Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SEACREST MARITIME MANAGEMENT, INC., NORDIS TANKERS MARINE A/S, and REDENTOR ANAYA,	**G.R. No. 239221**
Petitioners,	Present:
	LEONEN, *J.*, Chairperson,
	HERNANDO,
	INTING,
- versus -	DELOS SANTOS, and
	LOPEZ, J., *JJ.*
	Promulgated:
SAMUEL B. BERNARTE,	
Respondent.	April 28, 2021
	MisPDCBatt

x----------x

DECISION

DELOS SANTOS, *J.*:

The Case

This Petition for Review[1] assails the Decision[2] dated September 28, 2017 and the Resolution[3] dated May 7, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 140122 affirming with modification the Decision of the National Labor Relations Commission (NLRC). The CA affirmed the findings of the NLRC that petitioners Seacrest Maritime Management, Inc. (Seacrest Maritime) and Nordis Tankers Marine A/S (Nordis Tankers; collectively, petitioners) are liable to Samuel B. Bernarte (respondent) for total and permanent disability benefits. The CA, however, computed respondent's total and permanent disability benefits based on Section 32 of

---

1 *Rollo*, pp. 35-54.
2 Id. at 65-78; penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Celia C. Librea-Leagogo and Florito S. Macalino, concurring.
3 Id. at 97-100.

the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), not on the Collective Bargaining Agreement (CBA) which supplements respondent's employment contract.

The Antecedents

Seacrest Maritime, for its principal Nordis Tankers, hired respondent as an Able Seaman under a 7-month contract with basic monthly salary of US$594.00. Notably, respondent's contract is covered by a CBA.[4]

Prior to respondent's engagement, he underwent the required Pre-Employment Medical Examination. On September 4, 2013, after he was declared "Fit for Sea Duty," he boarded the *MT Clipper Karen*, with a tour of duty for seven months.[5]

On September 6, 2013, while performing his duties, respondent was allegedly hit by a metal hatch at the deck of *MT Clipper Karen* and suffered severe back pain which radiated from the upper portion of his body down to his waist. After taking pain relievers, he was able to resume his work. The pain on his back, however, always recurred. Thus, the master of the vessel decided to have respondent undergo a thorough examination at the next port of destination.[6]

Upon the vessel's arrival in South India on September 12, 2013, the master of the vessel referred respondent to the shore-side physician. Respondent underwent Magnetic Resonance Imaging (MRI) scan and x-ray of his lumbar spine. The MRI result showed that respondent suffers from "*Posterior and bilateral postero-lateral disc prolapse at L4-L5 and L5-S1 causing indentation of theca and narrowing the neutral foramina.*" The MRI result also stated that "*Associated facet joint hypertrophy at these levels causes further compromise in the neural foramina and compression of nerve roots in the lateral recess.*"[7] On the other hand, the x-ray result showed that respondent suffers from "*loss of lumbar lordosis.*"[8]

Consequently, the examining shore-side physician, Dr. A.H. Balaji (Dr. Balaji), declared respondent, "UNFIT FOR WORK," and recommended the latter's immediate repatriation.[9] On September 17, 2013, respondent was repatriated back to the Philippines.[10] Upon his arrival, respondent was

---

4 Id. at 66.
5 Id.
6 Id. at 67.
7 CA *rollo*, p. 402.
8 Id. at 403.
9 Id. at 133.
10 *Rollo*, p. 39.

immediately referred to the company-designated physician, Dr. Natalio Alegre (Dr. Alegre) at St. Luke's Medical Center, for evaluation on September 19, 2013.[11] Dr. Alegre gave respondent anti-pain medications and advised him to return on October 18, 2013 for a follow-up check-up.[12]

On November 7, 2013, Dr. Alegre advised respondent to undergo therapy and referred him to Dr. Greg Diaz of Naga Doctor's Hospital, a specialist in rehabilitation medicine. After three months of physical therapy, respondent was recommended by his other rehabilitation doctor, Dr. Venggie Ascarraga-Ong, to continue with the rehabilitation sessions. Despite his treatment and rehabilitation, however, there was still no improvement in his lumbar disc problem.[13]

In his January 8, 2014 Progress Report, Dr. Alegre requested respondent to undergo another MRI. He was also prescribed to take anti-pain medications. Likewise, respondent's physical therapy was temporarily discontinued.[14]

Respondent's second MRI, done on January 16, 2014, confirmed the result of his first MRI in South India. Respondent's second MRI showed that he was still suffering from "*Desiccated disks, L4-L5 and L5-S1, as noted before. Relatively stable broad-based posterior disk herniation L4-L5 resulting to mild central and bilateral neural canal stenosis. Posterior disk bulge with central extrusion resulting to mild central canal and mild bilateral neural canal stenosis, L5-S1, stable. degenerative endplate marrow changes, L5 and S1.*"[15]

Subsequently, Dr. Alegre declared in his January 18, 2014 Progress Report (initial assessment) that respondent's condition showed no improvement from the sessions of physical therapy undertaken. Dr. Alegre then recommended that respondent undergo Laminectomy and Discectomy with Spacer application.[16]

Respondent allegedly refused to undergo the recommended surgery. Hence, on January 23, 2014, Dr. Alegre issued a Final Progress Report (final assessment) stating that respondent's "*medical cure is reached. Patient has declined the recommended spine surgery[.]*" and assessed the latter with "*disability grade of 8 x x x based on the POEA Contract x x x.*"[17]

---

[11] Id.
[12] Id. at 67.
[13] Id. at 67-68.
[14] CA *rollo*, p. 476.
[15] Id. at 411.
[16] Id. at 477.
[17] Id. at 478.

On March 24, 2014, convinced that he was suffering from total and permanent disability, respondent filed before the Labor Arbiter (LA) a Complaint for Payment of Total and Permanent Disability Benefits, Damages, as well as Attorney's Fees, against petitioners.[18]

On April 14, 2014, respondent consulted and sought treatment from Dr. Misael Jonathan Ticman (Dr. Ticman), an Orthopaedic Surgeon, his personal physician. Respondent was subjected to a series of tests and examinations. After more than a month of examinations, Dr. Ticman concluded that the nature and extent of respondent's injury permanently and totally prohibit him from working and attending to the demanding nature of his work as a seaman.[19]

During the mandatory conference, petitioners offered respondent the disability compensation of US$16,795.00, corresponding to the Disability Grade 8 assessment, computed based on the POEA-SEC. Respondent, however, rejected the offer.[20]

The LA's Ruling

By Decision[21] dated October 15, 2014, the LA ruled in favor of respondent, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered finding herein Complainant entitled to total and permanent disability benefits [and sickness allowance] and, correspondingly, holding all of the herein [petitioners] jointly and severally liable to pay [respondent] US$93,154[.00] and $2,376[.00], or their peso equivalents at the time of payment, plus attorney's fees equal to 10% percent of the judgment awards.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[22]

The LA gave credence to respondent's allegation that his injury resulted from an accident. It found ambiguous and suspicious the shipmaster's act of merely stating "*back pain*" in the Request for Medicare as the reason for respondent's injury, without explaining the surrounding circumstances leading to said back pain. It then construed such ambiguity in favor of respondent. It likewise found that Dr. Alegre's January 23, 2014

---

18 Id. at 481-482.
19 *Rollo*, pp. 68-69.
20 Id. at 69.
21 CA *rollo*, pp. 64-97; penned by Labor Arbiter Thomas T. Que, Jr.
22 Id. at 96-97.

assessment was not a categorical determination of respondent's medical condition. It ratiocinated that the statement *"maximum medical cure reached"* was not sufficient to guaranty full recovery. And with respondent remaining to be unfit for sea duty beyond 120/240 days, his disability is deemed total and permanent.[23]

Further, it found that even if Dr. Alegre's Disability Grade 8 assessment were binding, respondent is still entitled to total and permanent disability benefits under the CBA which grants 100% compensation to a covered seafarer who had been declared by the company-designated physician as permanently unfit for further sea duties, although assessed by the latter with less than 50% disability only.[24]

The LA, however, denied respondent's claim for moral damages. It held that petitioners cannot simply be faulted for relying on the disability assessment issued by Dr. Alegre, without any evidence of bad faith on their part.[25]

Undaunted, petitioners appealed to the NLRC.

The NLRC's Ruling

By Decision[26] dated January 27, 2015, the NLRC affirmed the LA's Decision, *viz.*:

> IN VIEW WHEREOF, the respondents' appeal is DISMISSED for lack of merit. The Decision of the Labor Arbiter is AFFIRMED *in toto*.
>
> SO ORDERED.[27]

The NLRC echoed the findings of the LA that respondent's injury resulted from an accident. It held that without the shipmaster's affidavit to support that respondent did not suffer any accidental injury during the term of the latter's employment, petitioners' allegation that respondent's injury did not result from an accident is self-serving and therefore devoid of any probative value.

The NLRC, likewise, affirmed the LA's finding that on the basis of Dr. Alegre's Grade 8 disability assessment, respondent shall be entitled to

---

[23] Id. at 89-91.
[24] Id. at 94.
[25] Id. at 90.
[26] Id. at 49-60; penned by Commissioner Angelo Ang Palaña and concurred in by Commissioners Herminio V. Suelo and Numeriano D. Villena.
[27] Id. at 59.

total and permanent disability benefits under the CBA, which covers even accidental injuries suffered by the covered seafarers assessed with less than 50% disability, as long as the seafarer has been certified by the company-designated physician as permanently unfit for further sea duty. It opined that while respondent's Grade 8 disability, as assessed by Dr. Alegre, is equivalent to only less than 50% disability, he could no longer perform his duties as a seaman without exposing himself to further injury or risk of aggravating his existing injury.

Petitioners moved for reconsideration, but was denied by the NLRC.[28]

Aggrieved, petitioners filed a Petition for *Certiorari* before the CA ascribing grave abuse of discretion on the part of the NLRC.

The CA's Ruling

By the assailed Decision[29] dated September 28, 2017, the CA affirmed the NLRC's Decision with modification, *viz.*:

> WHEREFORE, premises considered, the petition is DENIED. The Decision dated January 27, 2015 and Resolution dated February 26, 2015 of public respondent National Labor Relations Commission (Fourth Division) are hereby AFFIRMED with MODIFICATIONS.
>
> Petitioners Seacrest Maritime Management, Inc. and Nordis Tankers Marine A/S are hereby held jointly and severally liable to pay private respondent Samuel B. Bernarte the amounts of (a) US$60,000.00 as permanent and total and [sic] disability benefit; (b) US$68.98 as the balance of sickness allowance; and (c) 10% of US$60,000.00 as attorney's fees, at the prevailing rate of exchange at the time of payment. On top of the monetary awards, petitioners Seacrest Maritime Management, Inc. and Nordis Tankers Marine A/S are ORDERED to jointly and severally pay private respondent legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction of said monetary awards.
>
> SO ORDERED.[30]

The CA found that Dr. Alegre failed to make a clear assessment of respondent's degree of disability within the period of 120/240 days.[31] However, for failure of respondent to show that his back injury was caused

---

28 Id. at 99-100.
29 Supra note 2.
30 *Rollo*, p. 78.
31 Id. at 73.

by an accident, his entitlement to total and permanent disability benefit should be based on the POEA-SEC, and not on the CBA.[32]

Petitioners moved for reconsideration, but was denied by the CA in its assailed Resolution dated May 7, 2018.[33]

The Present Petition

Petitioners claim that Dr. Alegre's January 23, 2014 purported Final Progress Report, issued within the 240-day period, should have been given more credence by the CA since it was made by Dr. Alegre after conducting a series of medical examinations and treatments on respondent. They maintain that respondent's disability can be assessed only by the company-designated physician, Dr. Alegre, who was given by law the primary authority to determine the nature of respondent's injury. Thus, respondent cannot claim disability benefits other than that corresponding to Dr. Alegre's assessment of Disability Grade 8.[34] Petitioners likewise claim that respondent failed to prove that he remained incapacitated or unfit for work.[35] Lastly, petitioners fault the CA for disregarding the fact that respondent sought consult and treatment from his personal doctor only after filing his claim for total and permanent disability benefits with the LA thereby rendering such claim premature.[36]

In his Comment,[37] respondent maintained his entitlement to total and permanent disability benefits. He claimed that Dr. Alegre's purported final assessment was not compliant with the requirements of the law. On the other hand, his personal doctor's assessment was more categorical in declaring that he is unfit to work as a seaman in any capacity. Respondent then claimed that his disability arose from an accident that happened on board the *MT Clipper Karen*. Thus, respondent calls the Court's attention to the shipmaster's failure to state, in the Request for Medicare, the reason for his back pain. Respondent is of the view that the shipmaster's omission was driven by wrongful intent of putting doubt on the reason of his injury. Lastly, respondent claims damages for petitioners' unjustified refusal to pay him the maximum disability benefits allegedly due him.

In their Reply,[38] petitioners denied respondent's claim of accident on board the vessel. They maintained that respondent's back pain occurred

---

32 Id. at 75.
33 Supra note 3.
34 *Rollo*, pp. 43-47.
35 Id. at 47.
36 Id. at 48-50.
37 Id. at 109-132.
38 Id. at 142-146.

while the latter was performing his regular duties, and without any intervening event.

The Issue

Whether respondent is entitled to total and permanent disability under the law.

The Court's Ruling

The petition is bereft of merit.

As a general rule, only questions of law, and not questions of fact, can be raised in a petition for review under Rule 45 of the Rules of Court. In labor cases, the Court is generally bound by the labor courts and the CA's factual findings. This, however, admits of exceptions, including when the CA's factual findings are contrary to those of the LA and/or the NLRC, as in this case. Here, both the LA and the NLRC found respondent's injury to have resulted from an accident, while the CA found that, although the injury was work-related, there was no substantial basis to conclude that said injury resulted from an accident. In the face of this conflicting findings of fact by the LA and the NLRC on one hand, and the CA on the other, the Court may examine the records and review the facts surrounding the case.[39]

Article 192(c)(1) of the Labor Code defines permanent and total disability of laborers, thus:

> ART. 192. Permanent Total Disability.
>
> x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules.

The rule referred to Section 2, Rule X of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code (Implementing Rules and Regulations [IRR]), states:

> 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

---

[39] See *One Shipping Corp. v. Peñafiel*, 751 Phil. 204, 209-210 (2015).

> 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)

Meanwhile, the POEA-SEC was enacted to provide the minimum acceptable terms in a seafarer's employment contract. It is, however, intended to be read and understood in accordance with the foregoing laws.[40]

Pursuant to Section 20(A) of the 2010 POEA-SEC, when a seafarer suffers a work-related injury or illness in the course of employment, the company-designated physician is obligated to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. During the said period, the seafarer shall be deemed to be suffering temporary total disability and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws.[41]

Meanwhile, Article 192(c)(l) of the Labor Code and Section 2, Rule X of the IRR provide that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled.

In fine, the 120-day period may be extended to 240 days. The period, however, does not extend automatically. The company-designated physician must perform some significant act and provide justification for the extension of the original 120-day period to the exceptional 240-day period under the IRR. Otherwise, the seafarer must be granted the relief of total and permanent disability benefits due to such non-compliance. We cannot completely ignore the general 120-day period under the Labor Code and the POEA-[SEC] and unconditionally apply the exceptional 240-day period under the IRR. Otherwise, the IRR becomes absolute and it will render the law forever inoperable.[42]

---

[40] *Tamin v. Magsaysay Maritime Corporation*, 794 Phil. 286, 298 (2016).
[41] *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018
[42] See *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362 (2015).

The company-designated physician failed to timely issue an assessment within the mandated 120-day period without a valid justification.

A judicious review of the records of the case reveals that the company-designated physician, Dr. Alegre, issued both his initial assessment and purported final assessment of respondent's condition within the maximum 240-day period, but beyond the original 120-day period.

Dr. Alegre issued his **initial assessment** on January 18, 2014 or 121 days after respondent first reported to him. He found respondent's physical therapy sessions to have made no improvement on the latter's condition. Consequently, he recommended respondent to undergo surgery. He likewise gave respondent a Disability Grade 8 based on his present condition, *viz.*:

> January 18, 2014
>
> x x x/**ENGR. REDENTOR G. ANAYA**
> **x x x x**
> **SEACREST MARITIME MANAGEMENT INC.**
>
> SAMUEL B. BERNARTE
> ABLE SEAMAN/MT CLIPPER KAREN/
> September 19, 2013 **121 day/s**
>
> x x x/**ENGR. REDENTOR G. ANAYA:**
>
> SAMUEL B. BERNARTE followed-up on 17 January 2014
> **Subjective Complaints**
> Numbness of the low back
>
> **Objective Complaints**
> MRI Showed desiccated disk L4 to S1
> Herniated Nucleos Pulposus, L4[-]L5
>
> **Assessment**
> Degenerative Disc Disease L4 to S1
>
> **Plans**
> Rehabilitation Medicine is consulted and physical therapy is continued.
> Orthopedic referral was sought since **he is unresponsive to physical therapy** and **Posterior Decompression with Laminectomy and Discectomy with Spacer application is recommended for approval at a cost of Php800,000.** The length of recovery is about 6-8 months.
> **If a disability is to be assessed now, a disability grade 8 is given based on POEA Contract Section 32, Chest-Trunk-Spine #5 moderate rigidity or two[-]thirds (2/3) loss of motion or lifting power of the trunk.**[43] (Emphases supplied)

---

[43] Supra note 16.

On January 23, 2014 or 126 days since respondent first reported to Dr. Alegre, the latter issued his purported **final assessment** giving respondent a Disability Grade 8. Since respondent allegedly refused the recommended spine surgery, Dr. Alegre claimed that the maximum medical cure was already reached, *viz.*:

> **Subjective Complaints**
> Persistence of numbness and pain at the low back
>
> **Objective Complaints**
> Trunk range of motion is limited
> Tight and tender paraspinal muscles
> No neurologic deficits
> Straight leg raising test deficient bilaterally
>
> **Final Diagnosis**
> Degenerative Disc Disease L4 to S1
>
> **Plans**
> **Maximum medical cure is reached[.]**
> **Since patient has declined the recommended spine surgery, a disability grade of 8 is given based on the POEA Contract, Chest Trunk Spine #5, moderate rigidity or two[-]thirds (2/3) loss of motion or lifting power of the trunk.**[44] (Emphasis supplied)

The January 18, 2014 initial assessment shows that Dr. Alegre recommended respondent to undergo spine surgery with expected recovery period of about six to eight months. Interestingly, as reflected in this January 18, 2014 medical report or assessment, respondent had his follow-up check-up with Dr. Alegre on January 17, 2014 (120th day). The Court is curious why Dr. Alegre issued the assessment and gave the recommendation for surgery only after 121 days or one day late.

In *Ampo-on v. Reinier Pacific International Shipping, Inc.,*[45] the company-designated physician issued an assessment within the 120-day period, which reads:

> Based on the patient's present status, his **prognosis is guarded.**
>
> ***The specialist recommends surgery with Transforaminal Lumbar Interbody Fusion. However, the patient has refused the surgery. Without the surgery, he has already reached maximum medical improvement.***
>
> **Fitness to work is unlikely to be given within his 120 days of treatment.**

---

[44] Supra note 17.
[45] G.R. No. 240614, June 10, 2019.

> **If** patient is entitled to disability, his **suggested disability grading** is Grade 8 — loss of 2/3 lifting power of the trunk. (Emphases and underscoring supplied)

The Court held therein that the company-designated physician's assessment, although issued within the 120-day period, could not have been the final and definite assessment required by law, considering that the same appeared as merely interim by the declaration that "*prognosis is guarded*" and "*[i]f patient is entitled to a disability, his suggested disability grading is Grade 8 — loss of 2/3 lifting power of the trunk.*" Moreover, while the company-designated physician recommended surgery to the seafarer, the Court found the assessment to have contained no indication of the need for the seafarer to further undergo treatment/rehabilitation or medication so as to justify the extension of the 120-day period to 240 days.

In the present case, it is undisputed that Dr. Alegre's initial assessment dated January 18, 2014 was issued within the 240-day period, but beyond the 120-day period, or only after 121 days. More importantly, the assessment showed no indication of respondent's need to further undergo treatment/rehabilitation or medication that would justify the extension of the original 120-day period to the exceptional 240-day period.

The Court cannot take Dr. Alegre's spine surgery recommendation as a valid justification for the extension of the period. From the face of the assessment itself, the spine surgery was **merely being recommended.** While it was recommended as an alternative to the physical therapy which made no improvement on respondent's condition, there was no indication that the recommended surgery was necessary for respondent's recovery. There was likewise no indication that it would properly address respondent's injury. In fact, there was no assurance or guaranty that the surgery would help respondent revert to his pre-injury and normal condition or at least improve his condition.

Clearly, Dr. Alegre reneged on his obligation to issue a valid final and definite assessment of respondent's condition within the applicable 120-day period. Meanwhile, respondent's medical condition unquestionably remained unresolved even after the lapse of the 120-day period, as can be gleaned from the findings of Dr. Alegre in his initial assessment issued on the 121st day that respondent's condition was not responsive to the physical therapy sessions undertaken.

More importantly, the two MRI results, the medical reports and assessments issued by all the doctors who examined and treated respondent, when taken altogether, would form the findings that indeed, respondent remained unfit for work even after the lapse of the 120-day period.

On September 12, 2013, after medical examinations and scans, Dr. Balaji, the shore-side physician who examined respondent in South India, found the latter "UNFIT FOR WORK." This was evidenced by the portion in the computerized Request for Medicare, which portion appears to have been accomplished by Dr. Balaji, having the following handwritten remarks or findings:

> TO THE DOCTOR
> Please see this patient and fill in the form
>
> Diagnosis: **LUMBAR DISC PROLAPSE L4-S, L5-S,**
> Advised: Medication, Rest, Repatriation.
> CONTINUE TREATMENT AT [HOMETOWN].
> **UNFIT FOR WORK."**[46] (Emphases supplied)

Additionally, at the second page of the Request for Medicare, the box for "Unfit for work" shows a handwritten check mark. This second page was stamped with the name of Dr. Balaji and bears his handwritten signature.

Meanwhile, in Dr. Alegre's initial assessment dated January 18, 2014, he acknowledged that respondent's condition "was unresponsive to physical therapy."

Respondent's second MRI, which was done on January 16, 2014, showed the results "*x x x Desiccated disks, L4-L5 and L5-S1, as noted before. Relatively stable broad-based posterior disk herniation L4-L5 resulting to mild central and bilateral neural canal stenosis. x x x.*" The said MRI results only confirmed the result of respondent's first MRI done in South India on September 12, 2013, which first revealed that respondent suffers from "*posterior and bilateral postero-lateral disc prolapse at L4-L5 and L5-S1 causing indentation of theca and narrowing the neutral foramina*" and "*Associated facet joint hypertrophy at these levels causes further compromise in the neural formina and compression of nerve roots in the lateral recess.*"

Verily, Dr. Alegre's findings on January 18, 2014 (121st day) that there was no improvement on respondent's condition is effectively an admission that respondent's condition remained the same as when the latter first reported to him after repatriation. To recall, respondent was declared *"unfit for work"* by the shore-side physician, for which reason and for proper treatment, his immediate repatriation was ordered. Undeniably, respondent was on an **"unfit for work" condition**, when he first reported to Dr. Alegre after repatriation.

---

[46] CA *rollo*, pp. 133-134.

With Dr. Alegre having admitted on the 121st day that respondent's condition did not improve after the physical therapy sessions, coupled with the second MRI's result showing that respondent still suffers from the same injury, the Court finds that respondent continued to be unfit for work even after the lapse of the 120-day period. This conclusion finds more support from the findings of respondent's personal physician, given after examinations and treatments that respondent "*is unfit to work as a seaman in any capacity.*"[47]

Moreover, even assuming without granting that Dr. Alegre's purported final assessment dated January 23, 2014 was indeed a conclusive determination of respondent's fitness to work or permanent disability, the same is already irrelevant and cannot be given weight for likewise being issued beyond the applicable 120-day period. [48]

In disability compensation cases, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity. Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.[49]

In *Pastrana v. Bahia Shipping Services*,[50] the Court held that for failure of the company-designated physician to issue a final disability assessment within 120 days from the seafarer's repatriation, without sufficient justification, the law already stepped in and considered the latter totally and permanently disabled and therefore entitled to the maximum disability benefits.

Considering that the 120-day period expired on January 17, 2014 without Dr. Alegre having issued a final and definite assessment of respondent's fitness to work or permanent disability, and without giving any justification for the extension of the 120-day period to 240 days, while respondent remained unfit for work and his medical condition remained unresolved, the latter is deemed totally and permanently disabled by operation of law.

---

47 Id. at 412.
48 *See Pastrana v. Bahia Shipping Services*, G.R. No. 227419, June 10, 2020.
49 *Chan v. Magsaysay Maritime Corp.*, G.R. No. 239055, March 11, 2020.
50 Supra note 48.

Petitioners contend that respondent prematurely filed his claim for disability benefits when he filed the same without first contesting Dr. Alegre's assessments, thus, the LA should have dismissed the claim for lack of cause of action.

Petitioners' contention failed to persuade.

The fact that respondent consulted his personal doctor only after filing his claim for disability benefits with the LA, did not render his claim prematurely filed. Respondent's cause of action actually arose from Dr. Alegre's failure to make a timely assessment of his fitness to work or permanent disability. In this case, there was no longer a need for respondent to contest Dr. Alegre's assessments by consulting an independent doctor before filing his claim. The need to contest the company-designated physician's assessment arises only when the latter's assessment is timely issued and is actually a conclusive determination of the seafarer's medical condition, which clearly is not the case here.

It has already been established that Dr. Alegre failed to issue a timely assessment of respondent's condition. Therefore, there was no need for respondent here to consult an independent doctor before filing the claim for total and permanent disability benefits with the LA. The fact that respondent is not required to contest the company-designated physician's assessment before filing his claim for disability benefits, likewise follows that respondent is not required to activate the third-doctor referral provision.

Respondent's injury, although work-related, did not result from an accident.

It is undisputed that respondent's back injury is work-related. Respondent, however, claims that his injury resulted from an accident which happened while he was performing his duties on board the *MT Clipper Karen*. He was allegedly hit by a metal hatch causing him to experience severe back pain from the upper portion of his body down to his waist. But aside from this allegation, respondent presented no other evidence to support such claim of accident.

Both the LA and the NLRC found respondent's injury to have resulted from an accident. They apparently gave credence to respondent's unsubstantiated allegation of occurrence of accident and construed in favor of the latter the ambiguity on the shipmaster's mere "*back pain*" remark in the portion of the Request for Medicare, where the reason or cause of the injury must also be stated. On the other hand, the CA found otherwise. The CA was not inclined to hold that respondent's injury was caused by an accident, mainly due to the latter's failure to adduce substantial evidence to support such claim.

The Court agrees with the CA. The Court is not convinced that the shipmaster was moved by any intent to conceal important details. Moreover, nothing in the records supports the conclusion that an accident occurred. On the contrary, the Court observes that none of the physicians who examined respondent, including the shore-side physician, noted in their medical reports that respondent's injury was caused by an accident. In fact, respondent's personal physician, Dr. Ticman, stated in his own Disability Report[51] that "*x x x [O]n September 7, 2013, **while working on board a sea vessel, the patient experienced low back pain after lifting heavy objects.** x x x.*"

It is worthy to note that respondent presented Dr. Ticman's assessment in support of his claim for total and permanent disability, without disputing any part of its contents, including the stated cause of his injury. It is now established that respondent's injury was caused by lifting heavy objects.

In *NFD International Manning Agents, Inc. v. Illescas*[52] the Court held that it is common knowledge that carrying heavy objects can cause back injury. Thus, respondent's injury cannot be said to have resulted from an accident, that is an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the **normal performance of his duty** — lifting heavy objects, **without any intervening event.**[53]

The Court cannot give credence to respondent's mere allegation of occurrence of an accident. In labor cases, the party who asserts a claim must provide the labor tribunals and courts with substantial evidence to support his affirmative allegations.[54] The burden generally belongs to him and not on the other party who asserts in the negative. This is especially true when there is an evidence negating the positive allegation, as in this case.

Respondent is entitled to total and permanent disability benefits under the POEA-SEC.

The 2010 POEA-SEC provides that the employer is liable for disability benefits only when the seafarer suffers work-related injury or illness during the term of his contract.

---

51 Supra note 47.
52 646 Phil. 244 (2010).
53 Id. at 251.
54 See *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).

Meanwhile, respondent's employment contract was supplemented by a CBA, which provides that a seafarer who suffers permanent disability **as a result of an accident** during employment, and whose ability to work as a seafarer is reduced as a result thereof, shall be entitled to compensation under its provisions.

In the labor case *Julleza v. Orient Line Philippines, Inc.*,[55] the Court was confronted with CBA provisions having similar substance as in the CBA provisions subject of the present case, *viz.*:

> The provisions of the CBA state:
>
> **Article 28: Disability**
>
> 28.1. A seafarer who suffers permanent disability **as a result of an accident** whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to [willful] acts, shall[,] in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.
>
> 28.2. The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> 28.3. The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than ten percent (10%) disability, to be *pro rata*.
>
> 28.4. A seafarer whose disability, in accordance with 28.2 above is assessed at fifty percent (50%) or more under the attached APPENDIX 3 shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to one hundred percent (100%) compensation. Furthermore, any seafarer assessed at less than fifty percent (50%) disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to one hundred percent (100%) compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 28.2 above.
>
> 28.5. Any payment effected under 28.1 to 28.4 above, shall be without prejudice to any claim for compensation made in law, but may be deducted from any settlement in respect of such claims.[56] (Emphasis and underscoring supplied)

---

[55] G.R. No. 225190, July 29, 2019.
[56] Id.

In *Julleza*, the Court held therein that the above-cited CBA provisions only cover disabilities resulting from accidents, *viz.*:

> A reading of the foregoing shows that it only covers disabilities arising from accidents. In fact, in *Fil-Star Maritime Corp. v. Rosete*, the Court ruled that Article 28 of the ITF-JSU/AMOSUP CBA, which also covers petitioner, is limited to injuries arising from accidents, thus:
>
> > The CBA provisions on disability are not applicable to respondent's case because Article 28 thereon specifically refers to disability sustained after an accident. Article 28 of the ITF-JSU/AMOSUP CBA specifically states that:
> >
> > Article 28: Disability
> >
> > 28.1. A seafarer who suffers permanent disability ***as a result of an accident*** whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer as a result thereof, but excluding permanent disability due to [willful] acts, shall be[,] in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. x x x
>
> The Court likewise ruled in *Island Overseas Transport Corp. v. Beja*, which involved the same clause 28.1, that it only covers injuries resulting from accidents. And since the seafarer's knee injury was not proven to have been the result of an accident, his disability benefits should be based on the POEA-SEC and not the CBA.
>
> Following the foregoing, and given that petitioner's injury did not arise from an accident, the provisions under the POEA-SEC applies to petitioner.[57](Emphasis in the original, citations omitted)

Very similar to the CBA provisions subject of the *Julleza* case, the pertinent provisions of the CBA presently at hand reads:

> Article 25: Disability
>
> **25.1 A seafarer who suffers permanent disability as a result of an accident** whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to [willful] acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.

---

[57] Id.

> 25.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> 25.3 The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than 10% disability, to be [*pro rata*].
>
> 25.4 A seafarer whose disability, in accordance with 25.2 above is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation. Furthermore, any seafarer assessed at less than 50% disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to 100% compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 25.2 above.[58] (Emphasis supplied)

The Court finds it clear from the above provisions that the CBA does not widely cover all injury or disability arising or resulting from any cause. Rather, **the CBA seeks to cover only disabilities that have resulted from accidents.**

Accordingly, since respondent's injury did not result from an accident, he cannot claim disability benefits under the CBA. Nonetheless, he is entitled to the disability benefits under the POEA-SEC since his injury was work-related.[59] Total and permanent disability is equivalent to Grade 1 disability under the POEA-SEC's schedule of disability/impediment with a corresponding disability benefit of US$60,000.00.[60]

Respondent is entitled to the balance of his sickness allowance and attorney's fees, but not to moral and exemplary damages.

With respect to sickness allowance, the Court adopts the CA's findings. Records show that respondent already received a total of US$2,307.02 sickness allowance from petitioner Seacrest Maritime. He is, however, entitled to a total of US$2,376.00 (US$594 x 4 months) sickness allowance. Petitioners, therefore, are still liable to pay respondent the deficiency of US$68.98.

---

58 CA *rollo*, p. 466.
59 2010 POEA-SEC, Sec. 32.
60 Id.

Respondent now claims entitlement to the award of damages and attorney's fees in his favor.

We deny the claim for moral and exemplary damages.

Respondent here failed to establish petitioners' bad faith in denying his claim for total and permanent disability benefits. On the contrary, records show that petitioners were willing, and in fact offered, to pay respondent disability benefits computed based on the Disability Grade 8 assessment of Dr. Alegre. Bad faith was negated here by petitioners' apparent intent to settle their liability albeit differed in the actual amount. Thus, for lack of bad faith on the part of petitioners, respondent cannot be entitled to moral damages. Not entitled to moral damages, respondent cannot likewise be entitled to exemplary damages.[61]

Nonetheless, we find respondent entitled to attorney's fees. In *Orient Hope Agencies, Inc. v. Jara*,[62] the Court awarded attorney's fees to a seafarer who was compelled to litigate due to the agency's denial of his valid claim for total and permanent disability benefits.

Here, respondent was compelled to litigate his claim for permanent and total disability benefits when petitioners denied him of the same and completely stopped his consultations and treatment without the company-designated physician issuing a final assessment of his fitness to work or degree of disability, within the mandated period. Thus, the award of attorney's fees is only proper.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated September 28, 2017 and the Resolution dated May 7, 2018 of the Court of Appeals in CA-G.R. SP No. 140122 are **AFFIRMED**. Petitioners Seacrest Maritime Management, Inc. and Nordis Tankers Marine A/S are **ORDERED** to jointly and severally pay respondent Samuel B. Bernarte US$60,000.00 as permanent and total disability benefits, US$68.98 as the deficiency from respondent's sickness allowance, and attorney's fees equivalent to 10% of the total of these amounts.

All monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

---

[61] See *Chan v. Magsaysay Maritime Corp.*, supra note 45.
[62] 832 Phil. 380 (2018).

SO ORDERED.

EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

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

MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice