



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DOLORES GALLEVO G.R. No. 218311
RODRIGUEZ, substituting her late
husband EDGAR A. RODRIGUEZ Present:

Petitioner,

PERLAS-BERNABE, SAJ.,*
HERNANDO,
*Acting Chairperson,***

-versus-

INTING,
GAERLAN, and
DIMAAMPAO, JJ.

PHILIPPINE TRANSMARINE
CARRIERS, INC., NORWEGIAN
CREW MANAGEMENT A/S, AND
MR. CARLOS SALINAS,
Respondents.

Promulgated:

OCT 11 2021

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DECISION

HERNANDO, J.:

Before Us is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the October 29, 2014 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 134211, which rejected petitioner Edgar A. Rodriguez's (Rodriguez) claim for permanent and total disability benefit, and its May 12, 2015 Resolution³ denying the Partial Motion for Reconsideration⁴ thereof.

Rodriguez was employed as a seafarer by respondent Philippine Transmarine Carriers, Inc. (PTC).⁵ During the pendency of the case, or on July

* On official leave.

** Per Special Order No. 2846 dated October 6, 2021.

¹ *Rollo*, pp. 27-52

² *Id.* at 15-22. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz.

³ *Id.* at 24-25.

⁴ Court of Appeals (CA) *rollo*, pp. 267-281.

⁵ *Rollo*, p. 16.

7, 2013, Rodriguez died due to cardio-respiratory arrest and vehicular accident. Thus, he was substituted by his surviving spouse, Dolores.⁶

PTC is a corporation established and existing under the laws of the Republic of the Philippines and duly licensed to do business as a manning agency. Respondent Carlos Salinas is PTC's President/General Manager. Respondent Norwegian Crew Management A/S (NCM) is the principal for the vessel MV Thorscape.⁷

The Antecedents:

On May 3, 2012, PTC, for and in behalf of NCM, engaged Rodriguez as an ordinary seaman for a period of eight months on board the ocean-going vessel MV Thorscape.⁸ Prior to his deployment, Rodriguez underwent the routine non-exploratory pre-employment medical examination and was declared fit for employment.⁹ Sometime in June 2012, while on board MV Thorscape, Rodriguez figured in an accident while lifting heavy loads, which resulted in a back injury.¹⁰

Upon reaching a convenient port in Taiwan on October 1, 2012, he underwent a medical examination and was initially diagnosed to have *Hepatomegaly; L5 Spondylosis with Lumbar Spondylosis*.¹¹ He was repatriated on October 2, 2012.¹² On October 4, 2012, he reported to respondents¹³ and was immediately referred to the Metropolitan Medical Center under the care of the company-designated physician, Dr. Robert D. Lim (Dr. Lim), and a team of specialists.¹⁴

On October 5, 2012, he underwent a magnetic resonance imaging (MRI) of the Lumbosacral Spine (Plain).¹⁵ On February 22, 2013, he was diagnosed with *Antral Gastritis; H. Pylori Infection; Non-Specific Hepatic Nodule; L2-S1 Disc Protrusion and incidental finding of Specific Colitis; Cholecystitis*.¹⁶ Upon Dr. Lim's recommendation, he was advised to undergo rehabilitation and continued medication through the endorsed orthopedic surgeon. Due to persistent lower back pain, the orthopedic surgeon eventually recommended surgery but Rodriguez declined and opted for conservative treatment.¹⁷

On January 24, 2013, Dr. Lim issued an *interim* disability assessment

⁶ Id. at 17.

⁷ Id. at 15-16.

⁸ Id. at 16.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 16, 66; See also *rollo* (Doctor's Report dated October 1, 2012), p. 142.

¹² Id. at 20.

¹³ CA *rollo*, p. 61.

¹⁴ *Rollo*, p. 16.

¹⁵ Id. at 20; See also *rollo* (MRI Report dated October 5, 2012), p. 144.

¹⁶ Id. (Medical Report dated February 22, 2013), p. 145.

¹⁷ Id. at 16.

Grades 12 and 8.¹⁸ He opined, among others, that Rodriguez's "*interim assessments are Grade 12 (surgical-wise)- slight residuals or disorder and Grade 8 (orthopedic-wise)-loss of 2/3 lifting power.*"¹⁹

On April 26, 2013, Dr. Lim issued a Medical Report²⁰ indicating Rodriguez's final disability assessment as equivalent to Grade 8.²¹

On April 30, 2013, Rodriguez consulted his personal orthopedic surgeon, Dr. Cesar H. Garcia (Dr. Garcia) who found him to be afflicted with *multiple disc protusion*. In his April 30, 2013 Medical Certificate²², he assessed the seafarer to be permanently unfit for sea duty in whatever capacity with a corresponding Grade 1 disability or a permanent total disability.²³

In view of Dr. Garcia's assessment, Rodriguez claimed from respondents permanent total disability benefits. However, respondents insisted that as per Dr. Lim's findings, Rodriguez was only suffering from a Grade 8 disability and thus he was only entitled to a partial and permanent disability benefits.²⁴

Thus, on February 25, 2013,²⁵ Rodriguez filed a complaint for permanent total disability benefits, sickness allowance, medical reimbursement, damages and attorney's fees.²⁶

Ruling of the Labor Arbiter (LA):

In a July 31, 2013 Decision,²⁷ the LA awarded the seafarer permanent and total disability benefits.²⁸ The LA noted that on April 26, 2013, Dr. Lim assessed Rodriguez with disability at Grade 8. However, said assessment was issued beyond the 120-day period, counting from October 2, 2012 when Rodriguez was repatriated, until April 26, 2013 when such assessment was issued. Thus, since more than 120 days had already elapsed, the LA found that such disability should be classified as grade 1,²⁹ and hence he is deemed to have been permanently and totally disabled to assume sea duty.³⁰ The dispositive portion of the LA Decision reads:

WHEREFORE, premises above-considered, judgment is hereby rendered ordering respondents, *Philippine Transmarine Carriers, Inc., Norwegian Crew Management A/S*, and *Mr. Carlos C. Salinas*, to pay complainant, *Edgar A.*

¹⁸ Id. at 20; *See also* CA rollo (Medical Report dated January 24, 2013), p. 61.

¹⁹ CA rollo, p. 61.

²⁰ Id. at 62.

²¹ Rollo, p. 20.

²² Id. (Dr. Garcia's Medical Report dated April 30, 2013), pp. 147-149

²³ Id. at 16-17.

²⁴ Id. at 17.

²⁵ CA rollo, p. 178

²⁶ Rollo, p. 17.

²⁷ CA rollo, pp. 126-131; penned by Judge Potenciano F. Napeñas, Jr.

²⁸ Rollo, p. 18.

²⁹ Id.

³⁰ Id. at 17.

Rodríguez, jointly and severally, the amount of **SIXTY THOUSAND US DOLLARS** representing his **permanent total disability benefits; Php50,000.00 as moral damages; and ten percent (10%) of the total awards as attorney's fees** or its equivalent in Philippine peso at the time of payment.

All other claims are dismissed.

SO ORDERED.³¹

Ruling of the National Labor Relations Commission (NLRC):

Respondents filed an appeal with the NLRC.

In its October 30, 2013 Decision,³² the NLRC modified the arbiter's ruling by deleting the award of moral damages, but affirming the award of total and permanent disability benefits and attorney's fees.³³ The dispositive portion of the labor tribunal's Decision reads:

WHEREFORE, the decision dated 31 July 2013 is hereby MODIFIED. The moral damages awarded by the Labor Arbiter is deleted. The other findings are AFFIRMED.

SO ORDERED.³⁴

Respondents moved for reconsideration, but the NLRC denied the same in its December 20, 2013 Resolution.³⁵

Ruling of the Court of Appeals:

Aggrieved, respondents filed with the appellate court a Petition for *Certiorari*³⁶ under Rule 65 of the Rules of Court, which raised the issue of Rodríguez's entitlement to permanent and total disability benefits.³⁷ They pointed out that the mere lapse of 120 days does not necessarily entitle a claimant to Grade 1 permanent and total disability benefits.³⁸

The court found respondents' petition as partly meritorious. It noted that, from October 5, 2012 when Rodríguez underwent MRI up to April 26, 2013 when Dr. Lim issued the final assessment, only 203 days had lapsed, and therefore, within the 240-day period.³⁹ It held that a temporary total disability only becomes permanent when so declared by the company physician within

³¹ *CA rollo*, p. 131

³² *Id.* at 33-40; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

³³ *Rollo*, p. 17.

³⁴ *CA rollo*, p. 40.

³⁵ *Rollo*, p. 17.

³⁶ *CA rollo*, pp. 3-27.

³⁷ *Rollo*, p. 18.

³⁸ *Id.*

³⁹ *Id.* at 20.

the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.⁴⁰ Thus, it held that Dr. Lim properly assessed Rodriguez with Grade 8 disability.⁴¹ The dispositive portion of the appellate court's Decision reads:

WHEREFORE, the petition for certiorari is partially **GRANTED**. The assailed Decision promulgated on October 30, 2013 and Resolution promulgated on December 20, 2013 of public respondent NLRC are **AFFIRMED** with **MODIFICATION**. Petitioners are ordered to pay private respondent jointly and severally: (1) the amount of US\$16,795.00 representing his disability benefits equivalent to disability Grade 8, and (2) ten percent (10%) thereof as attorney's fees or its equivalent in Philippine pesos at the time of payment.

SO ORDERED.⁴²

Petitioner moved for a partial reconsideration, but the same was unavailing as per the court's May 12, 2015 Resolution.⁴³

Issues

Hence, petitioner filed the instant petition which raises the following issues:

- i. Whether or not the CA erred in sustaining the assessment of the company-designated Orthopedist;
- ii. Whether or not the CA erred in ruling that it is mandatory for [Rodriguez] to seek [a] third medical opinion;
- iii. Whether or not [Rodriguez] is entitled to permanent and total disability.⁴⁴

Our Ruling

The Petition lacks merit.

It is undisputed that the illness of Rodriguez, osteoarthritis, is an occupational disease, and thus, compensable under Section 32-A(21) of the Philippine Overseas Employment Administration's Standard Employment Contract, series of 2010 (2010 POEA-SEC),⁴⁵ which provides:

⁴⁰ Id.

⁴¹ Id. at 21.

⁴² Id.

⁴³ Id. at 24.

⁴⁴ Id. at 39.

⁴⁵ POEA Memorandum Circular No. 10, Series of 2010 that the POEA, amending POEA Memorandum Circular No. 09, Series of 2000 (otherwise known as the 2000 POEA-SEC).

21. Osteoarthritis.

Any occupation involving; a) **joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics;** b) **minor or major injuries to the joint;** c) excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities; d) extreme temperature changes (humidity, heat and cold exposures); and e) faulty work posture or use of vibratory tools. (Emphasis supplied)

The only question in this case is whether Rodriguez is entitled to permanent and total disability compensation.

We rule in the negative.

The rule on the 120/240-day medical assessment period for seafarers to claim permanent and total disability benefits.

Disability claims of seafarers are governed by the Labor Code, its implementing rules and by contract such as the 2010 POEA-SEC, which governed Rodriguez' period of employment.

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

ART. 192. *Permanent Total Disability.* . . .

(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 in the foregoing provision, i.e., Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code (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 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.⁴⁶ (*Emphasis supplied*)

⁴⁶ See also *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 354 (2015).

The foregoing provisions should be read together with Section 20(A) of the 2010 POEA-SEC:

x x x x

2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. **The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days.** Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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

Prior to October 6, 2008, the prevailing rule then, as enunciated in *Crystal Shipping, Inc. v. Natividad*⁴⁷ (*Crystal Shipping*), was that "permanent and total disability consists mainly in the inability of the seafarer to perform his customary work for more than 120 days."⁴⁸ However, on October 6, 2008, *Vergara v. Hammonia Maritime Services, Inc.*⁴⁹ (*Vergara*) was promulgated which modified the ruling in *Crystal Shipping* such that the doctrine laid down in the latter cannot be simply applied as a general rule for all cases in all contexts.⁵⁰

In *Vergara*, We harmonized the abovementioned provisions of the POEA-SEC, Article 192(c)(1) of the Labor Code, and Rule X, Section 2 of the IRR. In said case, We pronounced:

⁴⁷ 510 Phil. 332 (2005).

⁴⁸ *Oriental Shipmanagement Co. Inc., v. Ocasas*, 818 Phil. 1083, 1092 (2017).

⁴⁹ 588 Phil. 895 (2008).

⁵⁰ *Oriental Shipmanagement Co. Inc., v. Ocasas*, supra.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period 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 Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.** The seaman may of course also be declared fit to work at any time if such declaration is justified by his medical condition.⁵¹ (*Emphasis and underscoring supplied*)

Thus, We clarified that “even though the 120-day period for medical evaluation was exceeded, the seafarers may not automatically claim permanent and total disability because it was possible to extend the evaluation or treatment period until 240 days.”⁵²

In *Kestrel Shipping Co., Inc. v. Munar*,⁵³ We pointed out that:

This Court’s pronouncement in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, **a seafarer’s inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer’s state from total and temporary to total and permanent**, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.⁵⁴ (*Emphasis supplied*)

Therefore, the prevailing rule is that, “if the complaint for maritime disability compensation was filed prior to October 6, 2008, the 120-day rule enunciated in *Crystal Shipping* applies. However, if such complaint was filed from October 6, 2008 onwards [such as the instant case wherein the Complaint was filed by Rodriguez on February 25, 2013,⁵⁵] the 240-day rule...as clarified in the case of *Vergara* applies.”⁵⁶

For a medical treatment that lasts more than 120 days, but less than 240 days, a claim for permanent

⁵¹ *Supra* note 49 at 912.

⁵² *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, *supra* note 46 at 355; *See also Vergara v. Hammonia Maritime Services, Inc.*, *supra* note 49 at 912.

⁵³ 702 Phil. 717 (2013).

⁵⁴ *Id.* at 738.

⁵⁵ *CA rollo*, p. 178

⁵⁶ *Oriental Shipmanagement Co. Inc., v. Ocangas*, *supra* note 48.

and total disability benefit may be awarded to the seafarer, if the company-designated physician failed to give a justification within the 120 days for extending the period of diagnosis and treatment.

A claim for permanent and total disability benefits may prosper after the lapse of the 120-day period, but less than 240 days, from the time the seafarer reported for medical treatment if the company-designated physician failed to declare within the 120-day period that the seafarer requires further medical attention.

In *Abosta Shipmanagement Corp. v. Segui*,⁵⁷ the company-designated physician did not issue a medical assessment to the seafarer despite the lapse of the 120-day period. On the 219th day from his repatriation, the company-designated physician issued a disability rating of Grade 8. In granting the seafarer's claim for permanent and total disability benefits, this Court ruled that "[t]he company-designated physician failed to issue a medical assessment within the 120-day period from the time [the seafarer] reported to him, and there was no justifiable reason for such failure. Likewise, there was no sufficient justification to extend the 120-day period to 240 days. Thus, x x x x [the seafarer's] disability becomes permanent and total, and entitles him to permanent and total disability benefits under his contract and the collective bargaining agreement."

Similarly, in *Career Philippines Ship Management, Inc. v. Acub*,⁵⁸ the company-designated physician issued a certification declaring the seafarer to be entitled to a disability rating of Grade 10 after the lapse of 120 days without justifiable reason. In granting the seafarer's claim for permanent and total disability benefits, We held that "since the company-designated physician failed to give his assessment within the period of 120 days, without justifiable reason, [the seafarer's] disability was correctly adjudged to be permanent and total."

Likewise, in *Aldaba v. Career Philippines Shipmanagement, Inc.*,⁵⁹ the company-designated physician issued a certification declaring the seafarer to be entitled to a disability rating of Grade 8 on the 163rd day, but without justifiable reason on why it was issued beyond the 120-day period. In granting the seafarer's claim for permanent and total disability benefits, We ruled that "[i]t must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period. x x x Therefore, the company-designated physician, failing to give his

⁵⁷ G.R. No. 214906, January 16, 2019.

⁵⁸ 809 Phil. 881, 891 (2017).

⁵⁹ 811 Phil. 486, 505 (2017).

assessment within the period of 120 days, without justifiable reason, makes the disability of petitioner permanent and total.”

We also made a similar pronouncement in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,⁶⁰

For a medical treatment that lasts more than 120 days, but less than 240 days, an award for permanent and total disability benefit is unavailing if: (i) the failure to issue a timely medical assessment was attended by the seafarer’s fault; or (ii) the company-designated physician opined within the 120-day period that the seafarer required further medical treatment.

i.) A claim for permanent and total disability benefit may be denied if the company-designated physician’s failure to timely issue a final assessment was due to the seafarer’s fault such as his refusal for medical treatment.

In *Splash Phils., Inc. v. Ruizo*,⁶¹ the seafarer was still undergoing medical treatment with the company-designated physician even after the lapse of 120 days (but less than 240 days) from his repatriation. However, during said period, the seafarer cut short his sessions with the doctor and missed an important medical procedure (extracorporeal shockwave lithotripsy or ESWL) which could have improved his health condition and his capability to work. In denying the seafarer’s claim for permanent and total disability benefits, this Court held, “[u]nfortunately, disability benefits could not be awarded in the instant case because complainant’s inability to work and persistence of his kidney ailment may be said to be attributable to his own willful refusal to undergo treatment.” Thus, in said case, We found that the absence of a disability assessment by the company-designated physician was not of the doctor’s making, but was due to the seafarer’s refusal to undergo further treatment.

In the same vein, in *New Filipino Maritime Agencies, Inc. v. Despabeladeras*,⁶² 166 days lapsed from the time the seafarer was repatriated until his last visit to the company-designated physician during which he was

⁶⁰ 765 Phil. 341, 365-366 (2015).

⁶¹ 730 Phil. 162, 177 (2014).

⁶² 747 Phil. 626, 640 (2014).

required to return seven days later, but for unknown reasons he failed to do so. In denying the seafarer's claim for permanent and total disability benefits, this Court held that the seafarer "was indeed guilty of medical abandonment for his failure to complete his treatment even before the lapse of the 240-day period. Due to his willful discontinuance of medical treatment with [the company-designated physician], the latter could not declare him fit to work or assess his disability."

Similarly, in *Anuat v. Pacific Ocean Manning, Inc.*,⁶³ the seafarer still required medical treatment despite the lapse of 120 days (but less than 240 days) from his repatriation. During said period, the company-designated physician advised him to come back to undergo further surgery to medically repair the existing tear in his left knee. However, instead of returning, he filed a complaint for total and permanent disability within 160 days from the onset of his work-related injury. In denying his claim, this Court held that when the seafarer "filed his disability claim he was still under medical treatment by [the] company-designated physician. In fact, he was advised by [the] physician to return on September 30, 2011 for a medical examination and he chose not to do so."⁶⁴ The Court further noted that the seafarer "filed his total and permanent disability claim x x x [at] 160 days from the onset of his work-connected-injury, [or] 80 days prior to the lapse of the 240 day period of extended medical treatment provided by law."⁶⁵ Thus, "[s]ince the 240 days have not lapsed from the onset of [the seafarer's] injury and since x x x [the] company-designated physician was still treating [the seafarer] and was [still] in the process of determining whether [the seafarer] was permanently disabled or fit to resume his duties as an able seaman x x x [the seafarer's] disability claim had not ripened into a cause of action for total and permanent disability."⁶⁶

We also made similar pronouncements in *Marlow Navigation Philippines, Inc. v. Osias*,⁶⁷ and *Magsaysay Maritime Corp. v. National Labor Relations Commission*,⁶⁸ wherein the respective seafarers' claims for total and permanent disability benefits were denied because the respective company-designated physicians' failure to issue a medical assessment within the allowable period was attended by the respective seafarers' indifference or refusal for medical treatment.

ii. A claim for a permanent and total disability benefit may be denied if the company-designated physician opined within the 120-day period that the seafarer required further medical treatment.

⁶³ 836 Phil. 618 (2018).

⁶⁴ Id. at 634.

⁶⁵ Id. at 636.

⁶⁶ Id.

⁶⁷ 773 Phil. 428, 444-445 (2015).

⁶⁸ 711 Phil. 614, 627 (2013).

In *Tradepil Shipping Agencies, Inc. v. Dela Cruz*,⁶⁹ the Court denied the seafarer's claim for permanent and total disability benefits even if the company-designated physician's medical assessment was issued after the lapse of the 120-day period but less than 240 days. In said case, We ruled that "x x x there must be a sufficient justification to extend the initial 120-day period to the exceptional 240 days. In this regard, **the Court has considered as sufficient justification the fact that the seafarer was still undergoing treatment and evaluation by the company-designated physician x x x** [In this case, the seafarer] was still undergoing medical treatment and evaluation by Dr. Lim after the lapse of the 120-day period. In fact, he agreed to a further medical evaluation on January 4, 2011, when he himself complained of the on-and-off pains in his scrotal area. Verily, these circumstances justified the allowance of the extension of the temporary disability period, and consequently of the period to treat and assess his medical condition, to the exceptional 240 days."

Similarly, in *Teekay Shipping Philippines, Inc. v. Ramoga, Jr.*,⁷⁰ the company-designated physician declared the seafarer's fitness to work after a lapse of 186 days from his repatriation. In finding that there was sufficient justification to extend the 120-day period, this Court held that "[i]n a Report dated January 11, 2011, the company-designated physician advised [the seafarer] to continue his rehabilitation and medications and to come back on February 1, 2011 for his repeat x-ray of the left foot and for re-evaluation. The company-designated physician has determined that [the seafarer's] condition needed further medical treatment and evaluation. Thus, it was premature for the [seafarer] to file a case for permanent total disability benefits on March 4, 2011 because at that time, [he] is not yet entitled to such benefits. The company-designated physician has until June 1, 2011 or the 240th day from his repatriation to make a declaration as to [the seafarer's] fitness to work."

Likewise, in *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura*,⁷¹ the Court denied the seafarer's permanent and total disability claims even if the seafarer was declared fit to work after the lapse of 120 days but within the allowable extended period of 240 days. In said case, We held that "the mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same. "In this case, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, [the seafarer] underwent therapy and rehabilitation and was continuously being monitored. The company-designated physicians did not sit idly by and wait for the lapse of the said period. [The seafarer's] further need of treatment necessitated the extension for the issuance of the medical assessment. It is noteworthy that the seafarer was declared fit to

⁶⁹ 806 Phil. 338, 353-354 (2017). Emphasis supplied.

⁷⁰ 824 Phil. 35, 45 (2018).

⁷¹ 823 Phil. 245 (2018).

work after six months from the time he was medically repatriated or within the allowable extended period of 240 days.”⁷²

In case of conflicting medical assessments between a company-designated physician and the seafarer’s private physician, then referral to a third doctor is mandatory. In the absence of a third doctor’s opinion, it is the medical assessment of the company-designated physician that should prevail.

Section 20(A) of the 2010 POEA-SEC provides that

x x x x

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.

In *Abosta Shipmanagement Corp. v. Delos Reyes*,⁷³ We pronounced “that in case of conflicting medical assessments, referral to a third doctor is mandatory; and that in the absence of a third doctor’s opinion, it is the medical assessment of the company-designated physician that should prevail.”

Summary:

The prevailing rule is that, “if the complaint for maritime disability compensation was filed prior to October 6, 2008, the 120-day rule enunciated in *Crystal Shipping* applies. However, if such complaint was filed from October 6, 2008 onwards x x x the 240-day rule x x x as clarified in the case of *Vergara* applies.”⁷⁴

Thus, for complaints filed from October 6, 2008 and onwards, the general rule is that the company-designated physician must issue a final and definitive medical assessment on the seafarer’s disability grading within a period of 120 days from the time the seafarer reported to him.⁷⁵

However, the mere lapse of 120 days without the company-designated physician’s declaration of the seafarer’s fitness to work does not automatically

⁷² Id. at 260.

⁷³ 833 Phil. 760, 769-770 (2018).

⁷⁴ *Oriental Shipmanagement Co. Inc. v. Ocangas*, supra note 48.

⁷⁵ *Abosta Shipmanagement Corp. v. Segui*, supra note 57; *Magadia v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 246497, December 5, 2019.

entitle the latter to his permanent total disability benefits⁷⁶ because the foregoing general rule is subject to the following guidelines⁷⁷:

Medical Treatment Period	Within 120-day period	More than 120 days, but less than 240 days		More than 240 days
May a seafarer avail of permanent and total disability benefits for a work-related injury?	<p style="text-align: center;">YES</p> <p>Requisite: The company-designated physician issued a final and definitive medical assessment on the seafarer's permanent and total disability.</p>	<p style="text-align: center;">YES</p> <p>In any of the following instances:</p> <p>i. No justification from the company-designated physician during the 120-days to extend period of treatment; or</p> <p>ii. "[t]he company-designated physician declared that [the seafarer] is fit for sea duty within the 120-day or 240-day period, as the case may be but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion."⁷⁸</p>	<p style="text-align: center;">NO</p> <p>In any of the following instances:</p> <p>i. The lapse of 120-days was caused by seafarer's fault (i.e. indifference to treatment/ uncooperative seafarer/ medical abandonment); or</p> <p>ii. The company-designated physician gave an assessment within the 120-day period that the seafarer required further medical treatment.</p>	<p style="text-align: center;">YES</p> <p>Thus, if after the lapse of 240 days, and the company-designated physician has not made any assessment, then "[t]he finding of permanent and total disability becomes conclusive."⁷⁹</p>

The present case.

In the instant case, We note the following relevant dates: (i) Rodriguez was repatriated on October 2, 2012;⁸⁰ (ii) two days thereafter or on October 4, 2012 he reported to Dr. Lim and his medical team;⁸¹ (iii) on January 24, 2013, Dr. Lim issued an *interim* disability assessment of Grades 12 and 8 on Rodriguez;⁸²

⁷⁶ *Teekay Shipping Philippines, Inc. v. Ramoga, Jr.*, 824 Phil. 35, 44 (2018).

⁷⁷ See also *Career Philippines Ship Management, Inc. v. Acub*, 809 Phil. 881, 895 (2017); and *Abosta Shipmanagement Corp. v. Segui*, supra note 57.

⁷⁸ *Guadalquivir v. Sea Power Shipping Enterprises, Inc.* G.R. No. 226200, August 5, 2019.

⁷⁹ *Elburg Shipmanagement Phils., Inc. v. Quilogue, Jr.*, supra note 46 at 361; See also *Rickmers Marine Agency Phils., Inc. v. San Jose*, 836 Phil. 641, 652 (2018).

⁸⁰ *Rollo*, p. 20.

⁸¹ *Id.* at 20; See also *CA rollo* (Medical Report dated January 24, 2013), p. 61.

⁸² *Id.*

(iv) on April 26, 2013, Dr. Lim issued a final Medical Report⁸³ indicating that Rodriguez was suffering from a final disability assessment Grade 8.⁸⁴

From October 4, 2012 to January 24, 2013 when the *interim* disability assessment was issued, more or less 112 days had lapsed. On the other hand, from October 4, 2012 to April 26, 2013, when the final disability assessment was issued about 202 days had lapsed.

Thus, We need to assess whether or not there existed sufficient justification for Dr. Lim to extend Rodriguez's medical treatment beyond the 120-day period which ended⁸⁵ on January 30, 2013. The January 24, 2013 Medical Report⁸⁶ which indicated Dr. Lim's *interim* disability assessment partly reads:

Patient has undergone Laparoscopic Cholecystectomy on January 23, 2013 for management for his gall bladder problem.

Prognosis with [regard] to this condition is good with estimated length of recuperation period of around 6-8 weeks after surgery.

Repeat Gastroscopy already showed negative Gastritis and H. pylori infection.

With [regard] to his back condition, patient claims to have no improvement with rehabilitation.

Patient was advised on possible back surgery but patient is not keen at present.

Prognosis with [regard] to this condition is guarded.

x x x x

Based on his present condition, his closes (*sic.*) interim assessments are Grade 12 (surgical-wise)- slight residuals or disorder and Grade 8 (orthopedic-wise)- loss of 2/3 lifting power. (*Emphasis supplied*)

We find the foregoing assessment as sufficient justification to extend the seafarer's medical treatment beyond the 120-day period, since the latter still had to undergo further treatment and evaluation in view of his persistent back problems.

Since Dr. Lim's April 26, 2013 final medical assessment was justifiably issued beyond the 120-day period but within 240 days from the time Rodriguez first reported to him, this Court finds Rodriguez not entitled to his claim for permanent and total disability benefits. In *Gomez v. Crossworld Marine Services, Inc.*,⁸⁷ We emphasized that a "temporary total disability only becomes

⁸³ CA rollo, p. 62.

⁸⁴ Rollo, p. 20.

⁸⁵ CA rollo, p. 61.

⁸⁶ Rollo, p. 20; See also CA rollo (Medical Report dated January 24, 2013), p. 61.

⁸⁷ 815 Phil. 401, 419 (2017).

permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.” Thus, as the appellate court properly held, he is only entitled to partial and permanent disability benefits in view of Dr. Lim’s final assessment that Rodriguez was suffering from Grade 8 disability or injury classification.⁸⁸

Moreover, since Dr. Lim and Dr. Garcia had conflicting medical assessments, Rodriguez failed to refer the matter to a third doctor, jointly agreed upon the parties, as mandated by Section 20(A) of the 2010 POEA-SEC and the parties’ Collective Bargaining Agreement (CBA).⁸⁹ In *Marlow Navigation Philippines, Inc. v. Osias*,⁹⁰ We pointed out that “the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.” In view of the absence of a third doctor’s assessment, We find Dr. Lim’s assessment, as company-designated physician, should prevail. Moreover, We give more credence to Dr. Lim’s diagnosis than Dr. Garcia’s since the former was able to assess the seafarer after an extensive medical treatment, whereas Dr. Garcia only assessed him once.⁹¹ In *Abosta Shipmanagement Corp. v. Delos Reyes*,⁹² this Court ruled:

Under prevailing jurisprudence, “the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.”

Finally, it has not escaped our notice that Rodriguez filed the instant complaint on February 25, 2013, even before he consulted his personal doctor on April 30, 2013, who declared him on the same date to be suffering from a Grade 1 disability rating.

WHEREFORE, the instant Petition is hereby **DENIED**. The assailed October 29, 2014 Decision and May 12, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 134211 are hereby **AFFIRMED**. No pronouncement as to costs.

⁸⁸ See also *Cutanda v. Marlow Navigation Phils., Inc.*, 817 Phil. 1106, 1128 (2017).

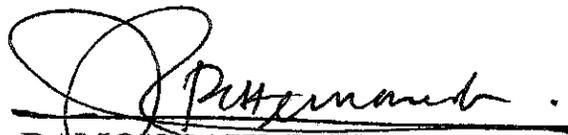
⁸⁹ *Rollo*, p. 20.

⁹⁰ 773 Phil. 428, 446 (2015).

⁹¹ *CA rollo*, pp. 91-93.

⁹² 833 Phil. 760, 770 (2018).

SO ORDERED.



RAMON PAUL L. HERNANDO

Associate Justice
Acting Chairperson

WE CONCUR:

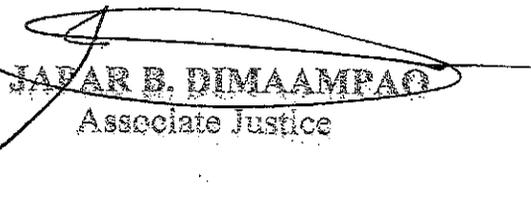
On official leave,
ESTELA M. PERLAS-BERNABE
Senior Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



JAFAR B. DIMAAMPAO
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.



RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

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.



ALEXANDER G. GESMUNDO
Chief Justice