Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PACIFIC OCEAN MANNING, INC. and/or INDUSTRIA ARMAMENTO MERIDIONALE and/or CAPT. AMADOR P. SERVILLON,
Petitioners,

- versus -

ROGER P. SOLACITO,
Respondent.

G.R. No. 217431

Present:

PERALTA, *C.J., Chairperson*,
CAGUIOA,
LAZARO-JAVIER,
INTING,* and
ZALAMEDA,** *JJ.*

Promulgated:

FEB 19 2020

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DECISION

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court assailing the Decision[1] dated June 20, 2014 and Resolution[2] dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 123284, which annulled and set aside the Decision[3] dated September 23, 2011 and Resolution[4] dated December 19, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. LAC 01-000098-11.

Facts of the Case

The facts of the case, as narrated by the CA, are as follows:[5]

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* Designated as additional Member per Raffle dated February 3, 2020 in lieu of Associate Justice Jose C. Reyes, Jr.

** Designated as additional Member per Raffle dated February 3, 2020 in lieu of Associate Justice Mario V. Lopez.

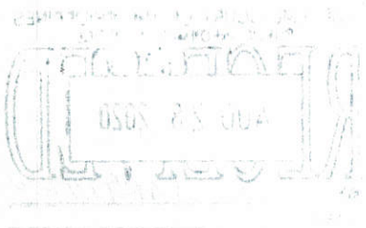
1 *Rollo*, pp. 65-75. Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) and concurred in by Associate Justices Mario V. Lopez (also now a Member of this Court) and Socorro B. Inting.

2 Id. at 146-149.

3 Id. at 199-212.

4 Id. at 214-215.

5 CA Decision dated June 20, 2014, *rollo*, pp. 65-69.



Petitioner Pacific Ocean Manning, Inc. hired respondent Roger P. Solacito (Solacito) as an Able Seaman on board M/V Eurocardo Salerno on behalf of its principal, petitioner Industria Armamento Meridionale. He had a contract for eight months with a basic monthly salary of $563.00.

Solacito was deployed on March 22, 2009 after being declared fit to work following his pre-employment medical examination (PEME). As an able seaman, Solacito was expected to do routine chores including pirate watch duty during the night.

Solacito alleged that while he was on pirate watch on the night of June 10, 2009, an insect entered and lodged itself inside his left ear which caused pain, itchiness, and dizziness. He tried to remove it with his fingers but failed. The pain and irritation persisted for several days. Thus, on June 18, 2009, Solacito was off-boarded at the nearest port for treatment. He was treated and diagnosed with *otite externa* at the Clinica da Climed in Luanda, Africa. When his condition did not improve, he was again off-boarded for treatment in a Moroccan hospital, and then at a clinic in Leixoes, Portugal, where he was advised to be medically repatriated for treatment.

Solacito was repatriated on July 3, 2009, and was referred to Vizcarra Diagnostic Center for examination and treatment by the company-designated physician on July 9, 2009. The company-designated physician diagnosed him with an ear infection which became aggravated chronic *otitis media.* He was given medication and recommended for surgery.

On October 13, 2009, Solacito underwent a surgical procedure at St. Luke's Medical Center. Interim medical reports with respect to his treatment and recovery were issued on October 28, 2009, November 16, 2009, and January 5, 2010. On January 7, 2010, Dr. Elizabeth Tan-Tin (Dr. Tan-Tin) issued a Medical Report finally declaring Solacito fit to work, *viz.*:

> Presently, there is a small perforation but tympanic membrane and middle ear are dry. No signs of infection. So far, there is good control of rhinitis. He has reached maximum stage of cure and has been declared FIT FOR SEA DUTY as of January 7, 2010. For your information. Elizabeth Tan-Tin, MD Chief of Clinics.[6]

On February 10, 2010, Dr. Frederick Hawson, the attending ear-nose-throat (ENT) consultant, and Dr. Tan-Tin prepared another medical report which states:

> This is to certify that Mr. Roger Solacito had first been seen by the ENT service in Vizcarra Diagnostic Clinic last July 9, 2009. The chief complaint was recurrent left ear discharge since June 10, 2009. On first consultation, the patient had been diagnosed to have chronic otitis media with a near total tympanic membrane perforation on the left ear. Various medications had been given to the patient with only temporary relief

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6 Id. at 67.

> afforded as the discharge would still be appearing intermittently. Finally, on October 13, 2009, the patient underwent a surgical procedure called Tympanoplasty and Ossiculoplasty on the left ear, done at the St. Luke's Medical Center, under surgeon Dr. Norberto Martinez. At present the left ear is already dry.
>
> The latest pure tone audiometry was done last December 14, 2009 at the Manila Hearing Aid Center (SM-Mall of Asia Branch). The results show that his right ear had an average hearing level of 25 dB, while the left ear had an average hearing level of 50 dB. The speech discrimination score for both ears is 100%.
>
> Mr. Solacito is not considered disabled because he does not fulfill the WHO definition of hearing disability, which is that the average hearing level of the BETTER ear should not be lower than 40dB. Since the right ear of Mr. Solacito, which is the better ear, had an average level of 25 dB, is within normal limits, there is no disability in this case.
>
> Furthermore, in the Dept. of Health memorandum entitled Administrative Order 2007-0225, it is stated that for servicing seafarers, unaided average threshold shall not be higher than 50dB in BOTH ears. His functional speech discrimination (unaided SRT) shall not be less than 90% at 55 dB for BOTH ears. Mr. Solacito's left ear hearing level is at 50 dB. His hearing in the right ear is within normal limits. The speech discrimination score for both ears is 100%.
>
> Therefore, based on his latest hearing evaluation as compared to established criteria, Mr. Solacito does not have hearing disability. His moderate hearing loss at the level of 50 dB on the left ear is a hearing impairment and may affect certain aspect of his job description. But overall as far as hearing is concerned he should still be FIT TO WORK as a seafarer.[7]

In January 2010, Solacito filed a complaint for total and permanent disability benefits, sickness pay for three months and 10 days, moral and exemplary damages, attorney's fees, and other benefits under the law.[8]

On March 18, 2010, Solacito consulted Dr. Manuel C. Jacinto, his personal physician, who issued a Medical Certificate which states:

> This is to certify that Roger P. Solacito Age 30, Sex Male, Status Single, Citizenship Filipino, Occupation Seafarer of Pacific Ocean Manning Inc., was admitted at Sta. Teresita General Hospital QC and was under my service during the period from March 2010 for the following diagnosis: Perforation of LEFT eardrum S/P Tympanoplasty (Oct 13, 2009). Surgical Intervention Tympanoplasty (L) & ossoculoplasty. Patient's condition on discharge: no improvement. Remarks: The patient was advised to be Physically Unfit to go back to work as a seafarer in any capacity because of hearing loss (L) ear. Disability [_/] Total Permanent.[9]

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7 Id. at 67-68.
8 Id. at 397-398.
9 Id. at 68.

Ruling of the Labor Arbiter

In a Decision[10] dated August 23, 2010, the Labor Arbiter (LA) ruled in favor of Solacito and awarded him total and permanent disability benefits in accordance with the Collective Bargaining Agreement (CBA) in the amount of $89,100.00 and attorney's fees equivalent to 10% of the total monetary award.

The LA held that the independent medical assessment of Solacito's personal physician must be upheld as accurate, fair, and neutral medical assessment considering the absence of any special relationship between said physician and Solacito other than a doctor-patient relationship. On the other hand, the medical assessment of the company-designated physicians expectedly downplayed Solacito's *chronic otitis* which was undisputedly caused by his perforated eardrum and which resulted to hearing loss. The LA further stated that no employer would rehire Solacito knowing that his hearing is permanently impaired because he could no longer be assigned to watch keeping tasks which require a fully functional sense of hearing. Moreover, the LA held that Solacito is totally and permanently disabled since he was unable to perform his job for more than 120 days from repatriation.

The dispositive portion of the LA Decision reads:

> **WHEREFORE,** premises considered, judgment is entered **FINDING** respondents **PACIFIC OCEAN MANNING INC.** *(Respondent/ local Agency) and/or* **INDUSTRIA ARMANENTO MERIDIONALE,** *(Respondent/Principal Abroad)*, **CAPT. AMADOR P. SERVILLON** *(Other respondent)* jointly and severally liable to pay complainant Roger P. Solacito's permanent and total disability benefits to (*sic*) under the parties Collective Bargaining Agreement, **ORDERING** thus said named respondents in said joint and several capacities to pay complainant Roger P. Solacito:
>
> 1) Permanent total disability benefits of US$89,100.00 at its peso equivalent at the time of actual payment; and
>
> 2) Attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.
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> Other claims of complainant are dismissed for lack of merit and/or failure to substantiate.
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> **SO ORDERED.**[11]

Aggrieved, petitioners filed a memorandum of appeal with the NLRC.

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10 Id. at 216-234.
11 Id. at 233-234.

Ruling of the NLRC

In a Decision dated September 23, 2011, the NLRC affirmed the findings of the LA but reduced the award of total and permanent disability benefit to $60,000.00.

The NLRC concurred with the LA that the medical assessment made by Solacito's personal physician must prevail over that of the company-designated physicians. The NLRC likewise stated that no maritime company aware of Solacito's ear problem will likely hire him considering that the duties of an able seaman do not only entail an almost perfect eyesight but also superior sense of hearing. However, the NLRC found that Solacito's contract of employment was executed more than two months after the expiration of the CBA. Thus, the total and permanent disability benefits due to Solacito should be based on the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).

The dispositive portion of the NLRC Decision reads as follows:

> **WHEREFORE,** the appealed Decision is **AFFIRMED,** with the **MODIFICATION** that complainant-appellee Roger P. Solacito is entitled to the amount of US$60,000.00 only as permanent and total disability compensation.
>
> **SO ORDERED.**[12]

Both parties sought reconsideration of the NLRC Decision, but their motions were denied in a Resolution dated December 19, 2011. Thus, petitioners filed a petition for *certiorari*[13] before the CA.

Ruling of the Court of Appeals

The CA granted the petition for *certiorari* in a Decision dated June 20, 2014 and instead awarded permanent partial disability benefits to Solacito, *viz.*:

> **WHEREFORE,** in view of the foregoing premises, judgment is hereby rendered **GRANTING** the petition for certiorari filed in this case, **ANNULLING** and **SETTING ASIDE** the Resolution dated December 19, 2011 and the Decision dated September 23, 2011 issued by the respondent National Labor Relations Commission, and **ORDERING** Solacito to return to the petitioners the equivalent in Philippine pesos of the amount of US$54,775.00 and to report his compliance within ten (10) days from the finality of this Decision. No costs.
>
> **SO ORDERED.**[14]

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12 Id. at 211.
13 Id. at 150-196.
14 Id. at 74-75.

According to the CA, the NLRC acted with grave abuse of discretion when it upheld the medical assessment of Solacito's personal physician over that of the company-designated physicians. The CA explained that under the POEA-SEC and prevailing jurisprudence, the medical assessment of the company-designated physicians should be recognized when the seafarer, as in this case, did not submit himself to the assessment of a third doctor. The CA further held that under the POEA-SEC, Solacito is not entitled to Grade 1 disability benefit for he is not suffering complete loss of his sense of hearing in both ears. The CA also dismissed, as being purely speculative and unsupported by evidence, NLRC's conclusion that Solacito will no longer be able to work as an able seaman.

However, the CA held that Solacito is suffering *permanent and partial* disability with a Grade 12 disability rating. According to the CA, Solacito's disability has become *permanent* because his disability lasted for more than 120 days from his repatriation, and the company-designated physician declared him fit to work after more than 240 days. Yet, his permanent disability could not be considered total in nature. The CA explained that, considering that a Grade 11 assessment is given for the total loss of the sense of hearing in one ear, then, the logical assessment for partial hearing loss in one ear is Grade 12. Thus, the CA found Solacito entitled to the disability benefits corresponding to a Grade 12 disability rating, or $5,225.00. Since petitioners already paid the total award amounting to ₱2,722,000.00 as well as execution fees amounting to ₱27,220.00, petitioners are thus entitled to the return of the money they paid less $5,225.00, or $54,775.00.

The parties respectively filed motions for reconsideration of the CA Decision. Meanwhile, petitioners also filed a manifestation[15] submitting additional evidence which showed that Solacito was subsequently re-deployed through another manning agency. Both motions for reconsideration were, however, denied in a Resolution dated March 13, 2015. Hence, this Petition.

Issues

The present Petition raises the following issues:

1. Whether the CA erred in finding Solacito suffering from *permanent and partial* disability; and

2. If the Court finds Solacito *permanently and partially* disabled, whether the CA erred in the calculation of the amounts due to be returned to petitioners.

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[15] Id. at 93-97.

The Court's Ruling

Before delving into the main issues, the Court first disposes of the procedural matters brought up by Solacito.

In his Comment,[16] Solacito maintains that the NLRC Decision had already become final and executory — and, therefore, immutable — despite the pendency of the petition for *certiorari* before the CA. Solacito also argues that the petition for *certiorari* before the CA should have been deemed abandoned or rendered moot and academic following petitioners' voluntary settlement of the judgment award during the pre-execution proceedings. Thus, the CA erred in giving due course to the petition and modifying the NLRC Decision.

This contention is erroneous. Under the Labor Code, the decision of the NLRC shall become final and executory after 10 days from notice *if* no appeal is taken therefrom within said period.[17] It is settled that the aggrieved party may still seek reconsideration of the decision of the NLRC, and then seasonably avail itself of the special civil action of *certiorari* under Rule 65.[18] Here, as shown by the records, petitioners timely filed a motion for reconsideration of the NLRC Decision and a petition for *certiorari.* Thus, the NLRC Decision is not yet immutable.

There is also no basis for the proposition that petitioners should be deemed to have abandoned their petition before the CA. There is no showing that the payment made by petitioners to Solacito was by virtue of a settlement and in consideration of the termination of the case. On the contrary, records bear out that such payment was made pursuant to a writ of execution.[19] Indeed, under the 2011 NLRC Rules of Procedure, the filing of a petition for *certiorari* with the CA shall not stay the execution of the assailed decision unless a restraining order is issued by the CA.[20]

Thus, the CA did not err in giving due course to the petition for *certiorari.*

Now, on the substantive issues.

While petitioners agreed with the factual findings of the CA respecting the probative value of the medical assessment of the company-designated physicians *vis-à-vis* that of the private physician, petitioners challenged the *permanent and partial* disability benefits awarded by the CA to Solacito. Petitioners insisted that Solacito is not suffering from any disability, as shown

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16 Id. at 725-731.
17 LABOR CODE, Article 188 [182].
18 *Wesleyan University-Philippines v. Maglaya, Sr.*, 803 Phil. 722, 735 (2017).
19 Supra note 1, at 10; Memorandum dated March 12, 2014, *rollo*, pp. 635-680.
20 THE 2011 NLRC RULES OF PROCEDURE, Rule XI, Section 4.

by the Medical Report dated January 7, 2010 and Solacito's subsequent re-deployment, and therefore, not entitled to any disability benefits.

The Court finds the Petition to be impressed with merit.

In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.[21]

Here, the CA correctly found grave abuse of discretion on the part of the NLRC when it affirmed the ruling of the LA and upheld the medical assessment issued by Solacito's personal physician over the one issued by the company-designated physicians. **However, the CA erred in independently giving a disability rating to Solacito and awarding *partial and permanent* disability benefits.**

Complaint filed prematurely

In *Belmonte, Jr. v. C.F. Sharp Crew Management, Inc.* [22] (*Belmonte*), the Court cited as one of the reasons for upholding the assessment of the company-designated physician, the seafarer's belated consultation with his personal doctor, *viz.:*

> Considering the absence of findings coming from a third doctor, the Court upholds the findings of the CA and holds that the certification of the company-designated physician should prevail. The Court does so for the following reasons: first, the records show that Belmonte only consulted the private physician after his complaint with the LA has been filed; second, the medical certificate was issued after a one-day consultation; and third, the medical certification was not supported by particular tests or medical procedures conducted on Belmonte that would sufficiently controvert the positive results of those administered to him by the company-designated physician.[23]

The Court, in *Belmonte,* further held that the seafarer "filed a claim for disability benefit without any basis since he waited for another two months from the filing of a complaint before he consulted a private doctor who issued a certification that he is physically unfit to go back to work."[24]

Evidently, at the time Solacito filed the complaint, he had no basis to oppose the findings of the company-designated physicians. On this score, the complaint should have already been dismissed at the level of the LA for lack of cause of action.

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21 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).
22 747 Phil. 643 (2014).
23 Id. at 656.
24 Id. at 654.

Failure to obtain an assessment by a third doctor taken against respondent

Even if the Court gives due course to the complaint despite it having been filed prematurely, Solacito failed to rebut the findings of the company-designated physicians. Section 20(B)(3) of the POEA-SEC provides as follows:

> SECTION 20. *Compensation and Benefits.* –
>
> x x x x
>
> 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:
>
> x x x x
>
> 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.
>
> 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. 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.

The above provision requires that, after medical repatriation, the company-designated physician must assess the seafarer's fitness to work or the degree of his disability. Thereafter, the seafarer may choose his own doctor to dispute the findings of the company-designated physician. If the findings of the company-designated physician and the seafarer's doctor of choice are conflicting, the matter is then referred to a third doctor, whose findings shall be binding on both parties

This procedure was discussed by the Court in more detail in *Mangubat, Jr. v. Dalisay Shipping Corp.*,[25] *viz.*:

> Jurisprudence has elaborated on the requirements for the validity and procedure for disputing the assessment of the company-designated physician. For the company-designated physician's assessment to be considered valid, it must be timely made and must state the fitness or degree of disability of the seafarer.
>
> Once the company-designated physician has issued the valid assessment, the seafarer may dispute it by referring to his own doctor, thus:
>
> > ***x x x resort to a second opinion must be done after the assessment by the company-designated physician precisely to dispute the said assessment.*** Such assessment from the company-designated physician, to reiterate, must be definite and timely issued. x x x (Emphasis and italics in the original)
>
> The seafarer has then the duty to signify his intent to challenge the company-designated physician's assessment and, in turn, the employer must respond by setting into motion the process of choosing the third doctor. As the Court ruled in *Pastor v. Bibby Shipping Philippines, Inc.*:
>
> > Corollarily, should the seafarer signify his intent to challenge the company-designated physician's assessment through the assessment made by his own doctor, the employer must respond by setting into motion the process of choosing a third doctor who, as the 2010 POEA-SEC provides, can rule with finality on the disputed medical situation. In such case, no specific period is required by law within which the parties may seek the opinion of a third doctor, and may do so even during the conciliation and mediation stage to abbreviate the proceedings.
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> The Court further explained in *Sunit v. OSM Maritime Services, Inc.* that for the third doctor's assessment to be valid and binding between the parties, the assessment must be definite and conclusive:
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> > Indeed, the employer and the seafarer are bound by the disability assessment of the third-party physician in the event that they choose to appoint one. Nonetheless, similar to what is required of the company-designated doctor, **the appointed third-party physician must likewise arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties.** (Emphasis in the original)
>
> The foregoing shows that it is required for both the company-designated physician and the third doctor to arrive at a definite and conclusive assessment of the fitness or disability rating of the seafarer for their assessment to be considered as valid.

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[25] G.R. No. 226385, August 19, 2019.

> The same standards to determine the validity of the assessment should be the same for the company-designated physician, seafarer's physician, and the third doctor. Thus, in order for the seafarer to dispute the assessment of the company-designated physician, the assessment of the seafarer's doctor should state the seafarer's fitness to work or the disability rating.[26] (Citations omitted)

Based on the foregoing, following the disability assessment issued by his personal physician which conflicted with that of the company-designated physicians, it was incumbent on Solacito to refer the findings of his own doctor to his employer who would then have had the obligation to commence the process of the selection of the third doctor.

The records of the case reveal, however, that Solacito (1) consulted his personal physician only on March 18, 2010, or about three months after the filing of the complaint, and (2) did not submit to or notify his employer the conflicting findings of his own doctor and give notice of his intention to have the conflicting findings referred to a third doctor.[27]

In this regard, jurisprudence is likewise settled that non-referral to a third doctor, whose decision shall be considered as final and binding, constitutes a breach of the POEA-SEC[28] and the assessment of the company-designated physician shall prevail.[29] As discussed by the Court in *Maersk-Filipinas Crewing, Inc. v. Alferos*,[30] *viz.:*

> The need for the evaluation of the respondent's condition by the third physician arose after his physician declared him unfit for seafaring duties. He could not initiate his claim for disability solely on that basis. He should have instead set in motion the process of submitting himself to the assessment by the third physician by first serving the notice of his intent to do so on the petitioners. There was no other way to validate his claim but this. Without the notice of intent to refer his case to the third physician, the petitioners could not themselves initiate the referral. Moreover, such third physician, because he would resolve the conflict between the assessments, must be jointly chosen by the parties thereafter. Unless the respondent served the notice of his intent, he could not then validly insist on an assessment different from that made by the company-designated physician. This outcome, which accorded with the procedure expressly set in the POEA-SEC, was unavoidable for him, for, as well explained in *Hernandez v. Magsaysay Maritime Corporation*:
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> > Under Section 20 (A) (3) of the 2010 POEA-SEC, "[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." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came

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26 Id.
27 Supra note 1.
28 *INC Shipmanagement, Incorporation v. Rosales*, 744 Phil. 774, 786 (2014).
29 Id. at 787.
30 G.R. No. 216795, April 1, 2019.

> up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, **unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.** (Underscoring and emphasis in the original)
>
> **Moreover, the failure of the respondent to signify the intent to submit himself to the third physician was a direct contravention of the terms and conditions of his contract with the petitioners. Such contravention disauthorized the making of the claim for the benefits.**
>
> On the basis of the foregoing, the respondent's claim for disability benefits predicated on his physician's assessment would be bereft of basis considering that his non-compliance with the procedure expressly provided by law led to the fit-to-work assessment by the company-designated physician becoming the controlling and only reliable medical assessment.[31] (Additional emphasis supplied; citations omitted)

Hence, on the basis of the medical assessment issued by the company-designated physicians, Solacito should be considered able and fit to work, and therefore not entitled to any disability benefit — not even a partial disability benefit.

Again, the assessment of the company-designated physicians is already binding on Solacito given his premature filing of the complaint and his failure to observe the procedure under Section 30(B)(3) of the POEA-SEC. There is, therefore, no basis to ascribe a disability rating to Solacito. Moreover, as explained by the Court in *Caredo v. Maine Marine Philippines, Inc.*,[32] the determination of the fitness of a seafarer for sea duty is the province of the company-designated physician.[33] It is therefore beyond the courts' authority, nay expertise, to prescribe a disability rating to Solacito in contravention of the valid and binding findings of the company-designated physicians.

The records also bear that the company-designated physicians issued said final and definitive medical assessment within 240 days. Particularly, the Medical Report dated January 7, 2010 was issued after 188 days from his medical repatriation. Even the subsequent medical report dated February 10, 2010 of the company-designated physicians was issued within the 240-day window. Thus, following the "120/240-day rule" on claims for permanent and total disability benefits,[34] Solacito had no basis to insist that he is suffering from *total* or *partial permanent* disability.

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31 Id.
32 758 Phil.166 (2015).
33 Id. at 187.
34 *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341 (2015).

Considering that Solacito's complaint is unfounded and in the absence of any of the circumstances under Article 2208[35] of the Civil Code, there is likewise no basis to award attorney's fees in his favor.

In view of the foregoing, petitioners are, therefore, entitled to the return of ₱2,722,000.00 representing the Philippine Peso equivalent of the total and permanent disability benefit and the 10% attorney's fees awarded by the NLRC and paid by petitioners to Solacito during the execution proceedings. While it is unfortunate that Solacito has already spent the amounts he collected from petitioners,[36] restitution is in order in case of reversal of an executed judgment.[37]

Finally, interest at the rate of 6% *per annum* shall be imposed on the total monetary award counted from the finality of this Decision until full payment in accordance with prevailing jurisprudence.[38]

WHEREFORE, in view of the foregoing, the Petition is **GRANTED.** The Decision dated June 20, 2014 and Resolution dated March 13, 2015 of the Court of Appeals in CA-G.R. SP No. 123284 are hereby **ANNULLED** and **SET ASIDE**, and the complaint **DISMISSED** for lack of merit.

Accordingly, respondent Roger P. Solacito is **DIRECTED** to return to petitioners Pacific Ocean Manning, Inc., Industria Armamento Meridionale, and/or Capt. Amador P. Servillon the total and permanent disability benefits and attorney's fees erroneously paid to him in the total amount of Two Million Seven Hundred Twenty-Two Thousand Philippine Peso (₱2,722,000.00). Interest at the rate of 6% *per annum* is also imposed on the total monetary award from the finality of this Decision until full payment.

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35 ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded; or

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

36 *Rollo*, p. 728.

37 THE 2011 NLRC RULES OF PROCEDURE
Rule XI
Execution Proceedings
x x x x

SECTION 14. Effect of Reversal of Executed Judgment. — Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court, the Labor Arbiter shall, on motion, issue such orders of restitution of the executed award, except wages paid during reinstatement pending appeal.

38 *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994).

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
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.

DIOSDADO M. PERALTA
Chief Justice