

G. R. No. 172800

THIRD DIVISION

MARCIANO L. MASANGCAY,
Petitioner,

G. R. No. 172800

Present:

- *versus* -

YNARES-SANTIAGO,
AUSTRIA-MARTINEZ,
AZCUNA,^{*}
CHICO-NAZARIO, and
NACHURA, *JJ*.

**TRANS-GLOBAL MARITIME
AGENCY, INC. AND
VENTNOR NAVIGATION,
INC.,**
Respondents.

Promulgated:

October 17, 2008

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D E C I S I O N

CHICO-NAZARIO, *J*:

Assailed in this Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court is the *Decision*^[2] dated 10 February 2006 of the Court of Appeals in CA-G.R. SP No. 91393, entitled Trans-Global Maritime Agency, Inc. and Ventnor Navigation, Inc. vs. National Labor Relations Commission and Marciano Masangcay, as well as the appellate courts *Resolution*^[3] dated 30 May 2006 in the same case.

In the questioned decision, the Court of Appeals granted the petition filed by respondents Trans-Global Maritime Agency, Inc. (Trans-Global) and

Ventnor Navigation, Inc. (Ventnor); and issued the writ of *certiorari*, thereby, annulling and setting aside the *Resolution*^[4] dated 28 April 2005 and *Resolution*^[5] dated 30 June 2005 of the National Labor Relations Commission (NLRC), and ordering the latter to dismiss NLRC CA No. 041053-04 [NLRC-NCR OFW Case No. (M)03-10-2649-00] entitled Marciano Masangcay vs. Trans-Global Maritime Agency, Inc., and/or Michael Estaniel and Ventnor Navigation, Inc.

The factual antecedents of the present petition are:

Ventnor is a foreign company based in Liberia and engaged in maritime commerce. It is represented in the Philippines by its manning agent, and correspondent herein, Trans-Global, a corporation organized and existing under Philippine laws.

On 2 September 2002, petitioner Marciano Masangcay (Masangcay) was hired by Ventnor, through its manning agent, Trans-Global, as an oiler on M/T Eastern Jewel, an oil tanker. His employment was to run for a period of seven (7) months; and he was to receive, *inter alia*, a basic monthly salary of US\$445.00.^[6]

Twenty-one days later, or on 23 September 2002, while on board M/T Eastern Jewel, Masangcay noticed a reddish discoloration of his urine upon micturation (urination). This happened several times and later became associated with bouts of left lower abdominal pain radiating to the loin area.^[7]

Docking at the nearest port, on 4 October 2002, Masangcay was brought to the Fujairah Hospital, Fujairah, United Arab Emirates, because of lower abdominal pain and left loin pain of ten (10) days duration with difficulty in urinating.^[8] The attending physician at said hospital diagnosed him to be suffering from *renal failure* due to multiple renal stones on the left kidney with bilateral hydronephrosis with dilation of ureters and pelvicalyceal system. [L]eft nephrostomy or better removal of the right pelvi-ureteric calculus^[9] was the recommended treatment but Masangcay refused surgical intervention and insisted on being repatriated back to the Philippines instead.

Upon his arrival in Manila on 7 October 2002, Masangcay was immediately referred to Trans-Globals designated physician, Dr. Mary Ann D.

Barrientos (Dr. Barrientos) of the Associated Medical and Clinical Services, Inc. for evaluation. In turn, she referred him to one of the urologists at the Makati Medical Center (MMC) for a consult and eventual management because his blood test results showed elevated BUN^[10] and Creatinine levels and his urinalysis revealed an active infection.

From the 21st until the 26th of October 2002, Masangcay was hospitalized at the MMC for the treatment of his Non-Functional Right Kidney and Left Pelvolithiasis^[11]; which included the following medical procedures:

Cystoscopy^[12] Bilateral RGP
Left Double J Stenting
Left ESWL^[13]

During one of Masangcays subsequent follow-ups, Dr. Francisco Agustin, Jr., his attending physician, requested a CT scan of his upper abdomen to assess the status of his (Masangcay) right kidney, even though the urinalysis showed no more trace of blood. The result of the scan revealed an obstructing urethrolithiasis on the right kidney with secondary hydronephrosis, *i.e.*, a poorly functioning right kidney where the flow of urine is obstructed by the presence of kidney stones. Due to the aforementioned result, the removal of the non-functioning right kidney was advised but Masangcay refused.

Masangcay was then referred to Dr. Reynaldo C. de la Cruz of the National Kidney and Transplant Institute (NKTi) for a second opinion. Thereat, due to right ureterolithiasis,^[14] said physician confirmed the need for another operation; thus, on the 17th until the 23rd of December 2002, Masangcay was admitted and confined at the NKTi for the following medical procedures, *viz*:

CYSTOSCOPIC REMOVAL OF DOUBLE-J STENT, LEFT
BILATERAL RETROGRADE PYELOGRAM
URETEROLITHOTOMY,^[15] RIGHT

The foregoing medical procedures proved successful as evidenced by a repeat examination of Masangcays urine, done on 8 January 2003, which yielded a negative result for the presence of blood.

On 29 January 2003, upon follow-up, Dr. dela Cruz pronounced^[16] Masangcay fit to resume work^[17] as all his laboratory examinations showed normal results. Accordingly, on 30 January 2003, Trans-

Globals designated physician, Dr. Barrientos of the Associated Medical & Clinical Services, Inc., declared Masangcay fit to go back to work after a regular medical examination and pegged the disability period of the latter to be from 3 October 2002 until 3 February 2003.^[18]

On 21 February 2003, Trans-Global, in behalf of Ventnor, paid Masangcay his full 120 days Sick Leave pay of Ninety Five Thousand Five Hundred Sixty Four and 52/100 (P95,564.52) Pesos^[19] representing One Thousand Seven Hundred Seventy Nine Dollars and 60/100 (US\$1,779.60) U.S. Dollars, as well as all his medical and hospital expenses, professional fees of his attending physicians, the total amount of which reached One Hundred Seventy Four Thousand Seventy Five and 10/100 (P174,075.10) Pesos.^[20]

Sometime in the first week of March 2003,^[21] Masangcay was asked to report back to the office of Trans-Global for deployment line-up. He was also asked to undergo medical examination in view of his impending deployment. When Masangcay reported to the premises of Trans-Global, however, he was informed by the Port Captain that he (Masangcay) can no longer be deployed due to negative reports about him coming from its principal, Ventnor.

More than six months later, or on 16 October 2003, however, armed with a Medical Certificate issued by one Dr. Efren R. Vicaldo (Dr. Vicaldo), a cardiologist, Masangcay instituted a complaint^[22] against Trans-Global and Ventnor, including Trans-Globals President, Michael Estaniel, before the National Labor Relations Commission (NLRC) for the payment of disability benefit, damages and attorneys fees.

The abovementioned Dr. Vicaldos Medical Certificate^[23] dated 31 July 2003 contained the following findings:

- Ureterolithiasis,^[24] right
- Pelvolithiasis, left
- S/P Ureterolithotomy, right
- S/P ESWL, left
- Renal insufficiency
- Impediment grade III (78.36%)

Dr. Vicaldo justified the finding of Impediment Grade III (78.36%) in this wise:

- This patient/seaman presented with a history of abdominal pain, painful and bloody urination on September 2002.
- He was confined in Dubai UAE on October 3-6, 2002 where work up showed elevated creatinine, right ureteral stone and left renal pelvic stone. He was advised surgery but opted to be repatriated back to the Philippines.
- On repatriation, he was confined at Makati Medical Center on October 8, 2002 where he underwent ESWL, left.
- On December 17-23, 2003, he was confined at National Kidney Institute and he underwent right ureterolithotomy.
- He is now unfit to resume work as seaman in any capacity.

- His illness is considered work aggravated.
- He needs regular monitoring of his renal function for deterioration and possible recurrence of kidney stones.
- His right kidney is non-functioning and his left kidney has impaired function. There is a likelihood that he would need dialysis in the future.
- He cannot land a gainful employment given his medical background.
- His renal insufficiency can cause secondary hypertension with associated target organ involvement.

Masangcay is claiming disability benefit under Section 20(b), paragraph 5 of the Philippine Overseas Employment Administration (POEA) Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, as amended by Memorandum Circular No. 55, Series of 1996, which is deemed integrated in every contract of employment of Filipino seafarers on ocean-going vessels, and which provides:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. 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:

x x x x

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

In view of the above-quoted provision, Masangcay alleged that his illness was contracted during the term of his Contract of Employment. He likewise prayed for moral and exemplary damages in view of the respondents supposed deliberate and wanton refusal to pay his claims.

Rebutting Masangcays complaint, Trans-Global, Ventnor, and Estaniel, the respondents therein, countered that [s]ince complainant had fully recovered and was pronounced fit for employment, his claim for disability benefits has no basis^[25]; that [t]he right to compensation for disability arises only when it is shown that the seafarer is disabled on account of an illness or injury suffered while in the employ of his employer^[26]; that, in this case, the company-designated physician had certified that complainant is fit for employment^[27]; that assuming arguendo but without admitting that their assessments and findings, including Dr. Barrientos, are disputed, however, under Sec. 20B, there must be a third doctor chosen by both parties who should resolved the issue and make a decision thereon^[28]; and that [a]bsent such determination, the complaint is premature and without basis since it is that third doctors decision which will be considered as final.

In a Decision^[29] dated 15 April 2004, Labor Arbiter Daisy G. Cauton-Barcelona found Masangcays complaint meritorious and ordered Trans-Global, Ventnor, and Estaniel to pay Masangcay the amount of Thirty Nine Thousand One Hundred Eighty U.S. Dollars (US\$39,180.00) representing the latters disability benefit at Impediment Grade III (78.36%). The decretal part of said decision reads:

WHEREFORE, as above-discussed, the respondents are hereby ordered, jointly and severally, to pay the complainant his disability benefit at Impediment Grade III (78.36%) in the amount of US\$39,180.00 or its Philippine Peso equivalent at the time of payment plus ten (10%) percent of the total monetary award as and for attorneys fees.

The labor arbiter opined that the compensability of an ailment does not depend on whether or not the injury or disease was pre-existing at the time of employment, but rather, if the injury or disease was related to or was aggravated by Masangcays work. The labor arbiter gave great weight to the medical opinion of Dr. Vicaldo rather than that of Trans-Globals designated physicians considering that respondents accredited doctors opinion has (*sic*) more than

meets the eye and should not be taken at face value. For most often than not, they are palpably self-serving and bias (*sic*) in favor of the employer and certainly cannot be considered independent.

On appeal to the NLRC, the Commission affirmed the decision of the labor arbiter albeit with modification. The dispositive portion of the Commissions Resolution dated 28 April 2005 states that:

WHEREFORE, the appealed decision is AFFIRMED but with MODIFICATION in that the individual respondent-appellant [Estaniel] is absolved from any or all liabilities arising from the controversy.^[30]

The NLRC dismissed the claim against Estaniel for the reason that Masangcay failed to adduce evidence that the President of Trans-Global acted with malice and bad faith in denying his (Masangcay) disability benefit claim. The subsequent joint motion for reconsideration of Trans-Global and Ventnor was denied by the Commission for lack of merit in an *Resolution* dated 30 June 2005.

Undaunted, Trans-Global and Ventnor filed an original action for *certiorari* before the Court of Appeals imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the NLRC for affirming the decision of the labor arbiter.

In a Decision promulgated on 10 February 2006, the appellate court granted the petition for *certiorari* of Trans-Global and Ventnor. It nullified and set aside the challenged *Resolutions* of the NLRC for having been issued in grave abuse of discretion amounting to lack or excess of jurisdiction. The *fallo* of the said judgment reads:

WHEREFORE, the PETITION FOR CERTIORARI is GIVEN DUE COURSE.

The RESOLUTION of the National Labor Relations Commission promulgated on April 28, 2005 in NLRC CA No. 041053-04 [NLRC-NCR OFW Case No. (M)03-10-2649-00], entitled Marciano Masangcay v. Trans-Global Maritime Agency, Inc. and/or Michael Estaniel and Ventnor Navigation, Inc.; and the ORDER of June 30, 2005 are NULLIFIED AND SET ASIDE.

The National Labor Relations Commission is ORDERED to dismiss NLRC CA No. 041053-04 [NLRC-NCR OFW Case No. (M)03-10-2649-00], entitled Marciano Masangcay v. Trans-Global Maritime Agency, Inc. and/or Michael Estaniel and Ventnor Navigation, Inc. considering that the claimant was already full (sic) paid the benefits to which he was lawfully entitled to.^[31]

The Court of Appeals reasoned in its decision that:

When it affirmed the Labor Arbiter, the NLRC arbitrarily set aside the fact that Masangcay was precluded from any entitlement to disability benefits after he was already fully recovered and declared to be fit for employment by the company-designated physician. Under the *Standard Terms, supra*, the right to compensation for disability arises only when the seafarer has been disabled on account of his illness or injury that he suffered while in the employ of his employer; otherwise, gross injustice would result to the petitioners.

X X X X

The NLRC could not simply sweep away the opinions of Dr. Barrientos and Dr. Agustin, as well s that of Dr. dela Cruz, by generalizing that company-designated or company-referred physicians were often biased in favor of the company and that their opinions were self-serving without specifically indicating how their specific findings were biased and why such opinions were self-serving. The generalization was, at the very least, most unfair to Dr. Agustin and Dr. dela Cruz, specialists in urology that covered the ailment of Masangcay. But, above all, the arbitrariness and capriciousness became even more blatant in the face of the fact that such company-designated or company-referred physicians had themselves personally attended to, examined and treated Masangcay in a professional capacity. Thereby, their findings and conclusions were far from speculation and conjecture.

X X X X

Worst of all, the NLRC did not require the opinion of a third doctor after Dr. Vicaldo (as Masangcays chosen physician) had disagreed with the findings and opinions of the company-designated physician. Yet, the NLRC needed to do so, in the face of the clear requirement of Sec. 20B, *Standard Terms*, that: 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 doctors decision shall be final and binding on both parties. The omission underscored the commission of manifest grave abuse of discretion consisting in the arbitrariness and capriciousness on the part of the NLRC.^[32]

The appellate court, thus, found that:

In fine, Masangcay was not entitled to anything more than what he was already paid by the petitioners. As we noted earlier, the petitioners spent ₱209,533.10 for his confinement and surgery; and paid to him his full 120 days sick leave benefits totaling US\$1,779.60.^[33]

Masangcays motion for reconsideration was denied by the Court of Appeals in a *Resolution* dated 30 May 2006.

Hence, this petition for review on *certiorari* under Rule 45 of the Revised Rules of Court premised on the following arguments:

I.

IN LIGHT OF THE RECENT DECISION OF THIS HONORABLE COURT IN CRYSTAL SHIPPING, INC., (AND/OR) A/S STEIN LINE BERGEN VS. DEO P. NATIVIDAD, (SIC) G.R. NO. 154798, OCTOBER 20, 2005, PETITIONER SHOULD BE DEEMED TO BE SUFFERING FROM PERMANENT DISABILITY AND THUS ENTITLED TO DISABILITY BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT AND TO ATTORNEYS FEES.

II.

IN COMPENSATION PROCEEDINGS AS IN THE INSTANT CASE, THE DISABILITY OF PETITIONER MUST BE CONSTRUED NOT IN ITS MEDICAL SIGNIFICANCE BUT ON HIS INABILITY TO PERFORM HIS CUSTOMARY WORK.^[34]

A priori, from a reading of the foregoing arguments laid out by Masangcay, it is quite apparent that this petition is raising questions of facts as we are asked to revisit anew the factual findings of the Court of Appeals. Masangcay is fundamentally assailing the appellate courts finding that the evidence on record is insufficient to establish his entitlement to disability benefits. In effect, he would have us sift through the data on record and pass upon whether or not there is sufficient basis to hold Trans-Global and Ventnor accountable for refusing to pay him his disability benefits under the POEAs Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which is deemed written in his contract of employment. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.^[35]

Elementary is the principle that this Court is not a trier of facts; only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the Court of Appeals. Questions of fact are not entertained.^[36] And in labor cases, this doctrine applies with greater force.^[37] Factual questions are for labor tribunals to resolve.

Considering, however, the conflicting findings of the labor arbiter and NLRC on one hand, and the Court of Appeals on the other, this Court is impelled to resolve the factual issues in this case along with the legal ones.

The fundamental issue to be resolved in this petition is whether or not Masangcay is entitled to disability benefits on account of his present condition.

We rule in the negative.

In his Petition, Masangcay argued that since his disability lasted for more than 120 days, *i.e.*, from 3 October 2002 until 3 February 2003, he is deemed to be already permanently disabled. Citing *Crystal Shipping, Inc. v. Natividad*,^[38] Masangcay made a case that in compensation proceedings, the fitness or unfitness of a seafarer should not be construed in its medical significance but rather on the inability of the seafarer to perform his customary work. In his case, he averred that [t]here is no dispute that petitioners illness was suffered during the term of his contract of employment and on board the respondents vessel. And concludes that because of Sec. 20(b), paragraph 5 of the Philippine Overseas Employment Administration (POEA) Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, integrated in his contract of employment, [h]e is this (*sic*) entitled to disability benefits x x x.

On the other hand, in their Comment to the Petition, Trans-Global and Ventnor maintained that the manner of determining liability and the extent of the liability of the employer in case of an injury or illness contracted by a seafarer is set forth in the POEA Standard Employment Contract. As set forth in Sec. 20(b) of the POEA Standard Employment Contract, the employer-vessel owner/principal shall be liable for disability benefits to the seafarer only in case the latter was declared disabled by the company designated physician in view of a work-related illness or injury that he suffered onboard the vessel. Since petitioner-seafarer was declared FIT TO WORK by the company designated

physician, clearly then he is not entitled to disability benefits under the POEA Standard Employment Contract. With respect to the *Crystal Shipping case* referred to by Masangcay, Trans-Global and Ventnor refute such citation as the facts and circumstances present in said case are not herein availing.

As with all other kinds of worker, the terms and conditions of a seafarers employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarers contract is a set of standard provisions set and implemented by the POEA, called the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. The issue of whether Masangcay can legally demand and claim disability benefits from Trans-Global and Ventnor for an illness that became apparent during his contract of employment with the shipping company, is governed by the provisions of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels; hence, it is said standard terms and conditions which are relevant and need to be construed in the present case. Considering that Masangcay was employed on 3 September 2002, it is the *2000 POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*^[39] that is considered appended in his contract of employment and is controlling for purposes of resolving the issue at hand and not the 1996 POEA Revised Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels^[40] as alluded to by Masangcay.

Taking into consideration the arguments of the parties, the contract provisions, as well as the law and jurisprudence on the matter, we rule in favor of Trans-Global and Ventnor.

Under Sec. 20(b), paragraph 6, of the *2000 POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, viz:

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SECTION 20. COMPENSATION AND BENEFITS

X X X X

B. 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:

X X X X

6. In case of **permanent total or partial disability of the seafarer caused by either injury or illness** the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. [Emphasis supplied.]

Evident from the afore-quoted provision is that the permanent total or partial disability suffered by a seafarer during the term of his contract must be caused by work-related illness or injury. In other words, to be entitled to compensation and benefits under said provision, it is not sufficient to establish that the seafarers illness or injury has rendered him permanently or partially disabled, but it must also be shown that there is a causal connection between the seafarers illness or injury and the work for which he had been contracted for.

Accordingly, in order to hold Trans-Global and Ventnor liable for payment of his claims under Sec. 20(b), paragraph 6, of the *2000 POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, Masangcay must prove that he is suffering from permanent total or partial disability due to a work-related illness occurring during the term of his contract. Proof that he not only acquired or contracted his illness during the term of his employment contract is clearly not enough; Masangcay must also present evidence that such infirmity was work-related, or at the very least aggravated by the conditions of the work for which he was contracted for.

In the case of *Rio v. Employees Compensation Commission*, this Court had the occasion to state that a claimant must submit such proof as would constitute a reasonable basis for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. What kind and quantum of evidence would constitute an adequate basis for a reasonable man (not necessarily a medical scientist) to reach one or the other conclusion, can obviously be determined only on a case-to-case basis. That evidence must,

however, be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by existing law is real x x x not merely apparent.^[41]

The burden is clearly upon Masangcay to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, showing a reasonable connection that the nature of his employment or working conditions between the conditions of his work and his illness, *i.e.*, renal failure, uremia^[42] and/or nephrolithiasis^[43]; or that the risk of contracting the same was increased by his working conditions. This, he did not do. If truth be told, Masangcay does not even assert that his illness is work-related and/or was, at the minimum, aggravated by his working conditions at the M/T Eastern Jewel.

There is no substantiation that the progression of his ailment was brought about largely by the conditions of his job as an oiler. His medical history and/or records prior to his deployment as an oiler in M/T Eastern Jewel were neither presented nor alluded to in order to demonstrate that the working conditions on board said vessel increased the risk of contracting renal failure, chronic or otherwise.

To demonstrate just how bare the records are with respect to the illness with which Masangcay is allegedly afflicted, we cannot even make a definitive statement whether he had merely been afflicted with renal stones, or he is suffering from the more serious disease of chronic renal failure. The two physicians who issued their respective medical certificates have conflicting findings.

But even assuming that Masangcay is suffering from chronic renal failure, it still does not entitle him to compensation and benefits for a permanent disability.

In *Harrisons Principles of Internal Medicine*,^[44] chronic renal failure is described as a result of progressive and irreversible destruction of nephrons, regardless of cause (citation omitted).^[45] This diagnosis implies that glomerular filtration rate (GFR) is known to have been reduced for at least 3 to 6 months. Often a gradual decline in GFR occurs over a period of years.^[46] It is, therefore, highly improbable that Masangcays chronic renal failure developed in just a

months time, the length of time he was on board M/T Eastern Jewel before the symptoms became manifest.

It is of no moment that Masangcay passed his pre-employment medical examination. It is probable that the pre-employment medical examination conducted on him could not have divulged his illness for which he had been brought to the Fujairah Hospital in the United Arab Emirates, considering the fact that most, if not all, of such medical examinations are not so exploratory.^[47] The decrease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test.^[48] In pre-employment examination, the urine analysis (urinalysis), which is normally included, measures only the creatinine,^[49] the presence of which cannot conclusively indicate chronic renal failure.

Moreover, chronic renal failure, is neither listed as a disability under Sec. 32 of the *2000 POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*; nor an occupational disease under Sec. 32-A thereof, which provides for the schedule of disability or impediment for injuries suffered and diseases including occupational diseases or illness.

Under Sec. 32 of the *POEA Amended Standard Terms and Conditions*, it is the loss of a kidney, *i.e.*, its removal, that is compensated, and not merely the presence and subsequent removal of kidney stones. And under Sec. 32-A of the same, Masangcay's illness cannot also be classified as an occupational disease. A compensable occupational disease must satisfy several conditions, to wit:

SECTION 32-A. OCCUPATIONAL DISEASES

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

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

But other than Masangcay's bare avowal of entitlement just because an illness became manifest during his contract of employment, there is nothing on

record to substantiate the same and would have justified an award of compensation on top of the aid or assistance already extended to him by Trans-Global and Ventnor.

Masangcay asserts that by virtue of our pronouncement in *Crystal Shipping, Inc. v. Natividad*^[50] that [i]n disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of ones earning capacity,^[51] he is entitled to disability benefits under his contract of employment.

We are not persuaded. Masangcay cannot invoke a single line declared by this Court in another case under a totally different factual context.

The only similarity between the two cases, *Crystal Shipping* and the present petition, is the fact that the seafarers in both have the same personal physician, Dr. Efren R. Vicaldo, a cardiologist, who declared them permanently disabled to return to work. Other than that, the factual circumstances of the *Crystal Shipping* case are poles apart from that attendant to the case at bar. In the former, there was no question as whether or not the seafarer is entitled to disability benefits as in fact *Crystal Shipping, et al.* offered to pay disability benefits. The only issue therein referred to the degree of disability and impediment grade to which the seafarer was to be classified; or, put simply, how much disability benefit was he entitled to. The seafarer in said case had been employed as a Chief Mate of an ocean-going vessel when he complained of coughing and hoarseness and was later diagnosed with thyroid cancer. The company-designated physician and seafarers physician were both in agreement that the seafarer had been rendered disabled by his illness; they only differed in their assessments of the degree and the impediment grade of such disability in accordance with the schedule of disability or impediment for injuries suffered and diseases including occupational diseases or illness contracted under Sec. 32 of the 1996 POEA Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.^[52] In contrast, Trans-Global and Ventnor are contesting the right of Masangcay to claim disability benefits as the company-designated physicians have certified the latter fit to return to work, not to mention the fact that he was not suffering from a work-related and/or work-aggravated illness.

The Court notes that any dispute as to Masangcays state of health or the exact nature of the illness from which he is suffering could have easily been resolved had the parties stayed true to the provisions of Sec. 20(b), paragraph 3 of the *2000 POEA Amended Standard Terms and Conditions*, which declares that:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. 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:

x x x x

3. Upon sign-off from the vessel for medical treatment , the seafarer is entitled to sickness allowance x x x until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician x x x

x x x x

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 doctors decision shall be final and binding on both parties.

Without the opinion of a third doctor, we are constrained to make a ruling based on the evidences submitted by the parties and made part of the records of this case, which included the medical certifications of their respective physicians.

All told, except for the bare assertion that he is no longer fit to work due to the illness that became manifest during his contract of employment with Trans-Global and Ventnor, Masangcay makes no allegation, much less presents no proof, that the illness was caused or aggravated by his employment. The evidence on record is totally bare of essential facts on how he contracted or developed such disease and on how and why his working conditions increased the risk of contracting the same. Consequently, the labor arbiter and the NLRC had no basis at all to rule that Masangcay is deserving of other disability benefits espoused by Sec. 20(b), paragraph 6 of the *2000 POEA Amended Standard Terms and Conditions* other than that already extended to him by Trans-Global and Ventnor.

WHEREFORE, premises considered, the instant petition is **DENIED** for lack of merit. The assailed *Decision* dated 10 February 2006 and *Resolution* dated 30 May 2006 both of the Court of Appeals in CA-G.R. SP No. 91393 are hereby **AFFIRMED**. Costs against petitioner Marciano L. Masangcay.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

CONSUELO YNARES-SANTIAGO

Associate Justice

Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairmans Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO

Chief Justice

* Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

^[1] *Rollo*, pp. 9-26.

^[2] Penned by Court of Appeals Associate Justice Lucas P. Bersamin with Associate Justices Renato C. Dacudao and Celia C. Librea-Leagogo, concurring; Annex Q of the Petition; id. at 116-131.

^[3] Annex S of the Petition; id. at 138-140.

^[4] Annex M of the Petition; id. at 60-67.

^[5] Annex N of the Petition; id. at 68-70.

^[6] Contract of Employment; Annex A of the Petition; id. at 27.

^[7] Medical Report dated 9 October 2002, issued by Dr. Mary Ann D. Barrientos of the Associated Medical & Clinical Services, Inc.; Annex C of the Petition; id. at 29-30.

^[8] Medical Report dated 6 October 2002, issued by the Fujairah Hospital; Annex B of the Petition; id. at 28.

^[9] Id.; the nephrostomy has multiple functions but is used most frequently to provide urinary drainage when the ureter is obstructed and retrograde access is inadvisable or impossible. A nephrostomy can also be used to gain access to the upper urinary tract for various antegrade endourologic procedures, such as [intracorporeal lithotripsy](#), chemical stone dissolution, antegrade radiologic studies of the ureter, and double-J stent placement.

^[10] Blood Urea & Nitrogen.

^[11] Id. at 31-32.

^[12] Endoscopy of the urinary bladder *via* the urethra.

^[13] ESWL stands for extracorporeal shock wave lithotripsy; Medical Certificate dated 26 October 2002, issued by the Makati Medical Center with Dr. Francisco T. Agustin, Jr. as the attending physician; id. at 31.

^[14] Medical Certificate dated 8 January 2003, issued by the National Kidney and Transplant Institute; id. at 32.

- [15] This refers to the open surgical removal of a stone from the ureter.
- [16] *Rollo*, pp. 141-142.
- [17] Provided he refrained from carrying, pushing or pulling weights weighing more than 15 lbs.
- [18] Final Medical Report dated 30 January 2003, issued by Dr. Mary Ann D. Barrientos of the Associated Medical & Clinical Services, Inc.; *id.*
- [19] Records, p. 50.
- [20] *Id.* at 44-47.
- [21] Petitioner Masangcays Position Paper, p. 3; *rollo*, pp. 14.
- [22] Annex I of the Petition; *id.* at 36.
- [23] Annex G of the Petition; *id.* at 34-35.
- [24] Stones found in the ureter.
- [25] Respondents Position Paper, p. 7; records, p. 36.
- [26] *Id.*
- [27] *Id.*
- [28] *Id.*
- [29] Annex L of the Petition; *rollo*, pp. 54-59.
- [30] *Id.* at 67.
- [31] *Id.* at 130-131.
- [32] *Id.* at 124-127.
- [33] *Id.* at 130.
- [34] *Id.* at 17-18.
- [35] *CBL Transit, Inc. v. National Labor Relations Commission*, 469 Phil. 363, 371 (2004).
- [36] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).
- [37] *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc.*, G.R. No. 143341, 28 May 2004, 430 SCRA 193, 205-206.
- [38] G.R. No. 154798, 20 October 2005, 473 SCRA 559.
- [39] As amended by POEA Department Order No. 4 and POEA Memorandum Circular No. 9, both series of 2000.
- [40] As amended by POEA Memorandum Circular No. 55, series of 1996.
- [41] 387 Phil. 612, 619 (2000).
- [42] Uremia is the term generally applied to the clinical syndrome in patients suffering from profound loss of renal function.
- [43] The presence of renal/kidney stones.
- [44] *Harrisons Principles of Internal Medicine*, Vol. 2, (13th edition), p. 1253.
- [45] *Id.*
- [46] Proof of chronicity is also provided by the demonstration of bilateral reduction of kidney size by scout film, ultrasonography, intravenous pyelography, or tomography. Other findings of long-standing renal failure, such as renal osteodystrophy or symptoms of uremia, also help to establish this syndrome. Several laboratory abnormalities are often regarded as reliable indicators of chronicity of renal disease, such as anemia, hyperphosphatemia or hypocalcemia, but there are not specific x x x. In contrast, the finding of broad casts in the urinary sediment x x x is specific for chronic renal failure, the wide diameters of these casts reflecting the compensatory dilation and hypertrophy of surviving nephrons. Proteinuria is a frequent but nonspecific finding, as is hematuria. Chronic obstructive uropathy polycystic and medullary cystic disease, analgesic nephropathy, and the inactive end stage of any chronic tubulointerstitial nephropathy are conditions in which the urine often contains little or no protein cells, or casts even though nephron destruction has progressed to chronic renal failure; *id.*
- [47] *Sealanes Marine Services, Inc. v. National Labor Relations Commission*, G.R. No. 84812, 5 October 1990, 190 SCRA 337, 345-346.
- [48] *Harrisons Principles of Internal Medicine*, *supra* note 44 at 2493.
- [49] *Id.* at 2494.
- [50] *Supra* note 38.
- [51] *Id.* at 568.
- [52] Likewise Sec. 32 of the 2000 POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.