Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PACIFIC OCEAN MANNING, INC. and/or V. SHIPS UK LTD./ NORDIC AMERICAN TANKERS LIMITED, Petitioners,	**G.R. No. 259982**
	Present:
- versus -	GESMUNDO, *C.J., Chairperson,* HERNANDO, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
NICOLAS F. BOBILES, Respondent.	**Promulgated:** OCT 28 2024

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DECISION

ROSARIO, *J.*:

Over the years, the Court has vacillated on the award of attorney's fees on the basis of Article 111 of the Labor Code and Article 2208 of the Civil Code in worker disability indemnification cases. We clarify that attorney's fees under Article 111 of the Labor Code are recoverable only where there is unlawful withholding of wages, not in cases involving only indemnification claims for disability or death. Anent attorney's fees under Article 2208(2) of the Civil Code, it is not sufficient that the plaintiff be compelled to litigate or incur expense to protect their interest. The litigation or incurrence of expense must be in relation to third persons. A contrary rule would make entitlement to attorney's fees the general rule instead of the exception and would negate the policy against placing a premium on the right to litigate. Finally, attorney's fees under Article 2208(8) of the Civil Code are recoverable only in actions for indemnity under workmen's compensation and employer's liability laws, not under contract.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] and Resolution[3] of the Court of Appeals (CA), which affirmed with modification the Decision[4] of the National Conciliation and Mediation Board (NCMB) ordering petitioners Pacific Ocean Manning, Inc. (POMI) and V. Ships UK Ltd./Nordic American Tankers Limited (V. Ships UK Ltd.) to jointly and severally pay respondent Nicolas F. Bobiles (Bobiles) total permanent disability compensation and attorney's fees.

I

V. Ships UK Ltd. is a foreign juridical entity engaged in the shipping business while its local agent, POMI, is a domestic corporation duly licensed to engage in the manning business in the Philippines. Bobiles was hired by POMI et al. as a pumpman in their vessel, Nordic Vega, on October 17, 2016.

We quote the antecedents from the CA Decision:

> [Bobiles] was hired by [POMI] as Pumpman in its vessel Nordic Vega. According to the employment contract, Bobiles will have a basic salary of [USD] 764.00; his tour of duty was for nine months; to work 44 hours per week, with an additional overtime pay of [USD] 1425.00 and an additional [USD] 5.00 per hour in excess of 85.0 hours; and with vacation leave of 11 days per month.
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> The employment contract was covered by Filipino ITF IBF TCC AMOSUP Collective Bargaining Agreement [(**CBA**)]. Having been approved by the [Philippine Overseas Employment Administration (**POEA**)] dated December 8, 2016, the said contract was deemed to be an integral part of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Go[i]ng Vessels [(**POEA-SEC**)].
>
> Prior to the engagement of Bobiles as a seafarer, he underwent series of tests as required by [POMI] and he was declared fit to work. He had no medical issue or injury with respect to any parts of his body.
>
> Bobiles started to work as Pumpman for his contract on board vessel [Nordic] Vega on December 24, 2016 and was exposed to harsh conditions and perils of the sea. He was also under severe stress while being away from his family and suffering from over fatigue while on board the vessel due to long hours of duty schedule.
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> ...

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1 *Rollo*, pp. 35–65.

2 *Id.* at 67–83. The July 15, 2021 Decision in CA-G.R. SP No. 158388 was penned by Associate Justice Perpetua Susana T. Atal-Paño and concurred in by Associate Justices Edwin D. Sorongon and Carlito B. Calpatura of the Eleventh Division, Court of Appeals, Manila.

3 *Id.* at 98–100. The March 22, 2022 Resolution in CA-G.R. SP No. 158388 was penned by Associate Justice Perpetua Susana T. Atal-Paño and concurred in by Associate Justices Edwin D. Sorongon and Carlito B. Calpatura of the Former Eleventh Division, Court of Appeals, Manila.

4 A copy was not attached to the Petition.

On January 27, 2017, Bobiles inspected ... the welded pumps and found that the equipment needs servicing. When he lifted the equipment to be fixed in the work area, he felt something which snapped his back nerves. The impact caused pain which radiated from his shoulder down to his waist. The Master, who was advised on the condition of Bobiles who became incapable to work, requested a medical service from CIRM in Italy.

An advisory was given to the Master to prescribe him with several oral medications. Bobiles was also advised to stay in his cabin to take a rest. Despite the pain relievers, his back remained stiff including his waist. He was practically immobile because of the intense and piercing pain through his back. With this condition, Bobiles remained in his cabin for two weeks.

On February 6, 2017, when Bobiles was able to regain some level of comfort, he tried his best to return to duty but the excruciating pain prevented him from assuming his functions. As a result, Bobiles was advised to stay in his cabin to continue his bed rest... He religiously took medicines as advised and despite oral medications, Bobiles continued to be in severe pain.

On February 27, 2017, when the vessel arrived in Vadinar, India, Bobiles was disembarked upon the advice of the Master. He was brought to Divya Orthopaedic Hospital & Physiotherapy Center where he was attended by Dr. Niraj Vora, an orthopedic specialist who recommended Bobiles to undergo X-Ray and MRI on his Lumbosacral Spine. After undergoing the procedures, he was found to have "L2-L3" Instability. Dr. Vora prescribed medications and recommended for his repatriation.

Bobiles arrived in the Philippines on February 28, 2017 and he reported to his manning agent and was referred to Marine Medical Clinic, Manila. He was later endorsed to Cardinal Santos Medical Center, San Juan City and was attended by Dr. Robert Lim who advised [him] to undergo MRI on his lumbar spines.

On March 2, 2017, [*per*] the MRI, Bobiles was found to have severe injury on his lumbar spine described as *"At L4-5, there is a mild disc bulge with a superimposed 3x10 mm central and bilateral paracentral disc protrusion effacing the ventral thecal sa. No nerve root impingement seen; Minimal L2-3 and L3-4 disc bulges."*

These findings were identical to the previous diagnosis of the company doctor in India.

On March 8, 2017, Bobiles, per advice by Dr. Lim, underwent EMG-NCV. On April 21, 2017, the company doctor issued a diagnosis that Bobiles was suffering from *"L4-L5 Disc Herniation, l5 Radiculopathy."* With these findings, Bobiles was advised to undergo physiotherapy program. He underwent therapy at the Marine Medical Services from April 22, 2017 up to May 18, 2017, which was extended until June 13, 2017. Despite the therapies, Bobiles showed no favorable prognosis and so the therapy was extended on a month to month basis.

... Bobiles sought a second opinion from Dr. Manuel Fidel M. Magtira, MD... Dr. Magtira advised him to undergo laboratory test and examinations. Thus, Dr. Magtira issued a Medical Certificate dated October 30, 2017, pertinent portions of which states:

> *"Mr Bobiles still continue[s] to have pain and discomfort on his lower back. He is unable to tolerate prolonged walking and standing. He has not regained his usual capacity. Being a [s]eaman, his works demands are heavy. Since the time of his injury he is unable to work at his previous occupation. Mr. Bobiles is UNFIT to work back as a seaman. He is now permanently disabled.*
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> ...
>
> Bobiles claims that he lost the possibility of being employed as a seaman as he cannot tolerate the pain because of the injury...
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> ... [POMI] maintains that ... based on his lumbosacral MRI result, which only showed mild disc bulges, patient is not permanently unfit to sea duties because he may improve over time. Thus, on September 4, 201[7], a final disability assessment of Grade 11 (slight rigidity or 1/3 loss of lifting power of the trunk) was determined by the company doctor... Bobiles refused the offer but never presented any 2nd contrary medical report.
>
> [G]rievance proceedings ensued. [POMI] was willing to refer [Bobiles] to a 3rd doctor; however, Bobiles' representative moved to terminate the proceedings "for failure to reach amicable settlement." ...
>
> Bobiles prays that [POMI] be ordered to pay him US$102,308.00 for total permanent disability, [USD] 4,000.00 for unpaid sick wages, [P]500,000.00 for actual and exemplary damages, plus 10% of the award for attorney's fees...
>
> [POMI] prays for the dismissal of the case for utter lack of merit, with cost against Bobiles. In the alternative, [POMI] is willing to pay Bobiles the amount of [USD] 7,465.00 based on the Grade 11 disability assessment of the company designated physician.
>
> ... [POMI] maintains that the injury sustained by Bobiles was not a result of an accident, thus not covered by the CBA, and that damages and attorney's fees are not recoverable.[5] (Brackets and italics in the original)

On August 21, 2018, the NCMB issued a Decision in favor of Bobiles. It found that the appointment of a third doctor is not a condition *sine qua non* to the filing of a complaint for permanent total disability benefits and that his disability is total and permanent. Moreover, it ruled that the disability compensation rates in the CBA should be taken into consideration since they are more favorable to the seafarers. The dispositive portion reads:

> WHEREFORE, premises considered, judgment [i]s hereby rendered ordering [petitioners] to jointly and severally pay [Bobiles] the amount of US$102,308.00 as his total permanent disability compensation, plus attorney's fees equivalent to ten percent (10%) of the total monetary award or in their Philippine peso equivalent at the prevailing exchange rate at the actual date of payment.

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5 *Rollo*, pp. 68–72.

SO ORDERED.[6]

After the NCMB denied their Motion for Reconsideration[7] (MR), petitioners appealed to the CA which affirmed the NCMB Decision with modification. The dispositive portion reads:

> **WHEREFORE**, the Petition for Review is hereby **DENIED**. The Decision dated August 21, 2018, issued by National Conciliation Mediation Board, Buhi, Camarines Sur, Office of the Accredited Voluntary Arbitrator Atty. Julio A. Arcilla, Jr., in Case No. AC-958-RCMB-V-01-01-03-2018, is hereby **AFFIRMED WITH MODIFICATION** insofar as the award of total and permanent disability allowance is concerned. Accordingly, petitioners Pacific Ocean Manning, Inc., and V. Ships UK Ltd. are hereby adjudged solidarily liable to pay the amount of **US$60,000.00**, or its peso equivalent to respondent Nicolas F. Bobiles.
>
> **SO ORDERED.**[8] (Emphasis in the original)

The CA likewise denied POMI et al.'s MR in its assailed Resolution[9], emphasizing that the company-designated physician only issued a final disability assessment on September 4, 2017 or 188 days after Bobiles was repatriated, and did not explain why he did not issue it within the original 120-day period. There was likewise no allegation that respondent was uncooperative during his treatment which would otherwise justify an extension of the period to 240 days. By operation of law, Bobiles is thus considered as having total and permanent disability.[10]

Hence, this Petition arguing that there was complete refusal on the part of respondent to have the matter referred to a third doctor; that there was sufficient justification for the extension of the medical treatment; and that respondent is not entitled to payment of attorney's fees.[11]

In his Comment/Opposition (to the Petition for Review),[12] respondent counters that since the company physician failed to issue the disability rating within the required period, the law grants him the relief of permanent total disability benefits. Further, the provision in the POEA-SEC with regard to the appointment of a third doctor does not apply in his case since the company physician failed to issue a definite and accurate medical assessment. Finally, he argues that he is entitled to damages due to petitioners' bad faith as well as attorney's fees since he was compelled to litigate.

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6 *Id.* at 72–73. The dispositive portion of the National Conciliation and Mediation Board Decision was copied from the CA Decision.
7 *Id.* at 73.
8 *Id.* at 82.
9 *Id.* at 98–100.
10 *Id.* at 99–100.
11 *Id.* at 35–65.
12 *Id.* at 104–130.

II

Lack of a final medical assessment from the company physician negates the need to comply with the POEA-SEC third-doctor referral provision

In *Marlow Navigation Philippines Inc. v. Osias*,[13] We held that referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician, and (2) the seafarer-appointed doctor refuted such assessment.[14] Similarly, in *Paleracio v. Sealanes Marine Services, Inc.*,[15] We ruled that a seafarer's compliance with the POEA-SEC conflict resolution procedure presupposes that the company-designated physician came up with an assessment as to their fitness to work before the expiration of the 120- or 240-day periods.[16] The lack of a conclusive and definite medical assessment from the company-designated physician negates the need to comply with the POEA-SEC third-doctor referral provision, and the law steps in to consider the seafarer's disability as total and permanent.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[17] We laid down the following rules for seafarer total and permanent disability benefits claims:

> 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;
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> 2. If the company-designated physician fails to give [their] assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
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> 3. *If the company-designated physician fails to give [their] 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
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> 4. If the company-designated physician still fails to give [their] assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[18] (Emphasis supplied)

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13 773 Phil. 428 (2015) [Per J. Mendoza, Second Division].
14 *Id.* at 446.
15 835 Phil. 997 (2018) [Per J. Peralta, Second Division].
16 *Id.* at 1008.
17 765 Phil. 341 (2015) [Per J. Mendoza, Second Division].
18 *Id.* at 362–363.

Since respondent was medically repatriated on February 28, 2017, the company-designated physician should have issued a final medical assessment on or before June 28, 2017—the 120th day after his repatriation. Undisputed is the fact that no final assessment was issued within the original 120-day period. Instead, in the medical report dated June 14, 2017, the company-designated physician advised respondent to continue his physical therapy and medications and to return for re-evaluation on June 30, 2017, to wit:

> This is a follow-up report on Pumpman [Bobiles] who was initially seen here at Marine Medical Services on march 2, 2017 and was diagnosed to have L4-L5 Disc Herniation; L5 Radiculopathy.
>
> Patient still has low back pain with associated back stiffness.
>
> He was seen by the Physiatrist.
>
> He was advised to continue his physical therapy.
>
> He was given medication (Vigel) and advised to continue his other medications (Arcoxia and Lyrica).
>
> He has to come back on June 30, 2017 for re-evaluation.[19]

Hence, We must determine whether the above findings warrant the extension of the period to 240 days.

In *Paleracio*, We held that to avail of the extended 240-day period, the company-designated physician must first perform a significant act to justify extension, *e.g.*, when the seafarer's illness or injury requires further medical treatment or when the seafarer was uncooperative with the treatment. Should the physician fail to do so and the seafarer's condition remains unresolved, the seafarer's disability shall be deemed totally and permanently disabled.[20]

As found by the NCMB, despite the therapies respondent underwent from April 22, 2017 to May 18, 2017, he showed no favorable prognosis; hence, the therapy needed extension. The fact that the company-designated physician, after observing respondent to be suffering from low back pain and stiffness and referring him to the physiatrist, advised him to continue his physical therapy and medications and to return for re-evaluation, shows that respondent required further medical treatment, thus justifying the extension.[21]

A company physician's medical assessment is not final when there is a contemporaneous finding by said physician that

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19 *Rollo*, p. 24.
20 835 Phil. 997, 1009 (2018) [Per J. Peralta, Second Division].
21 *Rollo*, pp. 70–72.

the employee requires further treatment or reevaluation

While the CA found that the company doctor issued a "final" disability assessment of Grade 11 on September 4, 2017,[22] i.e., within the extended period, the Petition also refers to a medical certificate of even date which reveals that such assessment was not yet final. Said certificate reads:

> This is a follow-up report on Pumpman Nicolas F. Bobiles who was initially seen here at Marine Medical Services on March 2, 2017 and was diagnosed to have L4-L5 Disc Herniation; L5 Radiculopathy.
>
> Patient is status quo.
>
> He was seen by the Orthopedic Surgeon.
>
> He was given medications (Vigel, Celebrex) and was advised to continue his home exercises program.
>
> He is to come back on October 11, 2017 for re-evaluation.[23]

Our pronouncement in *Benhur Shipping Corp. v. Riego*[24] is instructive:

> [A]fter the issuance of the said final medical report (on May 26, 2014) by the company-designated physician, the same physician issued a Certification dated May 30, 2014 indicating that respondent has undergone medical/surgical evaluation treatment to Hiatal Hernia; L4-L5, L5-S1 Disc Bulge from December 16, 2013 until the date of the issuance of the same. *This evidently demonstrates that the assessment of the medical condition of respondent was still continuing and not conclusive even after the company-designated physician issued his May 26, 2014 Final Medical Report.*
>
> *Accordingly, the May 26, 2014 Medical Report issued by the company-designated physician cannot be treated as the final medical assessment contemplated by the POEA-SEC and the Elburg case. Thus, even if the 120-day period is extended to 240 days, there was still no proper final medical assessment issued...*
>
> [F]ailure of the company-designated physician to issue a final and valid assessment transforms the temporary total disability to permanent total disability, regardless of the disability grade. Hence, it was unnecessary for the seafarer to even refer the findings of the company-designated doctors to [their] own doctor. Such conflict-resolution mechanism only takes effect if the company-designated physician issues a valid and definite medical assessment. *Without such valid final and definitive assessment from the company-designated physicians, the law already steps in to consider the seafarer's disability as total and permanent.*[25] (Emphasis supplied)

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22 *Id.* at 99.
23 *Id.* at 55.
24 G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division].
25 *Id.* at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

We find, therefore, that the disability assessment of Grade 11 issued on September 4, 2017 cannot be considered final. For failure of the company-designated physician to issue a final disability assessment within the extended period, the law deems respondent's disability total and permanent. Since the disability compensation under the CBA only applies to "permanent disability as a result of an accident" and respondent's condition did not result from such, the CA correctly relied on the Schedule of Disability Allowances under the POEA-SEC which sets the amount at USD 50,000.00 × 120% or a total of USD 60,000.00. Pursuant to jurisprudence[26], however, said amount shall be subject to 6% legal interest from finality of this Decision until fully paid.

III

Anent attorney's fees, petitioners argue that respondent is not entitled thereto since it was the latter's refusal to go through the conflict resolution procedure under the POEA-SEC that prompted litigation. Further, they allege that they covered all the costs of respondent's medical treatment, as well as full sickness allowances. The CA affirmed the award of attorney's fees on the basis of Article 111 of the Labor Code and Article 2208 of the Civil Code.

Article 111 of the Labor Code applies only in cases of unlawful withholding of wages

In applying Article 111 of the Labor Code, the CA ruled that the withholding of wages need not be coupled with malice or bad faith to warrant the grant of attorney's fees since all that is required is that lawful wages be not paid without justification, thus compelling the employee to litigate.[27] However, Article 111 is inapplicable since this case does not involve unlawful withholding of wages but payment of disability compensation. Article 111 clearly speaks of attorney's fees only in the context of unlawful withholding of wages and recovery thereof, to wit:

> ART. 111. ATTORNEY'S FEES
>
> (a) *In cases of unlawful withholding of wages* the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
>
> (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings *for the recovery of the wages*, attorney's fees, which exceed ten percent of the amount of wages recovered. (Emphasis supplied)

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[26] *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.* (Resolution), G.R. No. 225433, September 20, 2022 [Per J. Leonen, *En Banc*].

[27] *Rollo*, p. 26, *citing Montierro v. Rickmers Marine Agency Phils., Inc.*, 750 Phil. 937, 948 (2015) [Per C.J. Sereno, First Division].

True, in *Heirs of Aniban v. National Labor Relations Commission*[28], which involved a claim for death benefits, the Court awarded attorney's fees and reasoned that Article 111 does not limit its award to cases of unlawful withholding of wages. **However, this is inaccurate.** The fact that Article 111 only speaks of withholding and recovery of wages, and is under Title II, Chapter III of the Labor Code titled "Payment of Wages," shows that it does not apply to cases involving only disability or death benefits. Our later ruling in *G.J.T. Rebuilders Machine Shop v. Ambos*[29] correctly applies Article 111:

> *The award of attorney's fees is the exception rather than the rule. Specifically in labor cases, attorney's fees are awarded only when there is unlawful withholding of wages* or when the attorney's fees arise from collective bargaining negotiations that may be charged against union funds in an amount to be agreed upon by the parties...
>
> In the present case, there is no unlawful withholding of wages or an award of attorney's fees arising from collective bargaining negotiations... *That respondents were "constrained to engage the services of counsel to prosecute their claims" is not enough justification since "no premium should be placed on the right to litigate."*[30] (Emphasis supplied)

Likewise, in *T&H Shopfitters Corporation/Gin Queen Corporation v. T&H Shopfitters Corporation/Gin Queen Workers Union*,[31] We held:

> Anent the issue on the award of attorney's fees, the applicable law concerning the grant thereof in labor cases is Article 111 of the Labor Code. Pursuant thereto, the award of 10% attorney's fees is *limited to cases of unlawful withholding of wages.* In this case, however, the Court cannot find any claim or proof that petitioners unlawfully withheld the wages of respondents. Consequently, the grant of 10% attorney's fees in favor of respondents is not justified under the circumstances. Accordingly, the Court deems it proper to delete the same.[32] (Emphasis supplied.)

Since the case at bench does not involve wages, much less the unlawful withholding thereof, Article 111 of the Labor Code finds no application here.

Instead, in worker disability indemnification cases, Article 2208 of the Civil Code, particularly paragraphs (2) and (8) thereof, are often cited to justify an award of attorney's fees, *viz.*:

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

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28 347 Phil. 46 (1997) [Per J. Bellosillo, First Division].
29 752 Phil. 166 (2015) [Per J. Leonen, Second Division].
30 *Id.* at 183–184.
31 728 Phil. 169 (2014) [Per J. Mendoza, Third Division]
32 *Id.* at 181.

> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect [their] interest;
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> ....
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> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
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> ....

Unfortunately, on numerous occasions, said paragraphs have been cited on erroneous justifications.

We are aware that in similar cases involving POMI and practically the same issue on disability compensation, the Court had vacillated over the issue on attorney's fees. In *Pacific Ocean Manning, Inc. v. Langam*,[33] We saw no reason to award attorney's fees since therein respondent failed to show that petitioners acted in bad faith in denying his claim for permanent total disability benefits. Also, in *Anuat v. Pacific Ocean Manning, Inc.*,[34] We did not award attorney's fees because we did not find POMI in bad faith. In fact, the company physician continued giving therein petitioner medical care and even advised him to return but he chose not to and instead filed his disability claim. On the other hand, in *Balbarino v. Pacific Ocean Manning, Inc.*,[35] We granted attorney's fees under Article 2208(2) of the Civil Code since therein petitioner was compelled to litigate to satisfy his claim for disability benefits. Likewise, in *Pacific Ocean Manning, Inc. v. Castillo*,[36] We granted attorney's fees under Article 2208(8) of the Civil Code which allows the same in actions for indemnity under workmen's compensation and employer's liability laws.

Article 2208(2) of the Civil Code applies only in litigation or incurrence of expense in relation to third persons

It is error to base an award of attorney's fees pursuant to Article 2208(2) of the Civil Code for the mere reason that the plaintiff was compelled to litigate. Said paragraph unequivocally states that the plaintiff must have been "compelled to litigate with **third persons** or to incur expenses to protect [their] interest." In his treatise on torts and damages, Senator Vicente J. Francisco commented on Article 2208(2) as follows:

> 80. — **Litigation against third persons.** It is generally held that where the wrongful act of the defendant has involved the plaintiff in litigation *with others* or placed [them] in such relation *with others* as makes

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33 875 Phil. 518, 530 (2020) [Per J. Reyes, Jr., First Division].
34 836 Phil. 618, 640 (2018) [Per J. Carpio, Second Division].
35 885 Phil. 847, 876 (2020) [Per J. Gaerlan, Third Division].
36 903 Phil. 687, 700 (2021) [Per J. Caguioa, First Division].

> it necessary to incur expenses to protect [their] interest, such costs and expenses, including attorney's fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages.[37] (Emphasis supplied)

His observation mirrors the following discussion in the American Jurisprudence encyclopedia:

> **§ 166 — Litigation against third person as result of defendant's wrongful act.** It is generally held that where the wrongful act of the defendant has involved the plaintiff in litigation *with others* or placed [them] in such relation *with others* as makes it necessary to incur expense to protect [their] interest, such costs and expenses, including attorney's fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages. In order to recover attorney's fees under this principle, the plaintiff must show: (1) that the plaintiff had become involved in a legal dispute either because of a breach of contract by the defendant or because of defendant's tortious conduct; (2) that the dispute was with a *third party — not with the defendant*; and (3) that the plaintiff incurred attorney's' fees connected with that dispute.[38] (Emphasis supplied)

This so-called "wrongful act doctrine," as it is contemporarily referred to, was illustrated by the Supreme Court of Iowa in this wise:

> If A sues B, generally, ... the successful party cannot recover [their] expenses of litigation such as lost time, attorney fees, and other special items other than court costs. *But if through the tort of A, B is in good faith involved in litigation with C, the exception comes into play*, and B may then recover the reasonable value of [their] expense for employment of counsel, and other proper items, from A.[39] (Emphasis supplied)

A common misconception about the wrongful act doctrine is that a party can avail itself of the doctrine to recover attorney's fees incurred in a direct action against the party who perpetrated the wrongful conduct. However, its application requires the existence of litigation with third parties. This requirement, however, need not take place in separate litigation; rather, it may be possible for the doctrine to apply where the plaintiff, tortfeasor, and third party are all joined in one lawsuit.[40] The circumstance justifying such an award is the necessity of entering into litigation against a third party, and not whether the action is separate or part of the original suit.[41] Moreover, litigation or incurrence of expense in relation with third persons must be the natural and proximate consequence of the defendant's wrongful act, incurred necessarily and in good faith.[42] Where litigation with third persons is unnecessary, it could not be said that the claimant of attorney's fees is compelled to litigate.

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37 VICENTE J. FRANCISCO, TORTS AND DAMAGES, 2nd ed. (1957), p. 431.

38 22 Am. Jur.2d, Damages, §166, p. 235.

39 *Turner v. Zip Motors, Inc.*, 245 Iowa 1091, 1098 (1954).

40 Jeremy M. Colvin, *The Wrongful Act Doctrine: A Common Law Exception to the American Rule on Entitlement to Attorneys' Fees in Florida*, 89 FLA. B.J. 10 (2015).

41 *Tibbetts v. Nichols*, 578 So. 2d 17 (Fla. Dist. Ct. App. 1991).

42 25 C.J.S. (Damages) §50, pp. 534-535.

Similarly, where litigation with third persons resulted from the claimant's own bad faith, the latter should not be able to benefit therefrom and should not be allowed attorneys' fees.

In *The Borden Company v. Doctors Pharmaceuticals, Inc.*,[43] the Court *en banc* refused to apply Article 2208(2) of the Civil Code because although therein respondent was compelled to litigate with petitioner by virtue of the filing of the petition, it was not compelled to litigate with third persons, to wit:

> [W]e do not believe that the respondent Doctors Pharmaceuticals Inc. is entitled to recover what it had paid or agreed to pay for attorney's fees, because *the filing of the petition in this case is not an act contemplated in article 2208, paragraph 2, of the new Civil Code.* The respondent Doctors Pharmaceuticals Inc. filed its application with the Patent Office ... not on account of any act or omission of the petitioner. *The filing of this petition by the Borden Company did not compel the Doctors Pharmaceuticals Inc. to litigate with third persons* and the answer filed by it to protect its interest is a continuation or an off-shoot of the trade-mark application granted by the Director of Patents.[44] (Emphasis supplied)

Similarly, incurrence of expense under Article 2208(2) must be in relation to third persons and not with the erring defendant itself.[45] A contrary rule would render Article 2208(2) applicable in virtually every case because litigation almost always entails expense. Thus, entitlement to attorney's fees would become the general rule instead of the exception and the policy against placing a premium on the right to litigate would be negated. Here, petitioners' act or omission only compelled respondent to litigate against them and not a third person. Hence, Article 2208(2) is inapplicable.

Article 2208(8) of the Civil Code applies only in actions for indemnity under workmen's compensation and employer's liability laws, not contract

It is likewise erroneous to base an award of attorney's fees on Article 2208(8) of the Civil Code for the mere reason that the case involves an action for indemnity for disability since said paragraph applies only when the action is under workmen's compensation and employer's liability laws.

Prior to the effectivity of Presidential Decree No. 442 or the Labor Code, workmen's compensation and employer's liability were governed by the Workmen's Compensation Act or Act No. 3428[46] and the Employer's

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43 90 Phil. 500 (1951) [Per J. Padilla, *En Banc*].

44 *Id.* at 502.

45 22 Am. Jur.2d, Damages, §166, p. 235.

46 Act No. 3428 (1927), An Act Prescribing the Compensation to be Received by Employees for Personal Injuries, Death or Illness Contracted in the Performance of Their Duties.

Liability Act or Act No. 1874[47], respectively.[48] With their repeal by the Labor Code, workmen's compensation was thenceforth governed by Title II, Book IV of said Code titled Employee's Compensation and State Insurance Fund.[49] In the case at bench, however, the action for indemnity is not based on the workmen's compensation provisions of the Labor Code or any employer liability law for that matter, but on contract, specifically, the POEA-SEC. Hence, Article 2208(8) of the Civil Code finds no application here.

Since neither Article 111 of the Labor Code nor Article 2208(2) and (8) of the Civil Code apply, may the catch-all provision of Article 2208(11) justify an award of attorney's fees in this case? Our ruling in *Estate of Buan v. Camaganacan*[50] is instructive:

> The exercise of judicial discretion in the award of attorney's fees under Article 2208(11) of the Civil Code demands a factual, legal, or equitable justification upon the basis of which the court exercises its discretion. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[51]

Other than the bare statement that respondent was forced to litigate to enforce his rights, no factual, legal, or equitable justification was proffered to warrant attorney's fees. Au contraire, since petitioners covered all of respondent's treatment costs, as well as full sickness allowances, it is only equitable under the circumstances to delete the award of attorney's fees.

ACCORDINGLY, the Petition is **PARTLY GRANTED**. The July 15, 2021 Decision and March 22, 2022 Resolution of the Court of Appeals in CA-G.R. SP No. 158388 are **AFFIRMED** with **MODIFICATION** in that the award of USD 60,000.00 or its equivalent in Philippine pesos shall be subject to 6% legal interest per annum from the finality of this Decision until full payment, and that the award of attorney's fees is **DELETED**.

SO ORDERED.

RICARDO R. ROSARIO
Associate Justice

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47 Act No. 1874 (1908), An Act to Extend and Regulate the Responsibility of Employers for Personal Injuries and Deaths Suffered by their Employees while at Work.

48 BENEDICTO C. BALDERRAMA, THE PHILIPPINE LAW ON TORTS AND DAMAGES (1953 ed., p. 375).

49 Omnibus Rules Implementing the Labor Code, Book Seven, Rule III, sec. 1(a) and (f). *See also Oceanmarine Resources Corp. v. Nedic*, G.R. No. 236263, July 19, 2022 [Per J. Zalameda, *En Banc*].

50 123 Phil. 131 (1966) [Per J. J.B.L. Reyes, *En Banc*].

51 *Id.* at 134–135.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice
(On official business)

RODIL V. ZALAMEDA
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice