G.R. No. 172933

SECOND DIVISION

JESUS E. VERGARA, Petitioner,	**G.R. No. 172933**
	Present:
- versus -	QUISUMBING, *J., Chairperson,* CARPIO MORALES, TINGA, VELASCO, JR., and BRION, *JJ.*
	Promulgated:
HAMMONIA MARITIME SERVICES, INC. and ATLANTIC MARINE LTD., Respondents.	October 6, 2008

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D E C I S I O N

BRION, *J.*:

Seaman Jesus E. Vergara (*petitioner*) comes to us through this Petition for Review on *Certiorari*[1] with the plea that we set aside for being contrary to law and jurisprudence the Decision[2] promulgated on March 14, 2005 and the Resolution[3] promulgated on June 7, 2005 by the Court of Appeals (*CA*), both issued in C.A.-G.R. SP No. 85347 entitled *Jesus E. Vergara v. National Labor Relations Commission, et al.*

THE FACTUAL BACKGROUND

On April 4, 2000, petitioner was hired by respondent Hammonia Maritime Services, Inc. (*Hammonia*) for its foreign principal, respondent Atlantic Marine Ltd., (*Atlantic Marine*). He was assigned to work on board the vessel *British Valour* under contract for nine months, with a basic monthly salary of US$ 642.00.

The petitioner was a member of the Associated Marine Officers and Seamans Union of the Philippines (*AMOSUP*). AMOSUP had a collective bargaining agreement (*CBA*) with Atlantic Marine, represented in this case by Hammonia.

The petitioner left the Philippines on April 15, 2000 to rendezvous with his ship and to carry out therein his work as a pumpman. In August 2000, while attending to a defective hydraulic valve, he felt he was losing his vision. He complained to the Ship Captain that he was seeing black dots and hairy figures floating in front of his right eye. His condition developed into a gradual visual loss. The ships medical log entered his condition as internal bleeding in the eye or glaucoma.[4] He was given eye drops to treat his condition.
The petitioner went on furlough in Port Galveston, Texas and consulted a physician who diagnosed him to be suffering from vitreal hemorrhage with small defined area of retinal traction. Differential diagnosis includes incomplete vitreal detachment ruptured macro aneurism and valsulva retinopathy.[5] He was advised to see an ophthalmologist when he returned home to the Philippines.

He was sent home on September 5, 2000 for medical treatment. The company-designated physician, Dr. Robert D. Lim of the Marine Medical Services of the Metropolitan Hospital, confirmed the correctness of the diagnosis at Port Galveston, Texas. Dr. Lim then referred the petitioner to an ophthalmologist at the Chinese General Hospital who subjected the petitioners eye to focal laser treatment on November 13, 2000; vitrectomy with fluid gas exchange on December 7, 2000; and a second session of focal laser treatment on January 13, 2001.

On January 31, 2001, the ophthalmologist pronounced the petitioner fit to resume his seafaring duties per the report of Dr. Robert D. Lim, Medical Coordinator.[6] The petitioner then executed a certificate of fitness for work in the presence of Dr. Lim.[7]Claiming that he continued to experience gradual visual loss despite the treatment, he sought a second opinion from another ophthalmologist, Dr. Patrick Rey R. Echiverri, who was not a company-designated physician. Dr. Echiverri gave the opinion that the petitioner was not fit to work as a pumpman because the job could precipitate the resurgence of his former condition.

On March 20, 2001, the petitioner submitted himself to another examination, this time by Dr. Efren R. Vicaldo, a physician who was not also designated by the company. Dr. Vicaldo opined that although the petitioner was fit to work, he had a Grade X (20.15%) disability which he considered as permanent partial disability.

Armed with these two separate diagnoses, the petitioner demanded from his employer payment of disability and sickness benefits, pursuant to the Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-going Vessels (*POEA Standard Employment Contract*), and the existing CBA in the company. The company did not heed his demand, prompting the petitioner to file a complaint for disability benefits, sickness allowance, damages and attorneys fees, docketed as NLRC NCR OFW Case No. (M) 01-050809-00.

On January 14, 2003, Labor Arbiter Madjayran H. Ajan rendered a decision in the petitioners favor.[8] The Arbiter ordered Hammonia and Atlantic Marine to pay the petitioner, jointly and severally, sickness allowance of US$ 2,568.00 and disability benefits of US$ 60,000.00 under the CBA, and 10% of the monetary award in attorneys fees.

The respondents appealed to the National Labor Relations Commission (*NLRC*) which rendered a decision on March 19, 2004 reversing the Labor

Arbiters ruling.[9] It dismissed the complaint on the ground that the petitioner had been declared fit to resume sea duty and was not entitled to any disability benefit. By resolution, the NLRC denied the petitioners motion for reconsideration.[10]

The petitioner thereafter sought relief from the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. The CA dismissed the petition in a Decision promulgated on March 14, 2005,[11] and likewise denied the petitioners motion for reconsideration.[12] Hence, the present petition.

THE PETITION

The petitioner contends that the CA erred in denying him disability benefits contrary to existing jurisprudence, particularly the ruling of this Court in *Crystal Shipping Inc., A/S Stein Line Bergen v. Deo P. Natividad,*[13] and, in strictly interpreting the POEA Standard Employment Contract and the CBA between the parties on the matter of who determines a seafarers disability.

The petitioner particularly questions the CA decision for giving credit to the certification by the company-designated physician, Dr. Robert Lim, that declared him fit to work.[14] On the assumption that he was indeed fit to work, he submits that he should have been declared to be under permanent total disability because the fit-to-work declaration was made more than 120 days after he suffered his disability.

The petitioner laments that the CA accorded much weight to the company-designated physicians declaration that he was fit to work.[15] He considers this a strict and parochial interpretation of the POEA Standard Employment Contract and the CBA. While these documents provide that it is the company doctor who must certify a seafarer as permanently unfit for further sea service, this literal interpretation, to the petitioner, is absurd and contrary to public policy; its effect is to deny and deprive the ailing seaman of his basic right to seek immediate attention from any competent physician. He invokes in this regard our ruling

in *German Marine Agencies, Inc. et al., v. National Labor Relations Commission.*[16]

In a different vein, the petitioner impugns the pronouncement of Dr. Robert Lim, the company-designated physician, that he was fit to resume sea duties as of January 31, 2001 since Dr. Lim did not personally operate on and attend to him when he was treated; he had been under the care of an ophthalmologist since September 6, 2000. The petitioner points out that there is nothing in the record to substantiate the correctness of Dr. Lims certification; neither did the attending eye specialist issue any medical certification, progress report, diagnosis or prognosis on his eye condition that could be the basis of Dr. Lims certification. The petitioner stresses that Dr. Lims certification was not based on his first hand findings as it was

issued in his capacity as the Medical Coordinator of the Metropolitan Hospital.[17] He also points out that Dr. Lim is not an eye specialist.

To the petitioner, it is the competence of the attending physician and not the circumstance of his being company-designated that should be the key consideration in determining the true status of the health of the patient/seaman. He seeks to rebut Dr. Lims certification through the opinion of his private ophthalmologist, Dr. Patrick Rey R. Echiverri that he would not advise him to do heavy work; he would not also be able to perform tasks that require very detailed binocular vision as the right eyes visual acuity could only be corrected to 20/30 and near vision to J3 at best.[18] The petitioner likewise relies on the assessment and evaluation ofDr. Efren R. Vicaldo that he suffers from partial permanent disability with a Grade X (20.15%) impediment and is now unfit to work as a seaman.[19]

The petitioner disputes the respondent companies claim that he is no longer disabled after his visual acuity had been restored to 20/20; it is fallacious because it views disability more in its medical sense rather than on its effect on the earning capacity of the seaman. Citing supporting jurisprudence, the petitioner posits that in disability compensation, it is the inability to work resulting in the impairment of ones earning capacity that is compensated, not the injury itself. He maintains that even if his visual acuity is now 20/20 as alleged by the company-designated physician, he can nevertheless no longer perform his customary work as pumpman on board an ocean-going vessel since the job involves a lot of strain that could again cause his vitreous hemorrhage. This limitation impairs his earning capacity so that he should be legally deemed to have suffered permanent total disability from a work-related injury. In this regard, the petitioner cites as

well his unions CBA[20] whose paragraph 20.1.5 provides that:

> 20.1.5 Permanent Medical Unfitness - A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph is regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e., US$ 80,000 for officers and US$ 60,000 for ratings. Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea services in any capacity by the company doctor, shall also be entitled to 100% compensation.

Finally, the petitioner contends that because there is doubt as to the accuracy of the medical opinion of the company-designated physician, the doubt should be resolved in his favor, citing *Sy v. Court of Appeals,*[21] as well as Article 4 of the Labor Code.[22]

THE CASE FOR RESPONDENTS

In a memorandum[23] filed on December 20, 2007, respondents Hammonia and Atlantic Marine entreat this Court to dismiss the petition under the following arguments:

1. The provisions of the POEA Standard Employment Contract and the CBA between the parties clearly provide that the assessment of the company-designated physician should be accorded respect.

2. There are no legal or factual bases for the petitioners claim of total and permanent disability benefits as he was declared fit to work.

3. The petitioners reliance on the *Crystal Shipping v. Natividad*[24] case is misplaced.

4. The petitioner is not entitled to attorneys fees.

The respondents anchor their case on their compliance with the law and the existing CBA as applied to the petitioners circumstances.

They point out that upon the petitioners repatriation, he was immediately referred to an ophthalmologist who scheduled him for observation and regular monitoring preparatory to possible vitrectomy. He was prescribed medication in the meantime.

On November 13, 2000, the petitioner underwent laser treatment of the right eye, which he tolerated well. His vitrectomy, scheduled on November 22, 2000, was deferred because he was noted to have accentuated bronchovascular marking on his chest x-ray, and mild chronic obstructive pulmonary disease as revealed by his pulmonary function test. He was given medication for his condition and was advised to stop smoking.

The petitioner was cleared for surgery on November 29, 2000. He underwent vitrectomy with fluid gas exchange and focal laser treatment of his affected eye on December 7, 2000. He tolerated the procedure well. His condition stabilized and he was discharged for management as an outpatient on December 9, 2000.

On December 13, 2000, the petitioners vision was 20/40 (r) and 20/20 (l) with correction and slight congestion observed in his right eye. His vision improved to 20/25 (r) and 20/20 (l) by December 20, 2000 although a substantial lesion was observed and contained by laser markings. This remained constant and by January 11, 2001, no sign of vitreous hemorrhage was noted on fundoscopy.

On January 13, 2001, petitioner underwent his second session of laser treatment and he again tolerated the procedure well. ByJanuary 31, 2001, his visual acuity was improved to 20/20 for both eyes, with correction. He was prescribed eyeglasses and was found fit to resume his sea duties. The petitioner executed a certificate of fitness for work under oath, witnessed by Dr. Robert Lim, the company-designated physician who had declared the petitioner fit to work based on the opinion of the handling eye specialist.[25]

The respondents anchor their objection to the grant of disability benefits on Dr. Lims certification. They dispute the petitioners contention that the

medical certifications and assessments by the petitioners private physicians - Dr. Echiverri and Dr. Vicaldo - should prevail.

The respondents object particularly to the petitioners claim that Dr. Lims assessment is not authoritative because Dr. Lim does not appear to be an eye specialist.[26] They point out that the issue of Dr. Lims qualifications and competence was never raised at any level of the arbitration proceedings, and, therefore, should not be entertained at this stage of review. They submit that if the petitioner truly believed that the company-designated physician was incompetent, he should have raised the matter at the earliest possible opportunity, or at the time he accepted Dr. Lims assessment. On the contrary, they point out that the petitioner concurred with the assessment of the company-designated physician by executing a certificate of fitness to work.[27]

The respondents likewise question the petitioners reliance on Art. 20.1.5 of the CBA for his claim that he is entitled to 100% disability compensation since his doctors, Echiverri and Vicaldo, declared him unfit to work as a seaman although his disability was determined to be only at Grade X (20.15%), a partial permanent disability. They contend that the petitioners position is contrary to what the cited provision provides as the CBA[28] specifically requires a company doctor to certify a seafarer as permanently unfit for service in any capacity.

The respondents bewail the petitioners attempt to have this Court find him permanently disabled because he was under the medication and care of the company-designated physician for over four (4) months or more than 120 days. They cite Section 20 B of petitioners POEA Standard Employment Contract whose relevant portion states: [29]

> 3. Upon sign-off from vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
> x x x
> 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 30 of his Contract.

The respondents then point out that Section 30 provides a schedule of disability for injuries, disease or illness contracted. Any item in the schedule classified under Grade I constitutes total and permanent disability entitled to a disability allowance equivalent to US$60,000 (US$50,000 x 120%). They consider reliance on this Courts ruling in *Crystal Shipping v. Natividad;*[30] *Government Service Insurance System v. Cadiz;*[31] and *Ijares v. Court of Appeals,*[32] to be misplaced with respect to the advocated conversion of the petitioners medical condition from temporary to permanent disability.

The respondents stress that in the present case, the petitioner had been accorded the necessary medical treatment, including laser treatment by company-designated physicians, that restored his visual acuity to 20/20. He was declared fit to work upon his return to the full possession of all his physical and mental faculties and after he was cleared of all impediments. They contend as well that all that the petitioner could present in support of his claim for total permanent disability was the Grade X disability assessment issued by his private physician, Dr. Vicaldo, that he is now unfit to work as seaman. They point out that Dr. Vicaldo himself is not an eye specialist.

Finally, the respondents insist that neither factual nor legal basis exists for petitioners claim of Grade I total and permanent disability benefits. Factually, the petitioner was declared fit to work by the company-designated physician. Legally, only blindness or total and permanent loss of vision of both eyes is considered a Grade I disability under the terms of the POEA Standard Employment Contract. Under its Section 30 on the portion on Eyes, only total and permanent loss of vision of both eyes can be considered as Grade I disability, not the petitioners claimed impairment of vision in the right eye.

THE COURTS RULING

We find no merit in the petition.

The Governing Law and Rules.

Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties CBA bind the seaman and his employer to each other.

By way of background, the Department of Labor and Employment (DOLE), through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working

on foreign ocean-going vessels.[33] Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition *sine qua non* prior to the deployment for overseas work.The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seamen.

A notable feature of the POEA Standard Employment Contract is Section 31 its provision on the Applicable Law. It provides:

> Any unresolved dispute, claim or grievance arising out of or in connection with this Contract, including the annexes shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and convenants where the Philippines is a signatory.

Through this provision, the DOLE skirted any possible issue regarding the law that should govern the terms and conditions of employment of Filipino seamen working in ocean-going vessels that have no significant Philippine presence and that hardly see Philippine waters. Thus, with the POEA Standard Employment Contract, there is no doubt that in case of *any unresolved dispute, claim or grievance arising out of or in connection with the contract*, Philippine laws shall apply.

In real terms, this means that the shipowner an employer operating outside Philippine jurisdiction does not subject itself to Philippine laws, except to the extent that it concedes the coverage and application of these laws under the POEA Standard Employment Contract. On the matter of disability, the employer is not subject to Philippine jurisdiction in terms of being compelled to contribute to the State Insurance Fund that, under the Labor Code, Philippine employers are obliged to support. (This Fund, administered by the Employees Compensation Commission, is the source of work-related compensation payments for work-related deaths, injuries, and illnesses.) Instead, the POEA Standard Employment Contract provides its own system of disability compensation that approximates (and even exceeds) the benefits provided under Philippine law.[34] The standard terms agreed upon, as above pointed out, are

intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In this respect and in the context of the present case, Article 192(c)(1) of the Labor Code provides that:

> x x x The following disabilities shall be deemed **total and permanent**:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules**;
>
> x x x

The rule referred to - Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code - states:

> Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case **benefit for temporary total disability** shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [Underscoring ours]

These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20 (3) states:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment.[35] For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work.[36] He receives his basic wage during this period[37] until he is declared fit to work or his temporary disability is acknowledged by the

company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws.[38] If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[39] The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

Thus, upon petitioners return to the country for medical treatment, both he and the respondent company acted correctly in accordance with the terms of the POEA Standard Employment Contract and the CBA; he reported to the company-designated doctor for treatment and the latter properly referred him to an ophthalmologist at the Chinese General Hospital. No dispute existed on the medical treatment the petitioner received, to the point that the petitioner executed a certificate of fitness for work based on the assessment/certification by the company-designated physician.

Problems only arose when despite the certification, the petitioner sought second and third opinions from his own doctors, one of whom opined that he could no longer resume work as a pumpman while the other recognized a Grade X (20.15%) partial permanent disability. Based on these opinions, the petitioner demanded that he be paid disability and sickness benefits; when the company refused, the demand metamorphosed into an actual case before the NLRC Arbitration Branch.

As we outlined above, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the

petitioner was fit to work. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose.

A twist that directly led to the filing of this case is the issue of whose medical pronouncement should be followed given that the company-designated physician had declared the petitioner fit for work with a certification of fitness duly executed by the latter, while the petitioners physicians gave qualified opinions on his medical situation.

The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physicians assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.[40]

Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctors certification is the final determination that must prevail. We do so mindful that the company had exerted real effort to provide the petitioner with medical assistance, such that the petitioner finally ended with a 20/20 vision. The company-designated physician, too, monitored the petitioners case from the beginning and we cannot simply throw out his certification, as the petitioner suggested, because he has no expertise in ophthalmology. Under the facts of this case, it was the company-designated doctor who referred the petitioners case to the proper medical specialist whose medical results are not

essentially disputed; who monitored the petitioners case during its progress; and who issued his certification on the basis of the medical records available and the results obtained. This led the NLRC in its own ruling to note that:

> x x x more weight should be given to the assessment of degree of disability made by the company doctors because they were the ones who attended and treated petitioner Vergara for a period of almost five (5) months from the time of his repatriation to the Philippines on September 5, 2000 to the time of his declaration as fit to resume sea duties on January 31, 2001, and they were privy to petitioner Vergaras case from the very beginning, which enabled the company-designated doctors to acquire a detailed knowledge and familiarity with petitioner Vergaras medical condition which thus enabled them to reach a more accurate evaluation of the degree of any disability which petitioner Vergara might have sustained. These are not mere company doctors. These doctors are independent medical practitioners who passed the rigorous requirements of the employer and are more likely to protect the interest of the employer against fraud.
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> Moreover, as between those who had actually attended to petitioner Vergara throughout the duration of his illness and those who had merely examined him later upon his recovery for the purpose of determining disability benefits, the former must prevail.

We note, too, as the respondent company aptly observed, that the petitioner never raised the issue of the company-designated doctors competence at any level of the arbitration proceedings, only at this level of review. On the contrary, the petitioner accepted his assessment of fitness and in fact issued a certification to this effect. Under these circumstances, we find the NLRC and the CAs conclusions on the petitioners fitness to work, based on the assessment/certification by the company-designated physician, to be legally and factually in order.

As a last point, the petitioner has repeatedly invoked our ruling in *Crystal Shipping, Inc. v. Natividad,*[41] apparently for its statement that the respondent in the case was unable to perform his customary work for more than 120 days which constitutes permanent total disability. This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we

must do in the application of all rulings and even of the law and of the implementing regulations.

Crystal Shipping was a case where the seafarer was completely unable to work for **three years** and was undisputably unfit for sea duty due to respondents need for regular medical check-up and treatment which would not be available if he were at sea.[42] While the case was not clear on how the initial 120-day and subsequent temporary total disability period operated, **what appears clear is that the disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under the circumstances, a ruling of permanent and total disability was called for, fully in accordance with the operation of the period for entitlement that we described above.** Viewed from this perspective, the petitioner cannot cite the *Crystal Shipping* ruling as basis for his claim for permanent total disability.

Additionally and to reiterate what we pointed out above regarding the governing rules that affect the disability of Filipino seafarers in ocean-going vessels, the POEA Standard Employment Contract provides its own Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted (Section 32); Disability Allowances (a subpart of Section 32); and its own guidelines on Occupational Diseases (Section 32-A) which cannot be disregarded in considering disability compensation and benefits. All these read in relation with applicable Philippine laws and rules should also be taken into account in considering and citing *Crystal Shipping* and its related line of cases as authorities.

In light of the above conclusions, we see no need to discuss the petitioners other submissions that the lack of disability has rendered moot, particularly the existence of doubt that the petitioner insists should be resolved in his favor.

WHEREFORE, premises considered, we **DENY** the petition for lack of merit.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CONCHITA CARPIO MORALES
Associate Justice

DANTE O. TINGA
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ATTESTATION

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

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons 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

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-27.

[2] Penned by J. Vicente Q. Roxas, JJ. Portia Alino-Hormachuelos and Juan Q. Enriquez, Jr., concurring; *id.*, pp. 175-184.

[3] *Id.*, pp. 185-186.

[4] Petition, Annex C, *id.,* p. 51.

[5] Petition, Annex D, *id.,* p. 52.

[6] *Id.*, p. 249.

[7] *Id.,* p. 250.

[8] *Id.,* pp. 102-110.

[9] NLRC Second Division, Comm. Angelita A. Gacutan, *ponente*, Comms. Raul T. Aquino and Victoriano B. Calaycay, concurring; *id.*, pp. 149-155.

[10] Promulgated on June 14, 2004; *id.*, pp. 157-158.

[11] *Supra* note 2.

[12] Promulgated on June 7, 2005; *supra* note 3.

[13] G.R. No. 154798, October 20, 2005, 473 SCRA 559.

[14] *Supra* note 6.

[15] *Id.*

[16] G.R. No. 142049, January 30, 2001, 350 SCRA 629.

[17] *Supra* note 6.

[18] Annex G, Petition; *rollo*, p. 55.

[19] Annex H-1, Petition; *id.*, p. 57.

[20] Annex B, Petition, pp. 29-50, 41.

[21] G.R. No. 142293, February 27, 2003, 398 SCRA 301.

[22] Construction in favour of labor: -All doubts in the implementation and interpretation of the provisions of the Code, including its implementing rules and regulations, shall be resolved in favour of labor.

[23] *Rollo*, pp. 566-586.

[24] G.R. No. 154797, October 20, 2005, 473 SCRA 559.

[25] *Supra* note 6.

[26] Petition, p. 21.

[27] *Supra* note 7.

[28] Article 20.1.4.2.

[29] Respondents Memorandum, pp. 12-13; *rollo*, pp. 577-578.

[30] *Supra* note 24.

[31] G.R. No. 154093, July 8, 2003, 405 SCRA 450.

[32] G.R. No. 105521, August 26, 1999, 313 SCRA 141.

[33] Section 20 [B]. *Compensation and Benefits for Injury or Illness*

x x x

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time as he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel fro medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

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.

C. It is understood that computation of the total permanent or partial disability of the seafarer caused by the injury sustained resulting from warlike activities within the warzone area shall be based on the compensation rate payable within the warzone area as prescribed in this Contract.

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or international breach of his duties, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

F. When requested, the principal shall furnish the seafarer a copy of all pertinent medical reports or any records at no cost to the seafarer.

G. The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in relation with or in the course of the seafarers employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

[34] *Id.,* Section 20 [B] (3).

[35] *Ibid.*

[36] Pursuant to Article 192(c)(1), Labor Code.

[37] Pursuant to Section 20[B](3), POEA Standard Employment Contract.

[38] Pursuant to Rule X, Section 2, Rules and Regulations Implementing Book IV of the Labor Code.

[39] *Id.*

[40] *Supra* note 34.

[41] *Supra* note 24.

[42] *Id.,* p. 568.