



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **June 30, 2020** which reads as follows:

**“G.R. No. 250369 (MARLOW NAVIGATION PHILIPPINES, INC., MARLOW NAVIGATION NETHERLANDS, B.V., and EDGAR S. GELITO vs. CHRISTOPHER R. REYES).-** Petitioners Marlow Navigation Philippines, Inc., Marlow Navigation Netherlands, B.V., and Crewing Manager Edgar S. Gelito, assail the following dispositions of the Court of Appeals in CA-G.R. SP No. 154865 entitled *“Marlow Navigation Phils. Inc., Marlow Navigation Netherlands B.V. and Edgar S. Gelito v. Christopher R. Reyes.”*”

1. Decision<sup>1</sup> dated June 28, 2019 affirming the award to respondent Christopher Rallos Reyes of permanent and total disability benefits of US\$80,000.00 and ten percent (10%) attorney’s fees; and
2. Resolution<sup>2</sup> dated October 30, 2019 denying reconsideration.

**Antecedents**

By complaint filed in May 2016 before the Office of the Voluntary Arbitrators of the National Conciliation Mediation Board (NCMB), respondent sought to recover permanent and total disability benefits and other monetary awards against petitioners. He essentially alleged:

Petitioner Marlow Navigation Philippines, Inc. hired him as an “able seaman” on board *M/V Crownbreeze* for and in behalf of its foreign principal

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<sup>1</sup> Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Robeniol, all members of the Tenth Division, *rollo*, pp. 48-64.

<sup>2</sup> *Id.* at pp. 66-67.

Marlow Navigation Netherlands, B.V.<sup>3</sup> On May 19, 2015, he was hammering steel plates when he lost grip of his hammer. He stepped back to avoid the hammer falling on his right foot but slipped. Something clicked on his back after he slipped and he started to feel mild to moderate pain thereon. He nevertheless continued to work until he could no longer tolerate the pain.<sup>4</sup>

On May 21, 2015,<sup>5</sup> he consulted a physician at a hospital in Finland regarding his persistent back pain and was diagnosed with *lumbago*. He was advised to undergo medication for temporary relief.<sup>6</sup> But on June 2, 2015, he was brought to a hospital in the United Kingdom where he was declared “unfit for duty for fourteen (14) days.”<sup>7</sup> He got repatriated to the Philippines on June 8, 2015.<sup>8</sup>

Upon arrival in the Philippines, he reported to petitioners’ office and requested a post-medical evaluation. He was referred to the company-designated physician, Dr. Ma. Socorro M. Garcia, Head of Industrial Medical at the Manila Doctors Hospital.<sup>9</sup> After a series<sup>10</sup> of laboratory examinations and medical treatments, his condition did not improve.<sup>11</sup> Per medical report<sup>12</sup> dated July 30, 2015, he was diagnosed with *lumbar stenosis* and referred to rehabilitation for six (6) physical therapy sessions. Despite undergoing physical therapy, there was no improvement on his condition. Instead, on August 20, 2015,<sup>13</sup> he was diagnosed with *spondylolysis* and was referred back to rehabilitation for six (6) more sessions.

In her interim medical assessment<sup>14</sup> dated September 4, 2015, Dr. Garcia diagnosed him with *spondylolysis* L5, viz.:

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<sup>3</sup> *Id.* at 49.

<sup>4</sup> *Id.* at 268-270.

<sup>5</sup> *Id.* at 218.

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

<sup>7</sup> *Id.* at 219.

<sup>8</sup> *Id.* at 270.

<sup>9</sup> *Id.* at 50.

<sup>10</sup> Respondent was diagnosed with acute low back pain and referred to orthopedic specialist per medical report dated June 10, 2015 (*id.* at 220); Referred for X-ray and rehab medicine to consider lumbar stenosis and ulnar nerve neuropathy under medical report dated July 2, 2015 (*id.* at 222); Referred to urology for urinalysis per medical report dated July 16, 2015 (*id.* at 223); Referred for ultrasound of KUB, prostate, and scrotum with doppler under medical report dated July 20, 2015 (*id.* at 224); Referred for CT stonogram per medical report dated July 22, 2015 (*id.* at 225); under medical report dated July 24, 2015, respondent was cleared urology wise and was referred back to orthopedic specialist (*id.* at 226).

<sup>11</sup> *Id.* at 52-53.

<sup>12</sup> *Id.* at 227.

<sup>13</sup> *Id.* at 232.

<sup>14</sup> *Id.* at 235.

04 September 2015

**CAPT. LEOPOLDO C. TENORIO**

CEO – Operations

MARLOW NAVIGATION PHILS., INC

2120 Leon Guinto Street, Malate,  
Manila

Re: **CROWN BREEZE**  
**AB REYES, CHRISTOPHER R.**  
Date of Disembarkment: 10 June 2015  
Medical Evaluation

Dear Capt. Tenorio

This is regarding the case of AB Reyes, Christopher 40 year old, male, who was disembarked from their vessel due to back pain.

***Present Disability Status:***

The patient still exhibits tenderness over lateral sacral edge, right; equivocal straight leg raising test, right; (-) Fabere's test; tight hamstrings, right and claims to have no improvement after sessions of physical therapy. Patient was advised to lose weight and continue physical therapy.

**Interim Disability Assessment**

If a disability is to be assessed now, based on the POEA contract, the closest possible disability grade would be **CHEST-TRUNK-SPINE** Grade 11, *Slight rigidity of one third (1/3) loss of motion or lifting power of the trunk #6.*

**DIAGNOSIS**

**LOW BACK PAIN SECONDARY TO L5-S1 RADICULOPATHY, RIGHT WITH ACUTE DENERVATION (EMG) SECONDARY TO DEGENERATIVE DISC DISEASE L3-L4, L4-L5, L5-S1 SPONDYLOLYSIS L5.**


For your information.

Prepared by:

(signed)

**MA. SOCORRO M. GARCIA, MD**  
HEAD, AMSD

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On September 24, 2015, he was advised to undergo spine surgery<sup>15</sup> but he declined because the procedure included the risk of lifetime paralysis.<sup>16</sup> Subsequently, he consulted his physician of choice, Dr. Manuel Fidel M. Magtira of the Armed Forces of the Philippines Medical Center. Under medical report<sup>17</sup> dated October 22, 2015, Dr. Magtira declared him unfit to work, thus:

October 22, 2015

#### MEDICAL REPORT

This is the case of *Mr. Christopher R. Reyes*, 41 year old male, married, a resident of Lot 1, Blk. 37, Leveriza, Tayabas, Quezon. He presents with lower back pain which apparently started on the 2<sup>nd</sup> week of May 2015 when the patient felt a click with mild to moderate pain on his back while hammering steel plates on board the ship M/V Crown Breeze, while employed as an able bodied seaman. He just ignores the condition and continues with his daily activity. The condition persisted and proved to be progressing until he cannot tolerate the pain anymore thus on May 21, 2015 he sought consult at a Hospital in Finland wherein X-ray was done and was given several unrecalled medications but affords only temporary relief. On June 4, 2015 he was brought to a hospital in United Kingdom where he was declared unfit and on June 8, 2015 he was repatriated. The following day upon arrival he sought consult at Manila Doctors Hospital and was seen by Dr. Fernando wherein X-ray and MRI was requested. He was advised surgery but the patient refused thus subjected to physical therapy.

Physical examination revealed a fairly developed, fairly nourished patient on a back brace. There is tenderness along the spinous process, and para-spinal muscles of the lumbar spine. Trunk motion is limited by pain in all directions. Muscle strength is 5/5 on both lower extremities. Deep tendon reflexes are normoactive. Straight leg raising test is negative.

**Result of MRI of the Lumbosacral spine done at Banawe Diagnostic MRI Center, INC. dated: October 19, 2015.**

#### **Impression:**

- **Lumbar muscular spasm.**
- **Lumbar spondylosis.**
- **Degenerative disc disease, lumbar spine.**

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<sup>15</sup> *Id.* at 237.

<sup>16</sup> *Id.* at 236.

<sup>17</sup> *Id.* at 306-308.

- **Central disc bulge, L3-L4, L4-L5 and L5-S1.**
- **Linear annular tear on L4-L5.**
- **Narrowing of the intervertebral disc of L5-S1.**
- **Inflammatory effusion, facet joints of L4-L5 and L5-S1.**

**Mr. Reyes** continues to experience back pain. His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has difficult[y] running, and climbing up or going down the stairs. The demands of a Seaman's work are heavy. **Mr. Reyes** has lost his pre injury capacity and is not capable of working at his previous occupation. He is now permanent[ly] disable[d].

The intervertebral discs are cartilaginous plates surrounded by fibrous rings, which lie between the vertebral bodies and serve to cushion them. Through degeneration, wear and tear, or trauma, the fibrous tissue (annulus fibrosus) constraining the soft disc material (nucleus pulposus) may tear. This results in protrusion of the disc or even extrusion of disc material into the spinal canal or neural foramen. This has been called herniated disc, ruptured disc, herniated nucleus pulposus, or prolapsed disc. The disc act as cushions between our vertebral bones, and as a part of walking upright and placing stress upon our backs, these discs can start to wear out. This is similar to a tire of a car. If you drive around a car long enough, the tires will begin to go bald. A degenerative disc is similar to a balding tire. Sometimes, a bald tire can become a flat tire, just as degenerative disc can tear and become a ruptured disc. A degenerative disc can cause problems in two ways then. It can cause local pain, if it occurs in the neck it can cause neck pain, and if it occurs in the back it can cause back pain. A degenerative disc can irritate an adjacent nerve causing pain to radiate into an extremity.

If specific lifestyle circumstances have led to one's disc problems, a change in habit is strongly recommended. In addition, for many people, this change is often necessary within the **WORK** environment. As difficult as these changes may be the importance in avoiding progression of symptoms and impairment cannot be stressed enough.

**Mr. Reyes** sustained back injury aboard the M/V Crown Breeze, while employed as an able bodied seaman. He presented with symptoms of nerves compression that has severely affected his capacity to perform activities that he used to do. These radical signs and symptoms are often associated with disc herniation or spinal stenosis. Patients with radiculopathy have well described pain, the distribution of which depends on the particular nerve root involved. His symptoms are confirmed by an MRI, is due to a Lumbar muscular spasm. Lumbar spondylosis. Degenerative disc disease, lumbar spine. Central disc bulge, L3-L4, L4-L5 and L5-S1. Linear annular tear on L4-L5. Narrowing of the intervertebral disc of L5-S1. Inflammatory effusion, facet joints of L4-L5 and L5-S1.

The herniated disc itself generally does not cause pain. The pain is usually caused when the disc presses against a nerve, and the nerve becomes inflamed and swollen. He may be well being a candidate for surgery, but the uncertainty of its success and long term result has kept him from undergoing it.

Surgical treatment of low back pain is a controversial issue that often fails to address the primary problem; inability to determine the exact source of pain in most instances. In most patients, precise anatomic localization of pain source is not important, as the immediate term outcome is generally favorable. However, the patient must be appraised that the disc surgery is not a cure. It may provide immediate and symptomatic relief but it cannot stop the pathological process nor restore the back to its previous state. It appears that although surgery may provide a more rapid and point (relief of pain), the ultimate end point is approximately the same regardless of treatment. Prolonged relief is less likely if no permanent modification in the patient's activities is made. He should therefore refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting.

Because of the chronicity of the patient's symptoms, it is best to consider him permanently disabled. He is now therefore ***UNFIT TO WORK*** at his previous occupation. Having him resume to his regular duties will only lead to frequent absences from illness, underperformance, and lost time at work. It is also necessary that in order to avoid the risk of a more serious disability, **Mr. Reyes** should permanently modify his activities and lifestyle.

(signed)

**Manuel Fidel M. Magtira, M.D.**

Meanwhile, on October 27, 2015, Dr. Garcia issued the purported final medical assessment<sup>18</sup> to respondent, finding the latter to have sustained grade 11 disability, *viz.*:

27 October 2015

**CAPT. LEOPOLDO C. TENORIO**  
CEO – Operations  
MARLOW NAVIGATION PHILS, INC.  
2120 Leon Guinto Street,  
Malate, Manila

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<sup>18</sup> *Id.* at 238.

Re: **CROWN BREEZE**  
**AB REYES, CHRISTOPHER R.**  
Date of Disembarkment: 10 June 2015  
Medical Evaluation

Dear Capt. Tenorio

This is regarding the case of AB Reyes, Christopher 40 year old male, who was disembarked from their vessel due to back pain.

***Present Disability Status:***

The patient still exhibits tenderness over lateral sacral edge, right; equivocal straight leg raising test, right; (-) Fabere's test; tight hamstrings, right and claims to have no improvement after sessions of physical therapy. Patient was advised to lose weight, discontinue physical therapy, and use of chair back brace and rest at home with analgesics/anti-inflammatory medicines, as needed. Surgical treatment is considered in view of MRI and EMG-NCV findings.

**Chance of sea service**

As of today, since pain persists, the patient is unlikely to return to sea service. However, if patient considers surgery, there is a moderate probability to return to work.

**Length of further treatment until maximum medical cure**

The estimated length of further treatment if with surgery is four to six (4-6) months.

**Final Disability Assessment**

If a disability is to be assessed now, based on the POEA contract, the closest possible disability grade would be CHEST-TRUNK-SPINE Grade 11, *Slight rigidity of one third (1/3) loss of motion or lifting power of the trunk.* #6.

**DIAGNOSIS**

**LOW BACK PAIN SECONDARY TO L5-S1 RADICULOPATHY, RIGHT WITH ACUTE DENERVATION (EMG) SECONDARY TO DEGENERATIVE DISC DISEASE L3-L4, L4-L5, L5-S1 SPONDYLOLYSIS L5.**

For your information.

Prepared by:

(signed)  
MA. SOCORRO M. GARCIA, MD  
HEAD, AMSD

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On October 27, 2015, he notified petitioners of his intent to refer the medical findings to a third doctor.<sup>19</sup> He reiterated this request through letter dated November 23, 2015.<sup>20</sup> But petitioners did not respond. Thus, respondent was constrained to file the complaint.<sup>21</sup>

For their part, petitioners countered that respondent was not entitled to disability benefits and other money claims for he was deemed to have abandoned his medical treatment when he refused to undergo the recommended spine surgery.

More, Dr. Garcia issued an interim medical assessment with grade 11 disability rating as early as September 4, 2015.<sup>22</sup> And on October 27, 2015, or 141 days from his medical repatriation on June 8, 2015, Dr. Garcia issued a grade 11 final disability rating.<sup>23</sup>

Lastly, respondent failed to observe the procedure for engaging a third doctor, *i.e.* it should have been mutually agreed upon by the parties.<sup>24</sup> Without complying with the requirement for referral to a third doctor, the findings of the company-designated physician must prevail. More so since it was Dr. Garcia who personally monitored respondent's condition.<sup>25</sup>

### **The National Conciliation and Mediation Board's (NCMB) Ruling**

By Decision<sup>26</sup> dated August 24, 2017, the NCMB ruled in favor of respondent and ordered petitioners to jointly pay permanent and total disability benefits of US\$80,000.00 in accordance with the Collective Bargaining Agreement (AMOSUP – NETHERLANDS Flag Collective Bargaining Agreement for Filipino Officers and Ratings on board Netherlands Flag Vessels), as well as ten percent (10%) attorney's fees. Respondent's other money claims were denied for lack of merit, *viz.*:

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<sup>19</sup> *Id.* at 309.

<sup>20</sup> *Id.* at 310.

<sup>21</sup> *Id.* at 180.

<sup>22</sup> *Id.* at 53.

<sup>23</sup> *Id.* at 180.

<sup>24</sup> *Id.* at 182.

<sup>25</sup> *Id.* at 53.

<sup>26</sup> *Id.* at 131-148.



**WHEREFORE**, premises considered, decision is hereby rendered ordering respondents **Marlow Navigation Philippines, Inc., Marlow Navigation Netherlands, and Edgar S. Gelito**, to pay complainant **Christopher Rallos Reyes**, jointly and severally in accordance with R.A. No. 8042 as amended by R.A. No. 10022, amount of **EIGHTY THOUSAND US DOLLARS [sic] (US\$80,000.00)**, representing his permanent and total disability benefits as per CBA plus *ten percent (10%)* thereof as attorney's fees or its equivalent in Philippine Peso at the time of payment.

Other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>27</sup>

According to the Voluntary Arbitrators, respondent's refusal to undergo the recommended spine surgery did not amount to abandonment. Even if respondent agreed thereto, he would still have had to undergo rehabilitation for four (4) to six (6) months thereafter. This meant that his condition would have remained unresolved for more that 240 days.<sup>28</sup>

There was no need for the third doctor referral since there was no substantial difference in the diagnoses of the company-designated physician and that of respondent's physician of choice.

In any event, Dr. Garcia's medical assessment dated October 27, 2015 was not final and definite as she was not respondent's attending orthopedist or psychiatrist. Thus, the Voluntary Arbitrators gave more weight to Dr. Magtira's assessment as an orthopedist.

Co-respondent Edgar S. Gelito was held jointly and severally liable pursuant to Republic Act No. 8042 (RA 8042) as amended by RA 10022.<sup>29</sup>

Petitioners' motion for reconsideration was denied under Resolution<sup>30</sup> dated February 21, 2018.

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<sup>27</sup> *Id.* at 147-148.

<sup>28</sup> *Id.* at 54.

<sup>29</sup> *Id.* at 131-148.

<sup>30</sup> *Id.* at 149-150.

### The Court of Appeals' Ruling

By Decision<sup>31</sup> dated June 28, 2019, the Court of Appeals affirmed. It noted that petitioners did not refer respondent's case to a third doctor for a final determination of his disability rating despite respondent's requests.

Petitioners moved for reconsideration but the same was denied under Resolution<sup>32</sup> dated October 30, 2019.

### The Present Petition

Petitioners now seek<sup>33</sup> affirmative relief from the Court and pray that the assailed dispositions of the Court of Appeals be reversed and a new one rendered dismissing respondent's complaint.

Petitioners essentially argue that Dr. Garcia issued a definite and final disability assessment within the 240-day maximum medical treatment period. As early as September 4, 2015 (or 88 days after medical repatriation), she issued an interim grade 11 disability rating. Respondent's refusal to undergo the recommended spine surgery necessitated the extension of his medical treatment. At any rate, on October 27, 2015 (or 141 days after medical repatriation), Dr. Garcia issued a grade 11 final disability rating.

More, during the conciliation conferences before the NCMB, the parties agreed to refer respondent's case to a third doctor but it was respondent who reneged when his counsel failed to contact him. Consequently, the company-designated physician's assessment should prevail over that of respondent's physician of choice.

Another. Respondent's alleged request for referral to a third doctor is ineffective for failure to furnish petitioners with copy of Dr. Magtira's findings. Hence, there is no conflicting opinions to speak of.

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<sup>31</sup> *Id.* at 48-64.

<sup>32</sup> *Id.* at 66-67.

<sup>33</sup> *Id.* at 11-39.

Lastly, the award of attorney's fees is belied by the voluntary arbitrators' finding that petitioners did not act in bad faith.

### Issues

1. Is respondent entitled to total and permanent disability benefits?
2. Were the parties here required to refer respondent's condition to a third doctor?

### The Court's Ruling

The Court resolves to **DENY** the petition for failure to sufficiently show that the Court of Appeals committed reversible error in rendering its assailed dispositions as to warrant the exercise of the Court's discretionary appellate jurisdiction.

***Respondent's disability is deemed permanent and total by operation of law.***

A seafarer's employment is governed by the contracts he executed with his employer. As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties.<sup>34</sup> For respondent's case, his employment, and consequent claim for total and permanent disability arising therefrom is governed by the Contract of Employment dated September 25, 2014, the parties' collective bargaining agreement (AMOSUP – NETHERLANDS Flag Collective Bargaining Agreement for Filipino Officers and Ratings on board Netherlands Flag Vessels) and the 2010 POEA-SEC.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,<sup>35</sup> the Court laid down the governing rules for seafarer's claim for total and permanent disability benefits:

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<sup>34</sup> See *Remigio v. NLRC*, 521 Phil. 330, 345 (2006).

<sup>35</sup> See *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362-363 (2015).

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.** (Emphases supplied)

Under the afore-cited rule, the company-designated physician is expected to issue a final and definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days.<sup>36</sup> A final and definite disability assessment is necessary in order to truly reflect the extent of the seafarer's sickness or injuries and his or her capacity to resume work. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.<sup>37</sup> Should he or she fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.<sup>38</sup>

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<sup>36</sup> See *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 731 (2013).

<sup>37</sup> See *Orient Hope Agencies, Inc. v. Jara*, G.R. No. 204307, June 6, 2018, 864 SCRA 428, 450.

<sup>38</sup> See *Kestrel Shipping Co., Inc. v. Munar*, supra note 36.

Here, after series of medical treatment and therapy, the company-designated physician Dr. Garcia diagnosed respondent with *spondylolysis L5* under medical report dated October 27, 2015 or 141 days from repatriation on June 8, 2015. *Spondylolysis*<sup>39</sup> is a bony defect in the vertebral parts, the cause of which is usually a stress microfracture in a congenitally abnormal segment. The most common cause of the low back pain is often associated with sports-related activities. The company-designated physician rated respondent's disability as grade 11.

The purported final medical assessment dated October 27, 2015, however, could hardly be considered final, definite, nor complete. As Dr. Garcia herself noted:

#### **Chance of sea service**

As of today, since pain persists, the patient is unlikely to return to sea service. However, if patient considers surgery, there is a moderate probability to return to work.

#### **Length of further treatment until maximum medical cure**

*The estimated length of further treatment if with surgery is four to six (46) months.*

#### **Final Disability Assessment**

*If a disability is to be assessed now*, based on the POEA contract, the closest possible disability grade would be CHEST-TRUNK-SPINE Grade 11, *Slight rigidity of one third (1/3) loss of motion or lifting power of the trunk.*  
#6. (Emphasis supplied)

Clearly, respondent was still under pain and needed continued medication and treatment. The alleged finality of the October 27, 2015 medical assessment is belied by the use of the words "*If a disability is to be assessed now*". More, Dr. Garcia's own issuance even stated that "*[t]he estimated length of further treatment if with surgery is four to six (4-6) months.*" These phrases indicate that the assessment was merely interim and that a final and conclusive assessment could have only been at least four (4) months after surgery. Without a complete,

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<sup>39</sup> See Jameson, L., Kasper, D. *et al.*, Harrison's Principle of Internal Medicine, 20<sup>th</sup> Ed. (2018) p. 96.

final, and definitive assessment from the company-designated physician, respondent, by operation of law, is deemed totally and permanently disabled.<sup>40</sup>

In *Carcedo v. Maine Marine Philippines, Inc.*,<sup>41</sup> the Court held that Carcedo's medical condition lapsed into total and permanent disability by operation of law for failure of the company-designated physician to issue a definitive impediment rating of Carcedo's disability within 240 days.

Similarly, in *Magadia v. Elburg Shipmanagement Philippines, Inc.*,<sup>42</sup> the Court held that the disability grade of 11 given to Magadia could not have been definite and conclusive since he still needed further therapy.

As aptly observed by the courts below, respondent's refusal to undergo the recommended spine surgery does not amount to medical abandonment. Abandonment requires a deliberate intention on the seafarer's part and is evidenced by some overt acts to abandon treatment.<sup>43</sup> Here, records show that respondent offered a justifiable reason for his refusal to undergo surgery – the risk of lifetime paralysis. This we cannot hold against respondent.

At any rate, even if respondent opted to undergo surgery, he would still have needed at least four (4) months or 120 days of treatment before a final assessment of his condition could have been made. Since the interim assessment was only issued 141 days after his repatriation, an additional 120 days of treatment would exceed the 240-day threshold, rendering respondent permanently and totally disabled by operation of law.

***The third-doctor referral rule  
does not apply.***

The mandatory third-doctor rule does not apply where there was no final and definite medical assessment issued by the company-designated physician, as here. Dr. Garcia's assessment of respondent's

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<sup>40</sup> See *Orient Hope Agencies, Inc. v. Jara*, supra note 37.

<sup>41</sup> 758 Phil. 166, 184 (2015).

<sup>42</sup> G.R. No. 246497, December 5, 2019.

<sup>43</sup> See *Magsaysay Maritime Corp. v. Cruz*, 786 Phil. 451, 466 (2016).

condition, being far from final, definite and complete, failed to trigger the application of the third-doctor referral under the 2010 POEA-SEC.<sup>44</sup>

As further held in *Carcedo*, the company-designated physician's failure to give a definitive impediment rating beyond the extended 240-day period bars the application of the third-doctor-referral provision.

***Respondent is entitled to disability benefits and attorney's fees.***

All told, respondent is entitled to total and permanent disability benefits.

Considering that the company-designated physician failed to issue a final, definite, and complete medical assessment on respondent's ailment, respondent, therefore, is deemed totally and permanently disabled by operation of law. Respondent was unable to perform his previous occupation and continues to be in pain even after the lapse of the 240-day period because of his disability. Further, there was also no showing that respondent was reemployed as an "able seaman" by petitioners or other manning agency from the time of his medical repatriation.<sup>45</sup> He is, therefore, entitled to total and permanent disability benefits of US\$80,000.00 pursuant to the AMOSUP – NETHERLANDS Flag Collective Bargaining Agreement for Filipino Officers and Ratings on board Netherlands Flag Vessels CBA.<sup>46</sup>

The award of ten percent (10%) attorney's fees is also warranted under Article 2208 of the Civil Code as respondent was clearly compelled to litigate to satisfy his claims for disability benefits.<sup>47</sup>

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<sup>44</sup> Section 20(A)(3) of the 2010 POEA-SEC. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

<sup>45</sup> *Rollo*, p. 62.

<sup>46</sup> *Id.* at 322.

<sup>47</sup> See *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.

As for respondent's claims for moral and exemplary damages were properly denied for lack of merit. Moral damages is awarded when the employer acted a) in bad faith or fraud; b) in a manner oppressive to labor; or c) in a manner contrary to morals, good customs, or public policy. Exemplary damages under Article 2332 of the Civil Code, on the other hand, provides that in contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.<sup>48</sup> It may only be awarded in addition to the moral, temperate, liquidated or compensatory damages.<sup>49</sup>

Here, respondent offered no evidence that petitioners acted in bad faith in dealings with him. In fact, petitioners facilitated respondent's medical repatriation, provided treatment and therapy, and even recommended spine surgery. Hence, the award of moral damages was properly denied for lack of merit. Absent the award of moral damages, exemplary damages cannot likewise be awarded.

The Court notes though that petitioners already tendered PNB Check No. 0000015534 worth US\$88,000.00 to NLRC Sheriff Carlito B. Napoles in compliance with the writ of execution issued by the Panel of Voluntary Arbitrators. The US\$80,000.00 corresponded to the award in favor of respondent in accordance with the CBA and US\$8,000.00 as ten percent (10%) attorney's fees.

**ACCORDINGLY**, the petition is **DENIED**. The Decision<sup>50</sup> dated June 28, 2019 and Resolution<sup>51</sup> dated October 30, 2019 of the Court of Appeals in CA-G.R. SP No. 154865 is **AFFIRMED**. NLRC Sheriff Carlito B. Napoles is hereby **ORDERED** to **RELEASE** PNB Check No. 0000015534 in favor of respondent Christopher R. Reyes.

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<sup>48</sup> See *Montinola v. Philippine Airlines*, 742 Phil. 487, 511 (2014).

<sup>49</sup> **Article 2229**. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

<sup>50</sup> *Rollo*, pp. 48-64.

<sup>51</sup> *Id.* at 66-57.



RESOLUTION

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G.R. No. 250369  
June 30, 2020

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>Manila</sup>

**7-B**

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(MVA-010-RCMB-NCR-196-07-09-2016)



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