REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **28 July 2021** *which reads as follows*:

"**G.R. No. 248661** ***(Rorimar Raymund M. Alvarez v. Magsaysay Maritime Corporation, Air-Sea Holiday and/or Marlon R. Rono***[1]*).* – This resolves the Petition for Review[2] on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[3] dated November 22, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 151924. The CA reversed and set aside the Decision[4] dated January 27, 2017 and the Resolution[5] dated April 24, 2017 of the National Labor Relations Commission (NLRC) and ordered the payment of partial disability benefits in favor of Rorimar Raymund M. Alvarez (petitioner) at Grade 11 – slight rigidity or 1/3 loss of lifting power of the trunk. Also assailed is the CA Resolution[6] dated August 5, 2019 denying petitioner's Motion for Reconsideration.

The Antecedents

Magsaysay Maritime Corporation, through its corporate officer Marlon Rono and on behalf of its principal, Air Sea Holiday (collectively, respondents), hired petitioner as "GPA No. 1 Galley." The employment contract[7] was for a period of ten months with a basic monthly pay of US$419.00, among other benefits. Petitioner was an "all-

1 Spelled as "Roño" in some parts of the *rollo*.

2 *Rollo*, pp. 31-56.

3 *Id.* at 10-23; penned by Associate Justice Rosmari D. Carandang, with Associate Justices Amy C. Lazaro-Javier and Jhosep Y. Lopez (now Members of the Court), concurring.

4 *Id.* at 358-370; penned by Presiding Commissioner Grace M. Venus with Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio, concurring.

5 *Id.* at 402-404. penned by Presiding Commissioner Grace M. Venus with Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio, concurring.

6 *Id.* at 80-81; penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) with Associate Justices Gabriel T. Robeniol and Perpetua T. Atal-Paño, concurring.

7 *Id.* at 186.

around man" tasked to perform strenuous activities such as lifting, moving pieces of equipment, and carrying baggage of the passengers. After passing the pre-employment medical examination, petitioner boarded the vessel Aidaluna on March 27, 2015.[8]

Sometime in July 2015, while performing his usual work, petitioner suffered a back injury that, according to him, resulted in his permanent and total disability. He narrated that: (1) at that time, he was carrying and loading cargoes when his back snapped; (2) he immediately felt excruciating pain from the back up to his lower extremities; (3) he reported the incident to the vessel's medical officer, who advised him to rest for two days; (4) because the pain persisted, he was brought to a medical facility in Norway where his MRI[9] scan revealed that he needed longer treatment; and (5) he was medically repatriated and arrived in the Philippines on August 8, 2015.[10]

Respondents referred petitioner to the company-designated doctor at the Marine Medical Services who gave the impression "*to consider L5-S1, Disc Herniation with Left S1 Radiculopathy.*"[11] Afterwards, petitioner's lumbosacral spine x-ray indicated "*consider Spondylolysis, L-5. Spondylolisthesis with Disc Disease, L5 over S1. Predisposition to lumbar instability.*"[12] He was then referred to the Cardinal Santos Medical Center where his attending doctors advised surgery and physical therapy (PT). Consequently, on October 7, 2015, he underwent surgery on his back (Minimal Invasive Transforaminal Lumbar Interbody Fusion, L5-S1).[13]

After his operation, petitioner underwent PT sessions. On November 6, 2015, the company-designated doctor reported that if petitioner was to be given a disability rating, the closest interim assessment was Grade 8 - moderate rigidity or 2/3 loss of lifting power of the trunk.[14]

On December 9, 2015, the company-designated doctor reported that petitioner's attending Orthopedic Surgeon advised him to continue with his rehabilitation program and medication. Petitioner was scheduled to return to the company-designated doctor on January 4, 2016 for re-

---

8 *Id.* at 84-87.

9 Magnetic Resonance Imaging.

10 *Rollo*, p. 12.

11 *Id.* at 188.

12 *Id.* at 189.

13 *Id.*

14 *Id.* at 13.

evaluation.[15] Meanwhile, in the Report[16] dated December 10, 2015, the latter declared that the attending specialist opined that petitioner's prognosis for returning to sea duties was guarded and that he already reached maximum medical improvement; and, if he was entitled to a disability rating, the suggested grading was Grade 11 – slight rigidity or 1/3 loss of lifting power of the trunk.[17]

Petitioner stated that he had regular consultations with the company-designated doctor and his treatment continued until January 2016 when respondents informed him that his treatment was terminated already. He insisted that his injury was never resolved such that he sought medical attention from his chosen doctor, Dr. Francis R. Pimentel (Dr. Pimentel).[18] On February 11, 2016, Dr. Pimentel issued a report concluding that the "*present medical condition of [petitioner] will not allow him to be able to work and perform his previous level of function. He is not fit for work with permanent disability.*"[19]

Petitioner consulted another independent doctor, Dr. Rogelio P. Catapang, Jr., who issued a medical report dated February 13, 2016 stating that petitioner was already unfit for further sea duties. The work restrictions must be made to prevent another disc herniation from occurring.[20]

Petitioner alleged that he asked for assistance from respondents but to no avail such that he filed a Complaint[21] for disability benefits and other money claims against them. He added that while the case was pending, the parties discussed the possible settlement or resort to a third doctor for opinion; however, respondents ignored his rightful claims. He further insisted that his back injury was work-related brought about by his work as a seafarer and sustained during the term of his employment contract with respondents.[22]

Petitioner also emphasized that for more than 240 days from his repatriation, his back injury was never resolved and the company-designated doctor did not issue any declaration on his condition. According to him, after the lapse of 240 days from his repatriation, by

---

15 *Id.* at 199.
16 *Id.* at 200.
17 *Id.*
18 *Id.* at 88.
19 *Id.* at 89-90.
20 *Id.* at 90-92.
21 *Id.* at 203-205.
22 *Id.* at 92, 95, 101.

19/t

operation of law, he was deemed permanently and totally disabled due to the absence of such assessment from the company-designated doctor.[23]

For their part, respondents countered that petitioner responded well to medication and therapy such that he was given an interim disability rating of Grade 8; and, on December 10, 2015, upon reaching maximum medical improvement, the company-designated doctor gave him the final disability rating of Grade 11. They asserted that in the absence of any showing that the findings of the company-designated doctor were arrived at arbitrarily, then they must be respected and accorded finality.[24]

Ruling of the Labor Arbiter

On October 10, 2016, the Labor Arbiter (LA) granted petitioner's claim for full disability benefits in the amount of US$60,000.00 and attorney's fees equivalent to 10% of the total monetary award.[25]

According to the LA, there was no dispute that petitioner suffered from a work-related injury during the term of his contract. He added that petitioner was entitled to permanent and total disability benefits as he could no longer perform the duties required of his work which included manual activities. He further stressed that in fact, the company-designated Orthopedic Surgeon (Dr. Ferdinand Bernal) noted that petitioner was still suffering from "*slight rigidity or 1/3 loss of lifting power of the trunk*" which made his capacity to work limited and restricted; hence, no shipping company would engage his services in this condition.[26]

Ruling of the National Labor Relations Commission

On appeal, the NLRC affirmed the LA Decision.[27] It ruled that the disability grading given by the company-designated doctor on December 10, 2015 was only interim because petitioner was set to see the company-designated doctor on January 4, 2016 for re-evaluation. It decreed that there being no final assessment on the condition of petitioner within 240 days from his repatriation, then he was deemed

---

[23] *Id.* at 102, 107.
[24] *Id.* at 163, 169.
[25] See Labor Arbiter Decision, *id.* at 319.
[26] *Id.* at 317-318.
[27] *Id.* at 313-319; penned by Labor Arbiter Fedriel S. Panganiban.

permanently and totally disabled and therefore, he was entitled to full disability benefits.[28]

With the denial of their Motion for Reconsideration, respondents filed a Petition for *Certiorari* with the CA.

Ruling of the Court of Appeals

On November 22, 2018, the CA reversed and set aside the ruling of the NLRC. It held that petitioner was only entitled to disability benefits corresponding to Grade 11 for slight rigidity or one-third (1/3) loss of lifting power of the trunk.[29]

Contrary to the NLRC's view, the CA ruled that the finding of the company-designated doctor that petitioner sustained a Grade 11 disability deserved credence than that of the personal doctors of petitioner. It added that the company-designated doctor gave the final assessment within the 240-day period embodied in the Report dated December 10, 2015. It also stated that there being a disagreement in the findings of the company-designated doctor and those of petitioner's personal physicians, then the opinion of a third doctor should have been consulted. None was availed here, then the assessment of the company-designated doctor must prevail.[30]

Aggrieved by the CA decision, petitioner filed the instant petition raising the following issues:

> 1. Whether the company-designated doctors issued a final and definitive assessment within the period of 120/240 days from his repatriation;
>
> 2. Whether petitioner is deemed permanently and totally disabled by operation of law.[31]

Our Ruling

The petition is granted.

It is settled that the Court is not a trier of facts and solely questions

---

[28] See NLRC Decision, *id.* at 368-369.
[29] See CA Decision, *id.* at 22.
[30] *Id.* at 19.
[31] *Id.* at 36.

of law may be resolved in a petition under Rule 45 of the Rules of Court. The rule, nonetheless, admits certain exceptions which include instances where the findings of fact are conflicting. In the case, there being variance in the factual findings of the LA and the NLRC, on one hand, and those of the CA, on the other hand, the Court sees it necessary to re-evaluate them for the proper disposition of the controversy.[32]

Moreover, our review under Rule 45 is limited. It is confined to ascertaining the legal correctness of the ruling of the CA on a petition for *certiorari* before it. In essence, the Court is tasked to determine whether the CA properly found grave abuse of discretion on the part of the NLRC when it (NLRC) ruled that petitioner was entitled to full disability benefits, and instead, granted in his favor Grade 11 disability benefits only.[33]

Taking into account the foregoing principles, the Court finds that the CA erred in reversing the NLRC as the latter committed no grave abuse of its discretion in holding that petitioner was conclusively presumed permanently and totally disabled and thereby, entitled to full disability benefits.

The Court has repeatedly stressed that the company-designated doctor is required to make a final and definite declaration on the condition of the concerned seafarer within the period of 120 days from the latter's repatriation. In case the seafarer continues to require medical attention, the 120-day period may be extended to a maximum period of 240 days within which the company-designated doctor must assess the fitness of the seafarer to return to work or determine the degree of his or her disability. A seafarer is considered permanently and totally disabled when so declared by the company-designated doctor within the period of 120 or 240 days, as the case may be; or after the lapse of 240 days without any declaration being given by the company-designated doctor.[34]

In *Pastor v. Bibby Shipping Philippines, Inc.*,[35] the Court decreed that the final disability assessment of the company-designated doctor must be embodied in a valid and timely medical report. A "final and definitive disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries to the seafarer and his or her capacity to resume work[.]"

---

32 *Guadalquiver v. Sea Power Shipping Enterprise, Inc.*, G.R. No. 226200, August 5, 2019.
33 *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 391 (2018).
34 See *Guadalquiver v. Sea Power Shipping Enterprise. Inc.*, *supra* note 32.
35 G.R. No. 238842, November 19, 2018.

In the present case, petitioner was medically repatriated on August 8, 2015. He had been under the care of the company-designated doctor, who issued an interim disability rating of Grade 8 on November 6, 2015 and a subsequent rating of Grade 11 on December 10, 2015. According to the CA, the latter assessment was a final declaration and serves as the basis for granting partial disability benefits in favor of petitioner.

The Court, however, disagrees with the CA.

To underscore, the pertinent portions of the Medical Report[36] dated December 10, 2015 (subject Report) reads:

> The specialist opines that patient's prognosis for returning to sea duties is guarded and he has already reached maximum medical improvement.
>
> If patient is entitled to a disability, his suggested disability grading is Grade 11 – slight rigidity or 1/3 loss of lifting power of the trunk.[37]

While the Court agrees that the period within which the company-designated doctor must issue his final declaration was extended to 240 days since petitioner was still under treatment even after the lapse of 120 days from his repatriation, the subject Report presents neither a definitive nor final assessment on the condition of petitioner. It did not specify the reasons for the conclusion that petitioner was suffering a Grade 11 disability and in fact, it was a mere *suggested* disability rating, not a categorical evaluation of the situation of petitioner.

In *Orient Hope Agencies, Inc. v. Jara* (Orient Hope),[38] the Court declared that the assessment issued by therein company-designated doctor was just a succinct statement as it lacks explanation or details of the progress of the treatment of the seafarer as well as the approximate duration necessary for his total recovery.

The circumstance in Orient Hope is similar to the case at bench. The subject Report did not even explain how the company-designated doctor arrived at his assessment. He likewise did not give any justification for his conclusion that petitioner was suffering from a Grade 11 disability.

---

[36] *Rollo*, p. 200
[37] *Id.* at 200.
[38] *Orient Hope Agencies, Inc. v. Jara*, *supra* note 33.

The subject Report[39] was not only incomplete, it was also not final considering that petitioner was still set to undergo PT sessions and take medications. In fact, he was scheduled to return to the company-designated doctor on January 4, 2016 as the company-designated doctor himself reported on December 9, 2015, *viz.*:

> [Petitioner] was seen by the Orthopedic Surgeon who advised [petitioner] to continue his rehabilitation program in his home province (Bacolod) and medications (Dolcet and Ascorbic Acid).
>
> He is to come back on January 4, 2016 for re-evaluation.[40]

To the Court's mind, the Medical Report[41] dated December 9, 2015 and the subject Report dated December 10, 2015 should not be taken separately but complementarily. In this regard, the suggested disability Grade 11 given on December 10, 2015 was indeed tentative given that petitioner needed to continue his rehabilitation treatment and was scheduled to return to the company-designated doctor for follow-up checkup. This is the same observation of the NLRC, to wit:

> x x x If [petitioner] was to be subjected to further evaluation on January 4, 2016, the December 10, 2015 medical report (which respondents claim as final and assessment of [petitioner's] disability) stating [petitioner's] situation has maximally improved and placing a suggested disability rating at Grade 11 was indeed an interim assessment. As there is no evidence on record of a final assessment of [petitioner's] fitness or unfitness to return to sea duties after January 4, 2016 and within the 240 days period, [petitioner's] disability has become permanent and total, warranting the award of full disability benefits under the POEA – Standard Employment Contract.[42]

As pointed out by the NLRC, with the lapse of 240 days from his repatriation, petitioner's condition remains unresolved and in the absence of a final declaration by the company-designated doctor, then petitioner is deemed totally and permanently disabled to return to his usual work as a seafarer.

Indeed, the duty of the company-designated doctor to arrive at a final and definite declaration of the fitness or the disability of the seafarer within the prescribed periods is mandatory. His failure to do so, as in the instant case, has rendered the findings of the company-

---

[39] *Id.* at 200.
[40] *Rollo*, p. 199.
[41] *Id.* at 199.
[42] *Id.* at 367-368.

designated doctor nugatory, and the disability sustained by petitioner is conclusively presumed to be permanent and total; therefore, he is entitled to full disability benefits.[43]

In addition, without a timely and final declaration issued by the company-designated doctor, the matters surrounding the non-compliance with the "third doctor referral procedure" – which the CA also used as a basis in reversing and setting aside the NLRC decision – is rendered irrelevant. To stress, in order for a third doctor to be consulted, there must be, in the first place, a definite and timely assessment from the company-designated doctor that is being contested by the finding of the seafarer's personal doctor. Simply put, the third-doctor rule finds no application in the absence of a final and definitive declaration from a company-designated doctor. Here, the company-designated doctor failed to issue the necessary and timely declaration on the fitness or unfitness of petitioner to return to sea duty. Verily, the law itself operates and deems his disability to be total and permanent.[44]

Finally, as ruled by the LA and affirmed by the NLRC, petitioner is also entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award as he was compelled to litigate by reason of respondents' denial of his valid claim.[45]

All told, considering that the NLRC ruling is well-supported by relevant facts, applicable laws and prevailing jurisprudence, the Court finds that the CA erred in reversing and setting aside the NLRC Decision[46] and Resolution.[47] As established, the NLRC committed *no* grave abuse of discretion in finding that petitioner is entitled to permanent and total disability benefits and attorney's fees.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 22, 2018 and Resolution dated August 5, 2019 of the Court of Appeals in CA-G.R. SP No. 151924 are hereby **REVERSED and SET ASIDE**.

Accordingly, the Decision dated January 27, 2017 and Resolution dated April 24, 2017 of the National Labor Relations Commission in NLRC LAC No. OFW-M-12-000895-16; NLRC Case No. (M) 04-04537-16 are **REINSTATED**.

---

[43] *Pastrana v. Bahia Shipping Services*, G.R. No. 227419, June 10, 2020.
[44] *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.
[45] *Orient Hope Agencies, Inc. v. Jara*, *supra* note 33.
[46] *Id.* at 358-370.
[47] *Id.* at 402-404.

SO ORDERED." **(ROSARIO, *J.*,** designated as Additional Member).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
08 SEP 2021

TOLENTINO & BAUTISTA LAW OFFICES (reg)
Counsel for Petitioner
8th Floor, PHILFLEX by the Bay
15 Coral Way Drive, Central Business Park
Mall of Asia Complex
1300 Pasay City

DEL ROSARIO & DEL ROSARIO (reg)
Counsel for Respondents
14th Floor, Del Rosario Law Center
21st Drive corner 20th Drive
Bonifacio Global City, 1630 Taguig

NATIONAL LABOR RELATIONS
COMMISSION (reg)
PPSTA Building, Banawe Street
corner Quezon Boulevard
1100 Quezon City
(NLRC NCR Case No. (M) 04-04537-16)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 151924

Please notify the Court of any change in your address.
GR248661. 07/28/2021(46)URES