



Republic of the Philippines  
**Supreme Court**  
 Manila

**THIRD DIVISION**

**RUDY T. AMPOLITOD,**

*Petitioner,*

**G.R. No. 252347**

Present:

- versus -

**CAGUIOA, J.,**

*Chairperson,*

**INTING,**

**GAERLAN,**

**DIMAAMPAO, and**

**SINGH, JJ.**

**TOP EVER MARINE MANAGEMENT  
 PHILS. INC., TEMM MARITIME CO.,  
 LTD., and CAPT. OSCAR D. ORBETA,**

*Respondents.*

Promulgated:

**May 22, 2024**

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**DECISION**

**GAERLAN, J.:**

This is a Petition for Review on *Certiorari*<sup>1</sup> filed by petitioner Rudy T. Ampolitod (Ampolitod), assailing the Decision<sup>2</sup> dated November 28, 2019 and the Resolution<sup>3</sup> dated March 12, 2020 promulgated by the Court of Appeals (CA) in CA-G.R. SP. No. 159193, which affirmed the Decision<sup>4</sup> dated August 28, 2018 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-000363-18 which dismissed Ampolitod's claim for total and permanent disability benefits.

<sup>1</sup> *Rollo*, pp 12–56.

<sup>2</sup> *Id.* at 61–72. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Jhosep Y. Lopez (now a Member of this Court) and Walter S. Ong of the Special Thirteenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 74–75. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Jhosep Y. Lopez (now a Member of this Court) and Walter S. Ong of the Former Special Thirteenth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 119–138. Penned by Commissioner Erlinda T. Agus and concurred in by Commissioner Dominador B. Mendroso, Jr.

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## FACTS

On June 27, 2015, Rudy T. Ampolitod was hired by Top Ever Marine Management Phils. Inc. (Top Ever) for and in behalf of its principal, TEMM Maritime Company, Ltd. (TEMM Maritime) as an Able-Bodied Seaman to work on board the vessel "M/V" Coral Opal for a period of nine months. Prior to this employment, Ampolitod was hired continuously by Top Ever for and on behalf of TEMM Maritime since 2009 to work on board different vessels under various positions.<sup>5</sup> Prior to his deployment, Ampolitod was given a clean bill of health by the company-designated doctors.<sup>6</sup>

On August 25, 2015, Ampolitod joined "M/V" Coral Opal. Sometime in October 2015, almost two months after embarkation and while on board the vessel, Ampolitod suddenly felt dizzy, weak, and tired. On October 22, 2015, Ampolitod requested permission from the vessel's Master to have a medical examination at a medical clinic in Baton Rouge, Louisiana, United States of America for his complete blood count (CBC).<sup>7</sup> According to his Hematology results, Ampolitod had a platelet count of 51 L, below the normal platelet count of 150-400.<sup>8</sup>

On October 25, 2015, Ampolitod noticed bruising on his legs, arms, and other body parts. In addition, Ampolitod felt dizzy and had blurred vision.<sup>9</sup> The following day, the vessel's Master sent him to West Jefferson Medical Center for medical treatment. The attending physician diagnosed Ampolitod with Thrombocytopenia and was advised to see a hematologist.<sup>10</sup> In addition, Ampolitod was declared unfit to work and recommended his repatriation.<sup>11</sup>

On October 29, 2015, Ampolitod was medically repatriated and arrived in the Philippines on October 30, 2015. On October 31, 2015, respondents had him admitted at the Manila Doctors Hospital where he was monitored and treated by the hematology team from that day until November 21, 2015. The company-designated physician's impression was Pancytopenia Secondary to Idiopathic Thrombocytopenia Purpura. Said condition is compatible with Myelodysplastic Syndrome (MDS), as confirmed by the November 16, 2015 bone marrow biopsy result.<sup>12</sup> The company-designated physician also sent a specimen of Ampolitod's bone marrow for cytogenetic analysis to the Molecular Cytogenetics Laboratory of St. Luke's Medical Center. The

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<sup>5</sup> *Id.* at 62.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 156.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 62.

<sup>11</sup> *Id.* at 156.

<sup>12</sup> *Id.* at 63.

cytogenetic report of December 10, 2015 showed that Ampolitod's illness is not genetic in nature.<sup>13</sup>

Respondents claim that during medical history taking at Manila Doctors Hospital, Ampolitod admitted that sometime in June 2015, he suffered from Isolated Anemia but was subsequently cleared for employment abroad. Ampolitod was asymptomatic until three months later when he noted anterior chest wall petechial and right calf and arm hematoma.

Ampolitod started treatment on October 31, 2015, and continued until May 2016 for almost seven months. Sometime in May 2016, Ampolitod's treatment was discontinued after his CBC showed normal result and that he was already fit to work.<sup>14</sup> Even after the discontinued treatment, the company physician recommended that Ampolitod continue monitoring his CBC.<sup>15</sup> Thus, Ampolitod regularly underwent CBC testing at Capital University Medical Center in his province in Cagayan De Oro. Ampolitod furnished the company-designated physicians his CBC results from January 20, 2016 until August 5, 2017, all of which showed below than normal results, especially on the platelet count. Ampolitod also continued to suffer from dizziness, bruising on his body, and blurred vision.<sup>16</sup>

During this time, Ampolitod also regularly visited Dr. Alisa Q. Queja (Dr. Queja), an internal medicine-hematologist in his hometown, for follow-up monitoring of his CBC. In a Medical Certificate dated September 6, 2017, Dr. Queja, under diagnosis MDS, declared Ampolitod "Not fit to work."<sup>17</sup> Ampolitod also sought the medical opinion of Dr. May S. Donato-Tan (Dr. Donato-Tan), an internal medicine cardiologist at the Philippine Heart Center, who declared him permanently disabled.

Consequently, on November 3, 2017, Ampolitod filed before the Labor Arbiter (LA) a complaint to recover permanent total disability benefits.<sup>18</sup>

During the mandatory conference, the parties agreed to refer the matter to a third doctor - Dr. Ivy Mae Escasa (Dr. Escasa), an internal medicine-adult hematologist. In a Report dated January 25, 2018, Dr. Escasa confirmed Ampolitod's MDS and made the following remarks: (1) placed his survival at 8.8 years; (2) that he has a low risk to develop acute myeloid leukemia; and (3) she recommended that Ampolitod not be allowed to work as a seafarer

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 64.

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anymore. However, the report of Dr. Escasa did not indicate that the illness was work-related.<sup>19</sup>

### **Ruling of the Labor Arbiter**

In its Decision dated March 23, 2018, LA Julia Cecily Coching-Sosito ruled in favor of Ampolitod and concluded that his illness was due to his exposure to harmful chemicals in the paints, solvents, and other cleaning agents.<sup>20</sup> Accordingly, LA Sosito awarded total and permanent disability benefit, among others to Ampolitod, the dispositive portion of the Decision reads:

**WHEREFORE**, judgment is hereby rendered finding Rudy Tenio Ampolitod entitled to permanent and total disability benefit.

Respondents Top Ever Marine Management Phils., Inc., TEMM Maritime Co. Ltd. and Oscar Orbeta are ordered to pay, jointly and severally, complainant the amount of [USD] 60,000.00 plus attorney's fees of [USD] 6,000.00, all in its peso equivalent at the time of payment.

**SO ORDERED.**<sup>21</sup> (Emphasis in the original)

According to the LA, although the medical certificate presented by Ampolitod did not categorically state that his illness is work-related, Ampolitod's repeated and continuous rehiring by respondents for the same position and function exposed him to harmful chemicals which caused his illness.<sup>22</sup>

Aggrieved, petitioner filed a Notice of Appeal questioning the foregoing LA Decision.<sup>23</sup>

### **Ruling of the NLRC**

In its Decision dated August 28, 2018, the NLRC reversed and set aside the LA Decision and dismissed the complaint filed by Ampolitod. The dispositive portion of the NLRC Decision<sup>24</sup> reads:

**WHEREFORE**, premises considered, the instant Appeal is **GRANTED**. Accordingly, the assailed Decision dated 23 March 2018

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<sup>19</sup> *Id.* at 89.

<sup>20</sup> *Id.* at 275.

<sup>21</sup> *Id.* at 276.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 277.

<sup>24</sup> *Id.* at 120-138.

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rendered by Labor Arbiter Julia Cecily Coching Sosito is hereby REVERSED and SET ASIDE and a NEW ONE ENTERED dismissing the complaint for lack of merit.

SO ORDERED.<sup>25</sup> (Emphasis in the original)

In reversing the LA Decision and dismissing the Complaint, the NLRC delved into the nature of MDS, including its symptoms and known risk factors contributing to MDS. The NLRC then noted that MDS is not among the occupational diseases listed in Section 32-A of the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), and thus it should be incumbent upon Ampolitod to present proof that his working conditions caused or at the very least increased the risk of contracting MDS.<sup>26</sup> However, according to the NLRC, Ampolitod failed to prove a causal connection between his illness and the nature of his work.<sup>27</sup> NLRC concluded that although Ampolitod was exposed to chemicals used to chip and remove rust on the deck, it was not shown that he was exposed for such a considerable period of time to reasonably conclude that his work contributed to or resulted to MDS.<sup>28</sup>

Thereafter, petitioner filed its Motion for Reconsideration<sup>29</sup> which was eventually denied by the NLRC in its Resolution<sup>30</sup> dated October 30, 2018. Thus, petitioner filed a Petition for *Certiorari*<sup>31</sup> with the CA, assailing the foregoing Decision of the NLRC.

### Ruling of the CA

In its Decision dated November 28, 2019, the CA affirmed the findings and ruling of the NLRC, denying Ampolitod's complaint:<sup>32</sup>

**WHEREFORE**, the petition is **DISMISSED**. The Decision dated August 28, 2018 and the Resolution dated October 30, 2018 of the National Labor Relations Commission in NLRC LAC No. 05-000363-18; NLRC NCR-OFW-M-11-16305-17 are hereby **AFFIRMED**.<sup>33</sup> (Emphasis in the original)

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<sup>25</sup> *Id.* at 140-141.

<sup>26</sup> *Id.* at 132.

<sup>27</sup> *Id.* at 133.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 317-342.

<sup>30</sup> *Id.* at 139-148.

<sup>31</sup> *Id.* at 76-115.

<sup>32</sup> *Id.* at 71.

<sup>33</sup> *Id.*

In dismissing the Petition, the CA affirmed the findings of the NLRC that Ampolitod failed to prove by substantial evidence the mandatory requirements for compensability.<sup>34</sup> In particular, the CA held that Ampolitod failed to show that his illness was contracted or developed during his short stay onboard “M/V” Coral Opal.<sup>35</sup> Moreover, the CA found that Ampolitod failed to adduce substantial evidence to show that his illness—MDS is work-related to entitle him to disability benefits.

Thereafter, petitioner filed its Motion for Reconsideration which was eventually denied by the CA in its Resolution dated March 12, 2020.<sup>36</sup>

Hence, the present Petition for Review on *Certiorari*.

## Our Ruling

### I

At the outset, we must stress that the remedy under Rule 45 is generally limited to questions of law, and thus, this Court is not duty-bound to analyze and weigh all over again the evidence presented in the proceedings *a quo*.<sup>37</sup> Moreover, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.<sup>38</sup>

However, the foregoing rule admits of certain exceptions, such as when the lower courts have conflicting findings of fact.<sup>39</sup>

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<sup>34</sup> *Id.* at 68.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 73.

<sup>37</sup> *Republic v. De Borja*, 803 Phil. 8, 17 (2017) [Per J. Caguioa, First Division].

<sup>38</sup> *Peckson v. Robinson Supermarket Corp. et al.*, 713 Phil. 471, 479 (2013) [Per J. Reyes, First Division].

<sup>39</sup> In *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division] the Court recognized the following exceptions to the general rule that only questions of law can be reviewed by the Court:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) The findings of the Court of Appeals are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
- (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

In this case, the conflicting factual findings by the LA on one hand, and the NLRC as affirmed by CA on the other, compels this Court to delve into the records and examine for itself the questioned findings.<sup>40</sup>

## II

**A seafarer's entitlement to disability benefits is a matter governed not only by medical findings, but also by law and contract,**<sup>41</sup> i.e., the employment contract and the 2010 POEA-SEC (Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships,) under POEA Memorandum Circular No. 10 (Series of 2010), which are deemed incorporated therein.<sup>42</sup>

Thus, for disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.<sup>43</sup>

The POEA-SEC defines a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."<sup>44</sup> On the other hand, Section 20(A)(4) of the POEA-SEC provides that illnesses not mentioned under Section 32 are disputably presumed to be work-related.<sup>45</sup> Nevertheless, this presumption is only limited to the "work-relatedness" of an illness and does not cover and extend to compensability.<sup>46</sup>

<sup>40</sup> *Paredes v. Feed the Children Philippines, Inc.*, 769 Phil. 418, 433 (2015) [Per J. Peralta, Third Division].

<sup>41</sup> *Doehle-Philman Manning Agency, Inc. v. Gatchalian, Jr.*, G.R. No. 207507, February 17, 2021 [Per J. M. Lopez, Second Division].

<sup>42</sup> *Grossman v. North Sea Marine Services Corp.*, G.R. No. 256495, December 7, 2022 [Per J. Kho, Second Division]; *BW Shipping Philippines, Inc. v. Ong*, G.R. No. 202177, November 17, 2021 [Per J. Gaerlan, Second Division]; *Career Phils. Shipmanagement, Inc. v. Tiquio*, 853 Phil. 724, 737-738 (2019) [Per J. Perlas-Bernabe, Second Division]; *Olidana v. Jepsens*, 772 Phil. 234, 245 (2015) [Per J. Mendoza, Second Division]; *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 180 (2015) [Per J. Carpio, Second Division]; *CF Sharp Crew Management, Inc. v. Taok*, 691 Phil. 521, 533 (2012) [Per J. Reyes, Second Division]; *Jepsens Maritime, Inc. and/or Alliance Maritime Services, Ltd v. Undag*, 678 Phil. 938, 946 (2011) [Per J. Mendoza, Third Division].

<sup>43</sup> *Ledesma v. C.F. Sharp Crew Management, Inc.*, G.R. No. 241067, October 5, 2022 [Per J. Gesmundo, First Division]; *Darroca, Jr. v. Century Maritime Agencies, Inc.*, G.R. No. 234392, November 10, 2021 [Per J. Hernando, Second Division]; *Ilustricimo v. NYK-Fil Ship Management, Inc.*, 834 Phil. 693, 701 (2018) [Per J. Velasco, Third Division]; *Doehle-Philman Manning Agency, Inc. v. Heirs of Gazzingan*, 760 Phil. 861, 877 (2015) [Per J. Del Castillo, Second Division]; *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 11 (2012) [Per J. Brion, Second Division].

<sup>44</sup> Item 16, Definition of Terms, 2010 POEA-SEC.

<sup>45</sup> Section 20(A) (4) of the 2010 POEA-SEC provides: "4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."

<sup>46</sup> *Career Phils. Shipmanagement, Inc. v. Tiquio*, *supra* at 744-745; *Romana v. Magsaysay Maritime Corp.*, 816 Phil. 194, 204 (2017) [Per J. Perlas-Bernabe, First Division].



The disputable presumption does not signify an automatic grant of compensation and/or benefits claim.<sup>47</sup> While the law disputably presumes an illness not found in Section 32-A to be also work-related, the seafarer must nevertheless still prove compliance with the conditions for compensability,<sup>48</sup> whether or not the work-relatedness of his illness is disputed by the employer.<sup>49</sup>

The legal presumption of work-relatedness must still be read together with the requirements of compensability under Section 32-A of the 2010 POEA-SEC,<sup>50</sup> which provides:

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

Thus, for both listed occupational diseases under Section 32 and non-listed illnesses, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.<sup>51</sup>

For a non-occupational disease to be compensable, substantial evidence must be presented to prove that the risk of contracting the illness was aggravated by the employee's working conditions.<sup>52</sup> It is enough that the

<sup>47</sup> *Ledesma v. C.F. Sharp Crew Management, Inc.*, *supra* note 43; *Marlow Navigation Phils. v. Heirs of Beato*, G.R. No. 233897, March 9, 2022 [Per J. Hernando, Second Division].

<sup>48</sup> *One Shipping Corp. v. Heirs of Abarrientos*, G.R. No. 255802, October 12, 2022, [Per J. M.V. Lopez, Second Division]; *Unitra Maritime Manila, Inc. v. Campanero*, G.R. No. 238545, September 7, 2022 [Per J. J.Y. Lopez, Second Division].

<sup>49</sup> *Career Phils. Shipmanagement, Inc. v. Tiquio*, *supra* note 42, at 744–745; *Romana v. Magsaysay Maritime Corp.*, *supra* note 46.

<sup>50</sup> *Darroca, Jr. v. Century Maritime Agencies, Inc.*, *supra* note 43, *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 96 (2010) [Per J. Nachura, Third Division].

<sup>51</sup> *Darroca, Jr. v. Century Maritime Agencies, Inc.*, *id.*; *Romana v. Magsaysay Maritime Corp.*, *supra* note 46.

<sup>52</sup> *Social Security System v. Simacas*, G.R. No. 217866, June 20, 2022 [Per J. Leonen, Second Division]; *Sarmiento v. Employees' Compensation Commission*, 228 Phil. 400, 405 (1986) [Per J. Gutierrez, Second Division].



seafarer's employment contributed, even in a small degree, to the development of the disease.<sup>53</sup> Only reasonable proof of work connection is required, and not direct causation. In resolving compensability, this Court only looks for probability, not the ultimate degree of certainty.<sup>54</sup>

In the present case, petitioner was diagnosed with Myelodysplastic Syndrome or MDS after a bone marrow biopsy was conducted, after he was medically repatriated. In addition, the company-designated physician also sent a specimen of Ampolitod's bone marrow for cytogenetic analysis to the Molecular Cytogenetics Laboratory of St. Luke's Medical Center which showed that his illness is not genetic in nature.<sup>55</sup>

The finding that Ampolitod was suffering from MDS was likewise affirmed by his doctor of choice, as well as the third doctor—Dr. Escasa, chosen by the parties during mandatory conference. According to Dr. Escasa, an internal medicine-adult hematologist, Ampolitod had: (1) a very low risk MDS with an average survival of 8.8 years; and (2) very low risk to develop acute myeloid leukemia. Dr. Escasa likewise recommended that Ampolitod not be allowed to work as a seafarer anymore given his condition.

Myelodysplastic Syndrome or MDS comprises a heterogeneous group of clonal hematopoietic stem cell malignancies with significant morbidity and high mortality.<sup>56</sup> Simply put, it is a group of diverse bone marrow disorders in which the bone marrow does not produce enough healthy blood cells. MDS is often referred to as a “bone marrow failure disorder.”<sup>57</sup>

Clinical manifestations or symptoms of MDS include a decrease in the number of red blood cells (RBC), platelets, and white blood cells (WBC).<sup>58</sup> In addition, patient suffering from MDS experience infection, anemia, spontaneous bleeding, or easy bruising. Anemia (low red blood cell counts), neutropenia (low white blood cell counts), and thrombocytopenia (low platelet counts).<sup>59</sup> Moreover, patients may complain of fatigue, shortness of breath, chest pain, or dizziness due to this.<sup>60</sup>

<sup>53</sup> *Unira Maritime Manila, Inc. v. Campanero*, supra note 48; *Alfredo Ani Corcoro, Jr. v. Magsaysay MOL Marine, Inc., et al.*, 879 Phil. 369, 375 (2020) [Per J. Carandang, Third Division]

<sup>54</sup> *Unira Maritime Manila, Inc. v. Campanero, id.*; *C.F. Sharp Crew Mgmt., Inc., et al. v. Castillo*, 809 Phil. 180, 189 (2017) [Per J. Peralta, Second Division];

<sup>55</sup> *Rollo*, p. 63.

<sup>56</sup> Xiaomei Ma, *Epidemiology of Myelodysplastic Syndromes*, 125 THE AMERICAN JOURNAL OF MEDICINE, Issue 7, S2-S5 (2012). available at <https://doi.org/10.1016/j.amjmed.2012.04.014> (Last accessed on August 15, 2023).

<sup>57</sup> Available at <https://www.mds-foundation.org/what-is-mds/> (Last accessed on August 15, 2023).

<sup>58</sup> Dotson JL, *Lebowicz Y. Myelodysplastic Syndrome*, STATPEARLS PUBLISHING; available at <https://www.ncbi.nlm.nih.gov/books/NBK534126/> (Last accessed on August 15, 2023)

<sup>59</sup> Available at <https://www.mds-foundation.org/what-is-mds/> (Last accessed on August 15, 2023).

<sup>60</sup> Dotson JL, *Lebowicz Y. Myelodysplastic Syndrome*, STATPEARLS PUBLISHING; available at <https://www.ncbi.nlm.nih.gov/books/NBK534126/> (Last accessed on August 15, 2023).

Development of MDS may occur due to various mechanisms such as environmental and occupational exposures<sup>61</sup> to chemicals like benzene, radiation, prior exposure to chemotherapeutic agents, or may be idiopathic, which is typically seen in the elderly population.<sup>62</sup>

In the case of Ampolitod, he was hired as an Able Seaman tasked with overhauling/maintaining gears/equipment, as well as to chip rust and paint the deck of the ship, among other duties.<sup>63</sup> From the nature of his work, Ampolitod's duties clearly exposed him to various industrial solvents, cleaning agents, and chemicals.

As this Court has recognized, Benzene is a widely used chemical and is mainly used as a starting material in making other chemicals, including, plastics, lubricants, rubbers, dyes, detergents, drugs, and pesticides.<sup>64</sup> Thus, it cannot be denied, that in the performance of his duties as an Able Seaman, Ampolitod was exposed to benzene contained in the solvents, agents, and chemicals used by him.

Respondents attempt to discount Ampolitod's exposure to benzene by claiming that it had only been two months since he was deployed before the symptoms manifested on board the vessel.<sup>65</sup> Respondents assert that there must be long-term exposure to benzene to develop MDS, if at all.<sup>66</sup>

We do not agree.

Although, Ampolitod developed the symptoms for his MDS two months after he joined "M/V" Coral Opal, it is beyond dispute that he was hired by respondents repeatedly for a span of six years. According to Ampolitod's Application for Shipboard Employment, he has been continuously rehired by respondents since November 2009 up until August 2015—the present employment contract, or for almost six years, in various positions, either as an Ordinary Seaman or an Able Seaman.<sup>67</sup> During his lengthy service to respondents, Ampolitod performed essentially the same functions which would expose him to various industrial solvents, cleaning agents, and chemicals containing benzene. Thus, it is highly probable that it

<sup>61</sup> Xiaomei Ma, *Epidemiology of Myelodysplastic Syndromes*, 125 THE AMERICAN JOURNAL OF MEDICINE, Issue 7, S2-S5 (2012), available at <https://doi.org/10.1016/j.amjmed.2012.04.014> (Last accessed on August 15, 2023).

Available at <https://doi.org/10.1016/j.amjmed.2012.04.014> (Last accessed on 15 August 2023).

<sup>62</sup> Dotson JL, Lebowicz Y. *Myelodysplastic Syndrome*, STATPEARLS PUBLISHING, available at <https://www.ncbi.nlm.nih.gov/books/NBK534126/> (Last accessed on August 15, 2023).

<sup>63</sup> *Rollo*, pp 155–156.

<sup>64</sup> *Grieg Philippines, Inc. v. Gonzales*, 814 Phil. 965, 972 (2017) [Per J. Leonen, Second Division].

<sup>65</sup> *Rollo*, p. 227.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 180.

caused or at the very least contributed even to a small degree to the development or aggravation of his MDS.

In addition, Ampolitod underwent cytogenetic analysis which yielded “no apparent chromosome abnormality,”<sup>68</sup> indicating that his MDS is not genetic in nature.

Given the foregoing, petitioner was able to establish that his MDS was work-related and that his working conditions, exposure to various industrial solvents, cleaning agents, and chemicals containing benzene, and his lengthy service with respondents caused or at the very least contributed to the development of his MDS. Accordingly, we find petitioner is entitled to disability benefits.

**A. *Petitioner is entitled to total and permanent disability benefits***

Having established that Ampolitod’s illness is work-related and compensable, the next issue for resolution is the extent of his disability and the corresponding benefits he is entitled to.

Respondents argue that Ampolitod had no disability as shown by the Final Disability Assessment issued by the company-designated physician on January 20, 2016.<sup>69</sup> However, despite Ampolitod’s supposed clearance, he was still assessed as “Low Risk type of MDS,” and was supposedly disease-free based on his CBC Results.<sup>70</sup>

For his part, Ampolitod claims that the Final Disability Assessment mentioned by respondents was in fact a Medical Report between the company designated physician and respondents. Ampolitod denies having received any copy of the supposed Final Disability Assessment. He only received a copy of the said report during the Single Entry Approach (SEnA) mandatory conference.<sup>71</sup> Furthermore, Ampolitod asserts that he was made to monitor his CBC and was given continued treatment until May 2016. It was only in May 2016 that his treatment was discontinued, and he was verbally informed by the company-designated physician that he already had normal CBC results and was fit to work.<sup>72</sup>

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<sup>68</sup> *Id.* at 188.

<sup>69</sup> *Id.* at 217.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 240.

<sup>72</sup> *Id.* at 238.

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We rule in favor of petitioner.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue*,<sup>73</sup> the Court set forth the following rules whenever there is a claim for total and permanent disability benefits by a seafarer:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.<sup>74</sup>

Pertinently, the foregoing medical assessment issued by the company-designated physician must be final, definite, and conclusive.<sup>75</sup>

In addition, this Court had occasion to disregard a medical report issued by a company-designated physician when it was shown that the seafarer was never furnished a copy thereof. Thus, in *Gere v. Anglo-Eastern Crew Management Phils., Inc.*<sup>76</sup> We held that the company designated physician must not only "issue" a final medical assessment, but they also must "give" their assessment to the seafarer concerned. The seafarer must be fully and properly informed of their medical condition. The results of their medical examinations, the treatments extended to them, the diagnosis and prognosis, if needed, and, of course, their disability grading must be fully explained to them by no less than the company-designated physician.

<sup>73</sup> 765 Phil. 341 (2015) [Per J. Mendoza, Second Division].

<sup>74</sup> See also *Benhur Shipping Corp. v. Riego*, G.R. No. 229179, March 29, 2022 [Per C. J. Gesmundo, First Division]; *Pastrana v. Bahia Shipping Services*, 873 Phil. 892, 904 (2020) [Per J. Caguioa, First Division].

<sup>75</sup> *Abella v. Abosta Shipmanagement Corp.*, G.R. No. 249358, April 28, 2021 [Per J. Caguioa, First Division].

<sup>76</sup> *Parce v. Magsaysay Maritime Corp.*, G.R. No. 241309, November 11, 2021 [Per J. J. Lopez, First Division]; 830 Phil. 695, 706 (2018) [Per J. Reyes, Jr., Second Division].

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Absent proper notice of the final medical assessment, respondent would not be in a position to evaluate or contest the findings.

In the instant case, Ampolitod was never furnished or given a copy of the supposed Final Disability Assessment/ Medical Report dated January 20, 2016 within the 120-day/240-day period provided by law. It was only during the proceedings before the SENa, after Ampolitod filed the complaint in 2017 that he was furnished a copy of the said assessment. Clearly, the said Final Disability Assessment was given beyond the period provided.

Moreover, respondents did not even attach the Final Disability Assessment supposedly issued by the company-designated physician to their submissions before this Court.

In addition, there is serious doubt as to the credibility of the said assessment. According to respondents, Ampolitod was cleared and declared fit to work citing a Medical Report dated January 20, 2016, stating that he was already normal based on his CBC Results.

The foregoing findings, however, were clearly refuted by the series of CBC Results taken at the Capitol University Medical Center in Cagayan De Oro which showed that Ampolitod's blood count was way below the normal range.<sup>77</sup> These results were taken during the period wherein Ampolitod was told to monitor his CBC and underwent continued treatment by the company-designated physician until May 2016. Notably, one CBC result showed he had below normal blood count on the day he was supposedly cleared for work – January 20, 2016.<sup>78</sup>

The table below clearly indicates that Ampolitod was still exhibiting symptoms of his MDS, i.e., low blood count, signifying that his condition was not normal and that he had not fully recovered.

<i>Date Taken</i>	<i>Test</i>	<i>Result</i>	<i>Reference Value</i> <sup>79</sup>
January 20, 2016 <sup>80</sup>	Hgb <sup>81</sup>	11.3	13.7-16.7 g/L
	WBC <sup>82</sup>	4,000	5,000 – 10,000 cell/mm <sup>3</sup>

<sup>77</sup> *Rollo*, pp. 189–205.

<sup>78</sup> *Id.* at 189.

<sup>79</sup> Otherwise known as “Reference intervals” which describe the typical range of results seen in a healthy reference population.

Sikaris KA, *Physiology and its importance for reference intervals*, CLIN BIOCHEM REV, (2014) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3961997/> (Last accessed on August 15, 2023).

<sup>80</sup> *Rollo*, p. 189.

<sup>81</sup> Hemoglobin.

<sup>82</sup> White Blood Cell Count.

	Platelet Count	48,000	144,000-372,000 cell/mm <sup>3</sup>
April 1, 2016 <sup>83</sup>	Hgb	13.6	13.7-16.7 g/L
	WBC	3,000	5,000 – 10,000 cell/mm <sup>3</sup>
	Platelet Count	52,000	144,000-372,000 cell/mm <sup>3</sup>
April 22, 2016 <sup>84</sup>	Hgb	12.3	13.7-16.7 g/L
	WBC	2,200	5,000 – 10,000 cell/mm <sup>3</sup>
	Platelet Count	55,000	144,000-372,000 cell/mm <sup>3</sup>
May 5, 2016 <sup>85</sup>	Hgb	11.8	13.7-16.7 g/L
	WBC	4,500	5,000 – 10,000 cell/mm <sup>3</sup>
	Platelet Count	49,000	144,000-372,000 cell/mm <sup>3</sup>
May 13, 2016 <sup>86</sup>	Hgb	11.7	13.7-16.7 g/L
	WBC	4,300	5,000 – 10,000 cell/mm <sup>3</sup>
	Platelet Count	56,000	144,000-372,000 cell/mm <sup>3</sup>

The foregoing test results were taken after the company-designated physician recommended Ampolitod to continue monitoring his CBC even after the discontinuation of his treatment. This signified that even the company-designated physician was not confident that Ampolitod's CBC levels had already returned to normal and that his condition was stable.

Consistent from the foregoing results is that Ampolitod's platelet count was significantly low during the time he was supposedly declared fit to work, and the following months thereafter. A platelet count that falls below the lower limit of normal, is defined as "thrombocytopenia."<sup>87</sup> Thrombocytopenia is among the symptoms that manifest when an individual suffers from MDS.<sup>88</sup>

Clearly, Ampolitod was far from being cleared and declared fit to work. In fact, based on the findings of the third doctor - Dr. Escaca, Ampolitod still exhibited low platelet count and mild anemia. Thus, Dr. Escaca recommended that Ampolitod no longer be allowed to work as a seafarer anymore due to the necessity of closely monitoring his condition and the need for immediate care should bleeding develop.<sup>89</sup>

Accordingly, in the absence of a final, definite, and conclusive medical assessment by the company-designated physician furnished or relayed to respondent, the law steps in and presumes that respondent suffered total and

<sup>83</sup> *Rollo*, p. 190.

<sup>84</sup> *Id.* at 191.

<sup>85</sup> *Id.* at 192.

<sup>86</sup> *Id.* at 193.

<sup>87</sup> Jinna S, *Khandhar PB Thrombocytopenia*, STATPEARLS PUBLISHING, available at <https://www.ncbi.nlm.nih.gov/books/NBK542208/> (Last accessed on August 15, 2023).

<sup>88</sup> Available at <https://www.mds-foundation.org/what-is-mds/> (Last accessed on August 15, 2023).

<sup>89</sup> *Rollo*, p. 214.



permanent disability.<sup>90</sup> The grant of permanent total disability benefits does not require a state of absolute helplessness. It is enough that there is inability to substantially pursue his gainful occupation as seafarer without serious discomfort or pain and without material injury or danger to life.<sup>91</sup>


With respect to the award of attorney's fees, Article 2208(8) of the Civil Code provides that the same can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees are also recoverable where an employee is forced to litigate and incur expenses to protect their right and interest.<sup>92</sup> Thus, the award of attorney's fees in the amount equivalent to 10% of the total award is warranted.

Moreover, the Court deems it proper to impose on all monetary awards due to petitioner legal interest at the rate of 6% per annum, reckoned from finality of this Decision until full payment, in accordance with prevailing jurisprudence.<sup>93</sup>

**ACCORDINGLY**, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated November 28, 2019 and the Resolution dated March 12, 2020 promulgated by the Court of Appeals in CA-G.R. SP. No. 159193 which affirmed the Decision dated August 28, 2018 of the National Labor Relations Commission in NLRC LAC No. 05-000363-18 are hereby **REVERSED** and **SET ASIDE**.

The Decision dated March 23, 2018 of the Labor Arbiter in NLRC NCR Case No. (M) 11-16305-17 is **REINSTATED** with **MODIFICATION**. Respondents Top Ever Marine Management Phils., Inc., TEMM Maritime Co. Ltd. and Oscar Orbeta are **ORDERED** to jointly and severally **PAY** Rudy T. Ampolitod the amount of USD 60,000.00, plus 10% attorney's fees amounting to USD 6,000.00, all in its peso equivalent at the time of payment. The foregoing amounts shall earn legal interest at the rate of 6% per annum from finality of this Decision until full payment.

**SO ORDERED.**

  
**SAMUEL H. GAERLAN**  
Associate Justice

<sup>90</sup> *Abella v. Abosta Shipmanagement Corp.*, *supra* note 75.

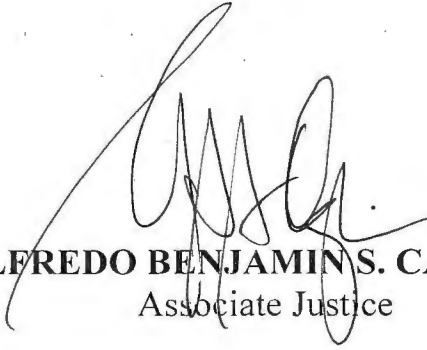
<sup>91</sup> *Magsaysay Mol Marine, Inc. v. Atraje*, 836 Phil. 1061, 1081 (2018) [Per J. Leonen, Third Division].

<sup>92</sup> *Atienza v. Orophil Shipping International Co., Inc.*, 815 Phil. 480, 508 (2017) [Per J. Perlas-Bernabe, First Division].

<sup>93</sup> *Reuyan v. INC Navigator Co. Phils., Inc.*, G.R. No. 250203, December 7, 2022 [Per J. Kito, Second Division]; *Nacar v. Gallery Frames*, 716 Phil. 267, 279 (2013) [Per J. Peralta, *En Banc*].



WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

*See Concurring  
Dissenting  
Opin.*



**HENRI JEAN PAUL B. INTING**  
Associate Justice



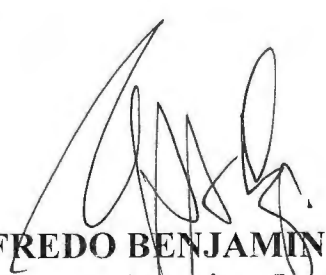
**JAPAR B. DIMAAMPAO**  
Associate Justice



**MARIA FILOMENA D. SINGH**  
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.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 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