is not the "definite and

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97 Id. at 212.
98 G.R. No. 204769, June 6, 2016, 792 SCRA 344 [Per J. Del Castillo, Second Division].
99 Id. at 356.
100 Id. at 355–356
101 *Rollo*, p. 71.

conclusive assessment of the seafarer's disability or fitness to return to work"[102] required by law from the company-designated physician or appointed third-party physician that would have the effect of binding the parties.[103]

Clearly, Dr. Cruz, Dr. Castillo, or any other company-designated physician failed to issue respondent either a fit-to-work certification or a final disability rating after his operation and before the lapse of 240 days from his repatriation. Thus, the Court of Appeals did not err when it considered respondent to be permanently and totally disabled. This follows the ruling in *Kestrel Shipping v. Munar*[104] where this Court explained:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.
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> *Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.*[105] (Emphasis supplied)

With the company-designated physicians' failure to issue either a fit-to-work certification or a final disability rating within the prescribed periods, respondent's disability was rightfully deemed to be total and permanent.

II

Respondent justifies his claim for damages by alleging the inhuman

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[102] *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf> 9 [Per J. Velasco, Third Division]

[103] Id.

[104] 702 Phil 717 (2013) [Per J. Reyes, First Division].

[105] Id. at 730–731.

treatment he received aboard M/V Larisa, where he was made to continue working even after he reported his accident and the excruciating pain in his back. Respondent also points to the arbitrary stoppage of his medical treatment to substantiate his claim for damages.[106]

The Court of Appeals, in turn, awarded respondent moral and exemplary damages because of petitioners' bad faith in belatedly submitting the disability rating.[107]

This Court sees no reason to reverse the findings of the Court of Appeals.

Bad faith is not simply bad judgment or negligence. "[I]t imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud."[108]

By not timely releasing Dr. Cruz's interim disability grading, petitioners revealed their intention to leave respondent in the dark regarding his future as a seafarer and forced him to seek diagnosis from private physicians. Petitioners' bad faith was further exacerbated when they tried to invalidate the findings of respondent's private physicians, for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, despite their own deliberate concealment of their physician's interim diagnosis from respondent and the labor tribunals. Thus, this Court concurs with the Court of Appeals when it stated:

> We also grant petitioner's prayer for moral and exemplary damages. Private respondents acted in bad faith when they belatedly submitted petitioner's Grade 8 disability rating only via their motion for reconsideration before the NLRC. By withholding such disability rating from petitioner, the latter was compelled to seek out opinion from his private doctors thereby causing him mental anguish, serious anxiety, and wounded feelings, thus, entitling him to moral damages of P50,000.00. Too, by way of example or correction for the public good, exemplary damages of P50,000.00 is awarded.[109]

Nonetheless, in light of petitioners' patently malicious act in belatedly submitting an ante-dated medical report, this Court increases the award of moral damages from ₱50,000.00 to ₱100,000.00 as compensation for the anxiety and inconvenience that respondent suffered.[110] The award of exemplary damages is also increased from ₱50,000.00 to ₱100,000.00 to

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106 *Rollo*, p. 586.
107 Id. at 48–49.
108 *Solidbank Corporation v. Gamier*, 649 Phil 54, 83 (2010) [Per J. Villarama, Jr., Third Division].
109 *Rollo*, pp. 48–49.
110 *Magsaysay Maritime Corporation v. Chin*, 731 Phil 608, 614 (2014) [Per J. Abad, Third Division].

serve as a deterrent against the commission of similar oppressive acts.[111]

Considering that the NLRC absolved petitioner Moises R. Florem, Jr. from personal liability in the absence of evidence that he had a direct hand in denying respondent's disability claims[112] and that this finding was never contested by any of the parties, this Court sees no reason to disturb this ruling.

Shipping companies should constantly be reminded of the humanity of their employees. Seafarers who leave their families for extended periods to pilot and maintain ships that bring profit for these corporations deserve better treatment than how respondent was treated in this case. In the ultimate analysis, if ever there will be a day of judgment, all of us will be held to account as to how we treated our fellow human beings, not by the amount of profit we generated for our corporations.

Petitioners could have done better in this case. With this judgment, this Court ends respondent's travails and can only hope that the benefits this Court now awards can assuage his suffering.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The Court of Appeals October 24, 2012 Decision in CA-G.R. SP No. 123318 is **AFFIRMED with MODIFICATION**. Petitioners Sharpe Sea Personnel, Inc. and Monte Carlo Shipping, Inc. are **ORDERED** to solidarily pay Macario Mabunay, Jr. the amount of **US$60,000.00** as permanent and total disability benefits plus ten percent (10%) thereof as attorney's fees. Furthermore, petitioners Sharpe Sea Personnel, Inc. and Monte Carlo Shipping, Inc. are **ORDERED** to pay **₱100,000.00** as moral damages, **₱100,000.00** as exemplary damages, **₱36,500.00** as reimbursement of transportation expenses, and **₱7,300.00** as reimbursement of MRI expenses. Legal interest shall be computed at the rate of six percent (6%) per annum of the total award from date of finality of judgment until full satisfaction.[113]

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[111] *Tankeh v. Development Bank of the Philippines*, 720 Phil 641, 692 (2013) [Per J. Leonen, Third Division].

[112] *Rollo*, pp. 203–204.

[113] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

WE CONCUR:

On official leave
PRESBITERO J. VELASCO, JR.
Associate Justice

LUCAS P. BERSAMIN
Associate Justice
~~Acting~~ Chairperson

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

CERTIFIED TRUE COPY
[illegible]
Division Clerk of Court
Third Division

JAN 15 2018

MARIA LOURDES P. A. SERENO
Chief Justice