Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **December 2, 2019** *which reads as follows:*

"G.R. No. 225683 (PHILIPPINE TRANSMARINE CARRIERS, INC., ICEPORT SHIPPING COMPANY LTD., and/or ANDREW CARLO T. *TORIBIO*, *petitioners* v. VICTOR ZARRIZ DORONILA, *respondent*). — This Court resolves a Petition for Review on Certiorari[1] of the Decision[2] and Resolution[3] of the Court of Appeals. The assailed judgments affirmed the National Labor Relations Commission Resolution,[4] which in turn upheld the Labor Arbiter's Decision,[5], awarding Victor Zarriz Doronila (Doronila) permanent total disability benefits of US$90,882.00 under the Collective Bargaining Agreement, plus 10% attorney's fees.

On May 18, 2012, Philippine Transmarine Carriers, Inc. (Transmarine) hired Doronila as an able seaman on board Nautilus,[6] a vessel owned by Iceport Shipping Co. Ltd (Iceport Shipping).[7] The employment contract was for nine (9) months with a monthly salary of US$563.00.[8] Doronila boarded the vessel on May 16, 2012.[9]

On November 25, 2012, while the vessel was on its way to Mexico, Doronila accidentally slipped and fell. He felt severe pain on his left leg.[10]

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1 *Rollo*, pp. 24–51. Filed under RULES OF COURT, Rule 45.
2 Id. at 58–65. The Decision dated March 10, 2016 was penned by Associate Justice Jose C. Reyes, Jr. (Chair) and concurred in by Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando of the Fifth Division of the Court of Appeals, Manila.
3 Id. at 94. The Resolution dated July 11, 2016 was penned by Associate Justice Jose C. Reyes, Jr. (Chair) and concurred in by Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando of the Fifth Division of the Court of Appeals, Manila.
4 Id. at 146–157. The Resolution dated October 20, 2014 was penned by Presiding Commissioner Gregorio O. Bilog III and concurred in by Commissioners Erlinda T. Agus and Alan A. Ventura.
5 Id. at 131–144. The Decision dated July 25, 2014 was penned by Executive Labor Arbiter Fatima Jambaro-Franco.
6 Id. at 27, Petition.
7 Id. at 59.
8 Id. at 27.
9 Id. at 59.
10 Id.

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He was brought back to his cabin through a stretcher and stayed there for three (3) days.[11] Upon the vessel's arrival in Panama, he was brought to Clinica Einstein where he was diagnosed with "1-fracture of shaft of proximal third of left femur, closed, displaced."[12] He was hospitalized for three (3) days, during which he underwent "surgery for open reduction of fracture and fixation with special nail."[13]

Upon repatriation in Manila on December 12, 2012, he was brought to Manila Doctors Hospital by a Transmarine representative. He was advised by an orthopedic surgeon to undergo at least 12 physical therapy sessions and to attend regular radiographic monitoring of his injury.[14] Doronila had an agreement with Transmarine that he would continue his therapy in his home province in Iloilo, and that they would reimburse him for his expenses.[15]

However, after 120 days, Transmarine stopped communicating with Doronila. This prompted Doronila to seek the representation of Associated Marine Officers & Seamen's Union of the Philippines.[16] The union then arranged a grievance conference, in which Transmarine offered to fund the continuation of Doronila's medical treatment.[17] Unfortunately, Doronila could no longer afford to go back to Manila and continue his treatment there.[18]

On September 20, 2013, Doronila and Transmarine failed to reach an amicable settlement.[19] This prompted Doronila to file a complaint for permanent total disability benefits, damages, and attorney's fees before the National Labor Relations Commission.[20]

Doronila maintained that he was entitled to the payment of permanent total disability benefits because his injury incapacitated him from performing the strenuous physical activities required of him as a seafarer.[21] According to him, his private physician stated that he may perform "light [to] moderate work excluding that [which] involve heavy axial loading on his left [femur]."[22]

In their defense, Transmarine and Iceport Shipping claimed that Doronila was not entitled to permanent total disability benefits. They argued that the company physician issued Doronila a Grade 13 disability assessment

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11 Id. at 132.
12 Id. at 59.
13 Id.
14 Id.
15 Id. at 59 and133.
16 Id.
17 Id. at 59.
18 Id. at 133.
19 Id. at 134.
20 Id. at 131 and 134.
21 Id. at 137.
22 Id.

stating that his condition has improved, and after completion of medical treatment, he may be declared fit for employment.[23] They likewise argued that in the event that a third doctor is absent on any of the agreed appointments between the parties, the assessment of the company physician prevails over the diagnosis of Doronila's private doctor.[24]

In a July 25, 2014 Decision[25], Labor Arbiter Fatima Jambaro-Franco (Labor Arbiter Jambaro-Franco) ruled in favor of Doronila and ordered the award of permanent total disability benefits.[26] She found that Doronila has not been able to engage in any compensable activity, nor could he return to his previous work on board the ship without great risk or complication to his injury.[27] The Decision's dispositive portion read:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering the respondents **Philippine Transmarine Carriers, Inc./Iceport Shipping VCO Ltd./Andrew Carlo T. Toribio** to jointly and severally liable to pay complainant **Victor Zarriz Doronila** the amount of **NINETY NINE THOUSAND NINE HUNDRED SEVENTY US DOLLARS (US$99,970.00)** or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his total and permanent disability benefits and attorney's fees.
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> All other claims are **DISMISSED** for lack of merit.[28] (Emphasis in the original)

In an October 20, 2014 Resolution[29], the National Labor Relations Commission sustained Labor Arbiter Jambaro-Franco's ruling,[30] finding that Doronila has not fully recovered from the injuries he sustained.[31] The Motion for Reconsideration filed by Transmarine was again denied in another November 21, 2014 Resolution[32] issued by the National Labor Relations Commission.

In its assailed March 10, 2016 Decision,[33] the Court of Appeals sustained the rulings of the National Labor Relations Commission and Labor Arbiter Jambaro-Franco. It found that the disability assessment, allegedly issued by the company-designated physician, was given beyond the periods prescribed by law. Hence, the assessment for partial disability did not defeat Doronila's claim for permanent total disability.[34]

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23 Id. at 137.
24 Id. at 137–138.
25 Id. at 131–144.
26 Id. at 144.
27 Id. at 143.
28 Id. at 144.
29 Id. at 146–157.
30 Id. at 156.
31 Id. at 153.
32 Id. at 159–160.
33 Id. at 11–18.
34 Id. at 15.

Following the denial of their Motion for Reconsideration, Transmarine filed the present Petition.[35]

Petitioners contend that respondent was not entitled to permanent total disability benefits.[36] They argue that, in accordance with the Philippine Overseas Employment Administration (POEA) Standard Employment Contract, the disability benefits awarded to respondent should have been based on the company-designated physician's findings.[37] Petitioners claim that respondent did not report back to the company doctor on July 10, 2013 for re-evaluation.[38] Instead, respondent prematurely filed his complaint. Due to respondent's abandonment of his treatment, he was assessed with Disability Grade 13 by the company-designated physician based on his last evaluation on June 7, 2013.[39]

Finally, petitioners dispute the award of attorney's fees. They argue that their refusal to pay respondent full disability benefits was due to the latter's abandonment of his treatment and the Grade 13 disability assessment of the company-designated physician.[40]

In his Comment,[41] respondent asserts that the Petition should be denied due course because: (1) it essentially raises questions of fact that are not proper in a Rule 45 Petition;[42] and (2) its verification and certification on non-forum shopping were signed by only one (1) of the two (2) petitioners.[43] In any case, respondent submits that the Court of Appeals did nor err in awarding him permanent and total disability benefits.[44] He adds that because of hip and knee injury, he could no longer perform the strenuous physical activities he was customarily exposed to as seafarer.[45] On the grant of attorney's fees, respondent asserts that the award was proper considering that by petitioners' omission, he was forced to litigate in order to enforce and protect his interest.[46]

In their February 13, 2018 Reply,[47] petitioners counter that factual questions may be entertained by this Court when the judgment is based on misappreciation of facts, as in this case.[48] Petitioners further reiterate the arguments they raised in their Petition.

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35 Id. at 24–52.
36 Id. at 25.
37 Id. at 34–35.
38 Id. at 38.
39 Id. at 42.
40 Id. at 50.
41 Id. at 103–122.
42 Id. at 105.
43 Id. at 107.
44 Id. at 108.
45 Id.
46 Id. at 119–120.
47 Id. at 172–184.
48 Id. at 173.

For this Court's resolution are the following issues:

First, whether or not the Petition should be dismissed for raising factual questions and for having a defective verification and certification on non-forum shopping; and

Second, whether or not respondent Victor Zarriz Doronila is entitled to permanent total disability benefits.

The Petition lacks merit.

I

Petitioners insist that respondent abandoned his treatment, and that the Grade 13 disability assessment issued by the company doctor should be the basis for the award of disability benefit. These are factual questions, the resolution of which would require this Court to reexamine the probative weight of the evidence adduced.

In labor cases, a Rule 45 review by this Court does not delve into factual questions or an evaluation of the evidence submitted by the parties.[49] It is limited to determining the legal correctness of the Court of Appeals' conclusion finding no grave abuse of discretion on the part of the National Labor Relations Commission in awarding full disability benefits to the respondent.[50] Consistent factual findings of the Labor Arbiter and the National Labor Relations Commission, when supported by substantial evidence, are generally binding upon this Court absent any cogent reason to disturb the same.[51] In this case, no exceptional circumstance or compelling reason to warrant a deviation from this rule. This Court agrees with respondent that on this ground alone, the Petition must be denied.

However, we cannot sustain respondent's argument that the Petition is defective for lack of verification and certification of non-forum shopping of Transmarine and its foreign principal, Iceport Shipping. A similar issue has squarely been ruled upon in *Varorient Shipping Company, Inc. v. National Labor Relations Commission,*[52] where this Court re-emphasized the previous

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49 *Perea v. Elburg Shipmanagement Philippines, Inc.*, 816 Phil. 445 (2017) [Per J. Leonen, Second Division]; *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010) [Per J. Perez, Second Division].

50 *See Jebsen Maritime, Inc. v. Ravena,* 743 Phil. 371 (2014) [Per J. Brion, Second Division]; *Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374 (2014) [Per J. Brion, Second Division]; and *Reyes & Lim Co., Inc. v. National Labor Relations Commission,* 278 Phil. 761 (1991) [Per J. Medialdea, First Division].

51 *Stolt-Nielsen Transportation Group, Inc. v. Medequillo, Jr.*, 679 Phil. 297 (2012) [Per J. Perez, Second Division]; and *Duldulao v. Court of Appeals*, 546 Phil. 22 (2007) [Per J. Tinga, Second Division].

52 564 Phil. 119 (2007) [Per J. Tinga, Second Division].

ruling in *MC Engineering Inc. v. NLRC,*[53] to the effect that a foreign principal need not execute a separate verification and certification from that of the local manning agent. This Court discussed:

> That issue was squarely resolved in the case of *MC Engineering, Inc. v. NLRC.* As in this case, the Court of Appeals had dismissed a special civil action for *certiorari* on account of the failure of the foreign principal to execute a separate verification and certification against forum shopping from that submitted by the local private employment agency. The holding of the Court in *MC Engineering* may very well apply to this case, thus:
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> . . . .
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> In the case at bar, the Court of Appeals should have taken into consideration the fact that petitioner Hanil is being sued by private respondent in its capacity as the foreign principal of petitioner MCEI. It was petitioner MCEI, as the local private employment agency, who entered into contracts with potential overseas workers on behalf of petitioner Hanil.
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> *It must be borne in mind that local private employment agencies, before they can commence recruiting workers for their foreign principal, must submit with the POEA a formal appointment or agency contract executed by the foreign based employer empowering the local agent to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement and contract of employment. Considering that the local private employment agency may sue on behalf of its foreign principal on the basis of its contractual undertakings submitted to the POEA, there is no reason why the said agency cannot likewise sign or execute a certification of non-forum shopping for its own purposes and/or on behalf of its foreign principal.*
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> It must likewise be stressed that the rationale behind the requirement that the petitioners or parties to the action themselves must execute the certification of non-forum shopping is that the said petitioners or parties are in the best position to know of the matters required by the Rules of Court in the said certification. *Such requirement is not circumvented and is substantially complied with when, as in this case, the local private employment agency signs the said certification alone. It is the local private employment agency, in this case petitioner MCEI, who is in the best position to know of the matters required in a certification of non-forum shopping.*
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> . . . .

[53] 412 Phil. 614 (2001) [Per J. Gonzaga-Reyes, Third Division].

> We thus re-stress that a foreign principal that is acting only through its local manning agent has no need to file a separate certificate of non-forum shopping.[54] (Emphasis supplied, citations omitted)

Section 10 of Republic Act No. 8042, as amended,[55] or the Migrant Workers and Overseas Filipino Act of 1995, provides for the solidary liability of the foreign principal and the local manning agency for all money claims or damages awarded to the overseas Filipino worker:

> SEC. 10. *Money Claims.* — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.
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> *The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval.* The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarity liable with the corporation or partnership for the aforesaid claims and damages.
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> . . . . (Emphasis supplied)

Republic Act No. 8042 serves as "a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad."[56]

This Court in *Sameer Overseas Placement Agency, Inc. v. Cabiles*[57] explained that the joint and solidary liability of the local placement agency and foreign employer is in line with the state's policy of affording protection to labor and alleviating workers' plight. It assures overseas workers that their rights will not be frustrated by difficulties in filing money claims against foreign employers. Hence, in the case of overseas employment, either the

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54 *Varorient Shipping Co., Inc. v. National Labor Relations Commission,* 564 Phil. 119, 131–133 (2007) [Per J. Tinga, Second Division].

55 Amended by Republic Act No. 10022 (2010).

56 *Gopio v. Bautista,* G.R. No. 205953, June 6, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64203> [Per J. Jardeleza, First Division], and *Sto. Tomas v. Salac,* 698 Phil. 454 (2012) [Per J. Abad, En Banc].

57 740 Phil. 403 (2014) [Per J. Leonen, En Banc].

local agency or the foreign employer may be sued for all claims arising from the foreign employer's labor law violations. This way, overseas workers are assured that someone—the foreign employer's local agent, at the very least—may be made to answer for violations that the foreign employer may have committed. This Court further discussed:

> The Migrant Workers and Overseas Filipinos Act of 1995 ensures that overseas workers have recourse in law despite the circumstances of their employment. By providing that the liability of the foreign employer may be "enforced to the full extent" against the local agent, the overseas worker is assured of immediate and sufficient payment of what is due them.
>
> Corollary to the assurance of immediate recourse in law, the provision on joint and several liability in the Migrant Workers and Overseas Filipinos Act of 1995 shifts the burden of going after the foreign employer from the overseas worker to the local employment agency. However, it must be emphasized that the local agency that is held to answer for the overseas worker's money claims is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.
>
> A further implication of making local agencies jointly and severally liable with the foreign employer is that an additional layer of protection is afforded to overseas workers. Local agencies, which are businesses by nature, are inoculated with interest in being always on the lookout against foreign employers that tend to violate labor law. Lest they risk their reputation or finances, local agencies must already have mechanisms for guarding against unscrupulous foreign employers even at the level prior to overseas employment applications.[58] (Citations omitted)

In *Altres v. Empleo*,[59] this Court enumerated the guidelines regarding noncompliance with the requirements on verification and certification on non-forum shopping. Relevantly, this Court declared:

> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. *Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.*[60] (Emphasis supplied, citations omitted)

Since Transmarine and Iceport Shipping share a common interest and invoke a common defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

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58 Id. at 445–446.
59 594 Phil. 246 (2008) [Per J. Carpio Morales, En Banc].
60 Id. at 262.

II

Even setting aside technicality, the Petition is still denied. The Court of Appeals made no reversible error in sustaining the decision of the National Labor Relations Commission and Labor Arbiter Jambora-Franco.

A seafarer's entitlement to disability benefits is governed not only by medical findings, but also by law and even by the POEA Standard Employment Contract,[61] which is deemed incorporated in the seafarer's employment contract.[62] Instructive in this case is Article 192(c)(1) of the Labor Code,[63] which provides for permanent disability:

> ARTICLE 192. *Permanent total disability.*—
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> . . . .
>
> (c) The following disabilities shall be deemed permanent total:
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> . . . .
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

Proceeding from this, Rule X, Section 2 of the Implementing Rules and Regulations of Book IV of the Labor Code[64] provides:

> SECTION 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.
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> . . . . (Emphasis supplied)

It is clear from this provision that if the injury or sickness incurred by the seafarer requires medical attendance beyond the prescribed 240-day period, then the seafarer becomes entitled to the payment, not of temporary total disability, but of *permanent total disability.*

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61 POEA Memorandum Circular No. 010-10 (2010). Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

62 *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895 (2008) [Per J. Brion, Second Division].

63 LABOR CODE, art. 192(c)(1).

64 Amended Rules on Employees' Compensation (1987), Book IV, Rule X, sec. 2.

Here, both the company-designated physician[65] and respondent's private doctor[66] concluded that respondent has not recovered from his injury yet. Clearly, his injury persists beyond the 240-day period. As the National Labor Relations Commission observed:

> [F]rom the date of his repatriation on 12 December 2012 until the filing of the above entitled case on 18 October 2013 and until the issuance of the Final Medical Report of the company[-]designated physician on 15 January 2014, [respondent] has not fully recovered and is still suffering from his injury. . . . [T]he Final Medical Report of the company-designated physician shows that aside from the belated assessment of [respondent's] injury, [it] recommended [respondent] to undergo 12 sessions of physical therapy. [Respondent], therefore, has not recovered from his injury and has not regained his pre-injury capacity even after the 240-day period provided by law.[67]

The Labor Arbiter also noted that:

> There is no iota of good chance for the [respondent] to return to his previous job or be engaged in one to which he is aptly trained. Even if he would be given the chance to work on board, it would be a great risk on his part or worst (sic) may even cause complications to his injury. It is indubitable that the continuous medication and check-up only helped to ease somehow or lessen the discomfort that he is experiencing.[68]

III

This Court is not persuaded by petitioners' claim that respondent abandoned his treatment and prematurely filed his complaint.

Settled in jurisprudence[69] is the obligation of the company-designated doctor to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. Failure of the company-designated doctor to issue a declaration within the given periods gives rise to the legal presumption that the seafarer is totally and permanently disabled.

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65 *Rollo*, pp. 188–190.
66 Id. at 137.
67 Id. at 153–154.
68 Id. at 143.
69 *Magsaysay Maritime Corp. v. Cruz*, 786 Phil. 451 (2016) [Per J. Del Castillo, Second Division]; *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166 (2015) [Per J. Carpio, Second Division]; and *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717 (2013) [Per J. Reyes, First Division].

In *Talaroc v. Arpaphil Shipping Corporation,*[70] this Court further emphasized that in order for company-designated physicians to avail of the extended 240-day period, they must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond 120 days, but not to exceed 240 days. In such case, the temporary total disability period is extended to a maximum of 240 days. Without sufficient justification for the extension of the treatment period, the seafarer's disability shall be conclusively presumed to be permanent and total. This Court summarized the guidelines to be observed when a seafarer claims permanent total disability benefits:

> 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 his 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 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
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> 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.[71] (Citation omitted)

In this case, respondent was never issued any medical assessment or progress report by the company-designated physician from his initial check up until his last therapy session on June 7, 2013, a period spanning a total of 175 days.[72] The company-designated doctor should have at least issued a medical report containing an evaluation of respondent's condition after 120 days of treatment/therapy or on April 11, 2013, with sufficient justification for extending the period of treatment to a maximum of 240 days.

Respondent had also not been able to communicate with Transmarine since the last payment of his medical reimbursements in March and April 2013.[73] Transmarine was no longer responding whenever respondent called regarding concerns about his health condition.[74] This indifference of

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70 817 Phil. 598 (2017) [Per J. Perlas-Bernabe, Second Division]. *See also Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234 (2015) [Per J. Mendoza, Second Division]; and *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505 (2017) [Per J. Velasco, Jr., Third Division].

71 Id. at 612.

72 *Rollo*, p. 153.

73 Id. at 15.

74 Id. at 133.

Transmarine officials and personnel, despite respondent's unresolved condition, prompted respondent to seek help from the Associated Marine Officers & Seamen's Union of the Philippines.[75] Indeed, it was only in August 2013, during the grievance conference arranged by the Associated Marine Officers & Seamen's Union of the Philippines, when Transmarine offered to continue respondent's medical treatment.[76]

Under the foregoing circumstances, this Court finds no sufficient basis to conclude that respondent is guilty of abandonment. There were no overt acts indicating a deliberate intention on respondent's part to abandon his treatment.

Moreover, Section 20 of the POEA Standard Employment Contract states that the employer has a duty to provide medical treatment to the injured seafarer, *viz*:

> SECTION 20. *Compensation and Benefits.*
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> . . . .
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> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. *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.
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> *The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the*

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[75] Id.
[76] Id.

> *appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.*
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> . . . .[77] (Emphasis supplied)

In *Cariño v. Maine Marine Philippines, Inc.*,[78] the employer raised the issue of the seafarer's medical abandonment barring the latter's claim for permanent total disability benefits. This Court ruled that the seafarer's failure to report to the company doctor at the scheduled check-up on September 17, 2013 does not constitute abandonment. It found the employer at fault for failing to pay the seafarer's sickness allowance and to confirm the approval of his medical treatment and reimbursement of expenses. It elucidated:

> *The duty of the seafarer to be present during the appointments with the company-designated physician should be viewed together with the duty of the employer to provide medical treatment and pay the sickness allowance of the seafarer.* Here, Cariño had a reason for his failure to appear during the scheduled check-up on September 17, 2013: he had no money to pay for his travel expenses from La Union to Manila as Maine Marine had not paid his sickness allowance, and based on his conversation with Talavera, Maine Marine had yet to approve his treatment with the company-designated physician. Cariño had also consistently followed-up with Talavera and even wrote the letter to Maine Marine requesting for the payment of his sickness allowance and the approval of his treatment. Far from abandoning his treatment, he made every effort to ensure his treatment would continue. It was Maine Marine that failed to pay his sickness allowance and to ensure he received medical treatment.
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> The effect of the NLRC and CA's ruling would put seafarers at the mercy of companies like Maine Marine and effectively violates the Constitution's guarantee of the full protection of labor. Following their ruling, the employers may delay the release of sickness allowance, the reimbursement of expenses, and the provision of medical treatment, and when seafarers fail to appear during the scheduled appointments primarily because they could not afford the expenses in going to the company-designated physicians, they will then be deemed to have abandoned their treatment. This is unjust.
>
> *Seafarers like Cariño and their families rely heavily on their basic wages. When the seafarers are medically repatriated, this source of income is put on hold. The payment of the sickness allowance and the reimbursement of medical expenses and the provision of medical treatment were provided in the POEA-SEC precisely to address these difficult and uncertain times for the seafarers and their families.*
>
> *It is therefore imperative that companies like Maine Marine provide medical treatment and reimburse medical expenses as soon as possible*

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77 POEA Memorandum Circular No. 010-10 (2010), sec. 20. Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

78 G.R. No. 231111, October 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64770> [Per J. Caguioa, Second Division].

> *following the POEA-SEC.* The sickness allowance should also be timely and regularly paid while the seafarer is sick as this takes the place of the seafarer's wages. *To delay in providing the foregoing would be tantamount to a breach of the employer's obligations under the POEA-SEC,* especially if this delay is the very reason for a seafarer's failure to attend a scheduled appointment with the company-designated physician.[79]
> (Emphasis supplied)

Here, it is unrefuted that Transmarine last paid for respondent's medical reimbursement in April 2013 and from then on, Transmarine has ignored his calls regarding his medical condition. Transmarine's delay in reimbursing respondent's medical expenses constitutes a breach of its obligation under the POEA Standard Employment Contract. This negates petitioners' claim of abandonment.

Significantly, even up to the filing of respondent's Complaint on October 18, 2013, or after more than 240 days had lapsed, no medical assessment has been given to respondent, and respondent has not yet fully recovered. During the conciliation conference before the Labor Arbiter in November 2013, Transmarine repeated its offer to continue respondent's medical treatment. This shows that respondent's condition remained unresolved. Respondent is thus deemed to have already acquired a cause of action for permanent total disability benefits.

IV

Granting we consider the partial disability diagnosis of the company-designated physician, it cannot be used as basis for the award of disability benefit because the Grade 13 disability assessment was issued beyond the 240-day period prescribed in law.

In *Vergara v. Hammonia Maritime Services, Inc.*[80] is instructive. This Court ruled in that case that if the "disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under the circumstances, a ruling of permanent and total disability called for[.]"[81]

Contrary to petitioners' allegation that the disability assessment was issued prior to the expiration of the 240-day period, the National Labor Relations Commission and the Court of Appeals were uniform in holding that the Grade 13 disability assessment appeared only in the Final Medical Report dated January 15, 2014[82]—399 days from respondent's initial check-up upon repatriation. As the Court of Appeals held:

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79 Id.
80 588 Phil. 895 (2008) [Per J. Brion, Second Division].
81 Id. at 916.
82 *Rollo*, p. 15.

The June 7, 2013 medical report states:

> 7th MEDICAL REPORT
>
> This is a case of Mr. Victor Doronilla, 29 years old, male, married, from Iloilo City, repatriated due to left leg pain with a diagnosis of closed, commuted fracture, left bio-bular, s/p ORIF.
>
> Patient has completed his physical therapy program. On reevaluation, patient is ambulatory without the aid of any assistive devices and can now tolerate full weight bearing exercises. Currently, he still complains of pain on medial aspect of the left leg with a tender spot at the medial aspect of the distal femur.
>
> He was advised to continue physical therapy for another month to achieve maximum strength. He will be reevaluated on July 10, 2013.

Nowhere was there a mention of a disability rating in this medical report. It was only in the Final Medical Report of January 15, 2014 that the disability rating was mentioned; thus:

> PLAN: For physical therapy (12 sessions). Suggested disability grade of 13 (slight atrophy of calf muscles without apparent shortening or joint lesion or disturbance of weight bearing line.[83] (Citation omitted)

To repeat, respondent's disability rating contained in the January 15, 2014 Final Medical Report was issued beyond the 240-day period. Thus, petitioners' contention—that the disability compensation in favor of respondent must be based on the disability grading given by the company-designated doctor—is untenable.

V

Finally, this Court finds no ground to disturb the uniform findings of the Labor Arbiter, National Labor Relations Commission, and the Court of Appeals in awarding attorney's fees. Article 2208 of the New Civil Code allows its recovery in "actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws."[84] Furthermore, respondent had been compelled to litigate due to petitioners' denial of his valid claims. Hence, the award for attorney's fees was proper.[85]

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83 Id. at 15–16.

84 *Cariño v. Maine Marine Philippines, Inc.*, G.R. No. 231111, October 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64770> [Per J. Del Castillo, Second Division].

85 *Tamin v. Magsaysay Maritime Corporation*, 794 Phil. 286 (2016) [Per J. Velasco, Third Division]; and *Quitoriano v. Jebsens Maritime, Inc.*, 624 Phil. 523 (2010) [Per J. Carpio Morales, First Division].

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed March 10, 2016 Decision and July 11, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138903 are **AFFIRMED**.

SO ORDERED."

Very truly yours,

Misael DC Batt
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