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SECOND DIVISION

[G.R. No. 192034, January 13, 2014]

ALPHA SHIP MANAGEMENT CORPORATION/JUNEL M. CHAN AND/OR CHUO-KAIUN COMPANY, LIMITED, PETITIONERS, VS. ELEOSIS V. CALO, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

An employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.

Assailed in this Petition for Review on *Certiorari*[1] are the December 17, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105550 which reversed and set aside the March 31, 2008 Decision[3] of the National Labor Relations Commission (NLRC) and reinstated the March 30, 2007 Decision[4] of the Labor Arbiter, and its April 26, 2010 Resolution[5] denying reconsideration thereof.

Factual Antecedents

Respondent Eleosis V. Calo worked for petitioners – Alpha Ship Management Corporation, Junel M. Chan and their foreign principal, Chuo-Kaiun Company Limited (CKCL) – since 1998 under seven employment contracts. On February 17, 2004, respondent was once more hired by petitioners as Chief Cook on board CKCL's vessel, MV Iris. Respondent commenced his duties as Chief Cook aboard MV Iris on March 5, 2004.

On July 13, 2004, while MV Iris was in Shanghai, China, respondent suffered back pain on the lower part of his lumbar region and urinated with solid particles. On checkup, the doctor found him suffering from urinary tract infection and renal colic, and was given antibiotics. When respondent's condition did not improve, he consulted another doctor in Chile sometime in August 2004, and was found to have kidney problems and urinary tract infection but was declared fit for work on a "light duty" basis.[6]

On September 19, 2004, respondent suffered an attack of severe pain in his loin

area below the ribs radiating to his groin. At the Honmoku Hospital in Yokohama, Japan, respondent was diagnosed with suspected renal and/or ureter calculus.[7] He was declared "unfit for work" and advised to be sent home and undergo further detailed examination and treatment.[8]

Respondent was thus repatriated on October 12, 2004 and was referred by petitioners to Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician.

On October 20, 2004, Dr. Cruz examined respondent, and thereafter, in his Medical Report,[9] Dr. Cruz wrote:

> The patient was seen today in our clinic. The IVP x-ray showed mild prostate enlargement with signs suggestive of cystitis. He was seen by our urologist and repeat urinalysis was requested.
>
> DIAGNOSIS:
> To consider Ureterolithiasis, right
>
> MEDICATION:
> Buscopan
>
> Advised to come back on November 10, 2004[10]

Respondent was examined once more on November 10, 2004, and his Medical Report[11] for such examination reads as follows:

> The patient was seen today in our clinic. The urinalysis done was normal. He complains of right lumbosacral pain which is probably secondary to lumbosacral muscular strain. He was seen by our urologist and ultrasound of the KUB-P was requested.
>
> DIAGNOSIS:
> To consider Ureterolithiasis, right
>
> MEDICATION:
> Mobic
>
> Advised to come back on November 17, 2004

Respondent returned to Dr. Cruz for check-up on November 17, 2004. His Medical Report[12] for such appointment states:

> The patient was seen today in our clinic. The ultrasound of the KUB showed the following 1) small, mild calyceal non-obstructing stone his [sic] left kidney 2) cortical cyst at the inferior pole of the left kidney 3) small parenchymal calcification in the mid portion of the right kidney and 4) mild prostatic enlargement with concretion. Our urologist recommended medical dissolution of the left kidney stone since it is small. However, he recommended lumbosacral x-ray of the back to evaluate the right lower back pain.

DIAGNOSIS:
Ureterolithiasis, left

MEDICATION:
Sambong
Acalka
Macrodantin

Advised to come back on December 15, 2004[13]

On December 15, 2004, respondent returned to Dr. Cruz for check-up, and in his Medical Report[14] he wrote:

The patient was seen today in our clinic. There is occasional low back pain. The x–ray showed mild lumbar osteophytes. He is for urinalysis and ultrasound of the kidneys.

DIAGNOSIS:
Ureterolithiasis, left

MEDICATION:
Sambong
Acalka
Macrodantin

Advised to come back on January 5, 2005[15]

Dr. Cruz's Medical Report[16] for January 5, 2005 reads as follows:

The patient was seen today in our clinic. The latest ultrasound of the kidneys showed the persistence of non-obstructing calculus located at the middle calyx of the left kidney. The right kidney is normal. The urinalysis showed microhematuria. Clinically, he still has occasional low back pain. Our urologist recommended KUB x-ray with bowel preparation.

DIAGNOSIS:
Nephrolithiasis, left

MEDICATION:
Sambong
Acalka
Macrodantin

Advised to come back on January 12, 2005[17]

Further Medical Reports[18] indicate that respondent returned to Dr. Cruz for additional check-ups on January 12 and 17, 2005; February 7, 14 and 18, 2005; March 4, 9 and 30, 2005; April 4, 20 and 27, 2005; May 11 and 18, 2005; June 8, 20 and 27, 2005; July 18, 25 and 27, 2005; August 3, 22 and 31, 2005; September 14, 2005; and October 5 and 14, 2005.

Meanwhile, on July 28, 2005, respondent – who felt that his condition has not improved – consulted another specialist in internal medicine, Dr. Efren R. Vicaldo (Dr. Vicaldo), who issued the following diagnosis contained in a two-page Medical Certificate:[19]

July 28, 2005

TO WHOM IT MAY CONCERN:

This is to certify that Eleosis V. Calo, 57 years of age, of Parañaque City was examined and treated as out[-]patient/confined in this hospital on/from July 28, 2005 with the following findings and/or diagnosis/ diagnoses:

Hypertension I
Nephrolithiasis, left
Impediment Grade X (20.15%)

(signed)
EFREN R. VICALDO, M.D.

JUSTIFICATION OF IMPEDIMENT GRADE X (20.15%) FOR SEAMAN ELEOSIS V. CALO

» This patient/seaman presented with a history of passing sandy material in the urine noted sometime August of 2004. He had a check up in Shanghai and he was diagnosed [with] UTI. He had another check up in Peru with the same diagnosis of urinary tract infection. He had episodes of lumbar pain, cold sweats and abdominal pain for which he had a check up in Japan [in] September, 2004. He underwent abdominal ultrasound, urinalysis and Xray of the KUB.

» He was subsequently repatriated [in] October, 2004 and he underwent several laboratory work up. He was diagnosed [with] hypertension and nephrolithiasis, left.

» When seen at the clinic, his blood pressure was elevated at 130/90 mmHg; the rest of his PE findings were unremarkable.

» He is now unfit to resume work as seaman in any capacity.

» His illness is considered work aggravated/related.

» He requires maintenance medication to control his hypertension to prevent other cardiovascular complications such as coronary artery disease, stroke and renal insufficiency.

» With his nephrolithiasis, he is prone to develop ascending urinary tract infection so that he has to monitor his urinalysis and be treated for any signs of infection.

» He may require intervention in the form of lithotripsy or surgery to remove his nephrolithiasis.

» His renal colic may be a recurrent discomfort impairing his quality of life.

» He is not expected to land a gainful employment given his medical background.

Thank you.

(signed)

Efren R. Vicaldo, M.D.[20]

Respondent underwent surgery for his nephrolithiasis on August 31, 2005. On September 12, 2005, respondent took an x-ray examination which registered the following results:

ROENTGENOLOGICAL FINDINGS:
Previous film not available for comparison.

Plain radiograph of the KUB shows gas and fecal-filled bowel loops which partially obscure both renal shadows.
No opaque lithiasis noted.
Spur formations are noted on the lumbar vertebrae.

IMPRESSION:

DEGENERATIVE OSSEOUS CHANGES OF THE LUMBAR VERTEBRAE[21]

Respondent filed a claim for disability benefits with petitioners, but the claim was denied.

Thus, on October 18, 2005, respondent filed against the petitioners a Complaint[22] for the recovery of total permanent disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees.

On July 3, 2006, respondent returned to Dr. Cruz and underwent urinalysis, ultrasound and x-ray. On July 18, 2006, Dr. Cruz issued his final Medical Report,[23]

stating thus:

> He (respondent) was repatriated because of right flank pain and gross hematuria. The IVP done showed mild prostatic enlargement with signs of cystitis. Ultrasound of the KUB done revealed small mild calyseal non-obstructing stone on the left side. The recent x-ray showed neither opacity nor filling defect. The IVP showed pyelitis (inflammation of the kidney). The repeat ultrasound showed decrease in the size of the echogenic focus and cyst in the upper pole of the left kidney. The right kidney is normal. Last August 31, 2005, he underwent ESWL.
>
> He was last seen in our clinic last October 14, 2005 and was advised to come back on November 07, 2005 but failed to do so.
>
> At present, the repeat urinalysis is normal. The ultrasound of the KUB showed left renal cortical cyst and enlarged prostate gland with concretions. Our urologist opined that Mr. Calo is now stone free and normal.
>
> He is now fit to work as a seafarer on account of the [absence of kidney stones].
>
> DIAGNOSIS:
> Nephrolithiasis, left, treated
>
> RECOMMENDATION:
> He is fit to work.[24]

Ruling of the Labor Arbiter

On March 30, 2007, the Labor Arbiter issued his Decision[25] which decreed as follows:

> **WHEREFORE**, both respondent companies are ordered to pay, jointly and severally, the complainant, the amount of US$60,000.00 or its peso equivalent at the time of payment as disability compensation and US$6,000.00 or its peso equivalent at the time of payment, as attorney's fees.
>
> Other claims are DISMISSED for lack of merit.
>
> **SO ORDERED.**[26]

The Labor Arbiter granted permanent total disability benefits and attorney's fees to respondent, but denied his claim for moral and exemplary damages.

The Labor Arbiter held that respondent suffered permanent disability as a result of his inability to work despite undergoing treatment and medication by the company-designated physician for more than 120 days, or from October 15, 2004 through July 18, 2006; the company-designated physician's July 18, 2006 "fit to work" declaration was irrelevant and belated as it was made long after the expiration of the continuous

120-day period during which respondent was unable to work, which thus entitles the latter to permanent total disability benefits under the law. The Labor Arbiter cited *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*,[27] which held:

> *Notatu dignum* is the correct observation of the appellate court in its above-quoted portion of its decision that it was only after respondent had filed a claim for permanent disability that Doctors Abaya and Hill declared him fit for sea duty.
>
> But even in the absence of an official finding by the company-designated physicians that respondent is unfit for sea duty, respondent is deemed to have suffered permanent disability. Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. It is undisputed that from the time respondent suffered a heart attack on December 5, 1997, he was unable to work for more than 120 days, his cardiac rehabilitation and physical therapy having ended only on May 28, 1998.
>
> That respondent was found to be "fit to return to work" by Clinica Manila (where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998 under UPL's account) on September 22, 1998 or a few months after his rehabilitation does not matter. *Crystal Shipping Inc. v. Natividad* teaches:
>
> > Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.[28] (Underscoring supplied)

Ruling of the National Labor Relations Commission

Petitioners appealed to the NLRC. On March 31, 2008, the NLRC rendered its Decision[29] granting petitioners' appeal and reversing the Labor Arbiter's March 30, 2007 Decision, thus:

> **WHEREFORE**, the appeal is GRANTED. The decision of the Labor Arbiter dated March 30, 2007 is VACATED and SET ASIDE and a new one entered dismissing the complaint for lack of merit.

SO ORDERED.[30]

In a Resolution[31] dated June 30, 2008 respondent's Motion for Reconsideration was denied.

Essentially, the NLRC held that for purposes of claiming disability benefits under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract, it is the company-designated physician, Dr. Cruz – and not respondent's physician Dr. Vicaldo – who should make the corresponding proclamation or finding that respondent suffered permanent total or partial disability. Thus, Dr. Cruz's July 18, 2006 Medical Report declaring respondent as fit to work prevails over Dr. Vicaldo's July 28, 2005 Medical Certificate declaring respondent unfit to resume work as seaman in any capacity.

The NLRC added that while the July 18, 2006 certification of fitness was issued more than one year following respondent's disembarkation, its belated issuance is not sufficient to establish petitioners' liability for disability compensation, especially where respondent was to blame for his failure to report to Dr. Cruz and continue treatment. The NLRC was referring to respondent's failure to return for further treatment by Dr. Cruz, as directed, after October 14, 2005. It held that as a result, respondent's Complaint was prematurely filed since his treatment was still ongoing at the time of its filing, and that he is guilty of unjustified abandonment of treatment.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[32] filed with the CA, respondent sought a reversal of the Decision of the NLRC, arguing that the latter committed grave abuse of discretion and gross error in upholding Dr. Cruz's July 18, 2006 Medical Report; in disregarding the 120-day rule which entitles the employee to permanent disability benefits in the event of continuous inability to perform his work for more than 120 days; and in ordering the dismissal of his Complaint.

On December 17, 2009, the CA issued the assailed Decision which contained the following decretal portion:

> **WHEREFORE**, premises considered, the March 31, 2008 Decision and June 30, 2008 Resolution of public respondent National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Accordingly, the March 30, 2007 Decision of the Labor Arbiter is **REINSTATED**.
>
> **SO ORDERED.**[33]

The CA held that the company-designated physician's findings are not conclusive and binding on the issue of the employee's state of health, disability, or fitness to resume work. It held, thus:

> In fine, therefore, the better view is this: While it is mandatory for the seafarer to be examined first by the company-designated physician, the latter's findings, however, should not be conclusive and binding upon the

> former nor upon the courts or labor tribunals. The seafarer's right to seek the opinion of his own doctor should be recognized. In case of disagreement between the findings of his doctor and those of the company physician, the parties may jointly seek the opinion of a third, independent doctor, whose decision shall be final and binding upon them. In the absence, however, of the opinion of a third, independent doctor as in this case, the findings of the company-designated physician and the seafarer's physician should be duly evaluated and weighed against each other based on their inherent merits. The foregoing, to Our mind, is more in accord with the spirit of the law and jurisprudence, not to mention the policy of social justice.[34]

The CA found incredible Dr. Cruz's findings in his July 18, 2006 Medical Report, which it held were self-serving and hearsay as they were based on the opinion of an unnamed urologist, whose opinion was not backed by the appropriate separate medical certificate.

The CA added that the NLRC gravely erred in not considering that respondent had already been under medical treatment and incapacitated to work for more than 120 days, or even 240 days – which is the maximum allowable period of treatment pursuant to Rule X, Section 2 of the Amended Rules on Employee's Compensation[35] and the pronouncement in *Vergara v. Hammonia Maritime Services, Inc.*[36] which held that if the 120-day period elapsed and no declaration of disability or fitness is made because the employee required further medical treatment, then treatment should continue 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; a temporary total disability only becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability. The CA held that herein respondent was repatriated on October 12, 2004, and his last medical examination was conducted on October 14, 2005; clearly, more than 240 days have elapsed without respondent having been declared either fit to work or permanently disabled. He was declared fit to work only on July 18, 2006, or long after his labor Complaint was filed and almost two years from his repatriation; respondent is thus deemed permanently disabled.

Finally, the CA declared that respondent's permanent disability was total, considering that both his personal physician Dr. Vicaldo and the company-designated physician Dr. Cruz declared him "unfit to work as seaman in any capacity" and "is not expected to land a gainful employment given his medical background," and that there was persistence of the left kidney stone "located inside the diverticulum and it is impossible to pass out the stone thru his urine." It held that for total disability to exist, it is not required that the employee be absolutely disabled or totally paralyzed; it is merely necessary that the injury or illness be such that the employee cannot pursue his/her usual work and earn therefrom. And to be permanent, a total disability should last continuously for more than 120 days – or 240 days, per the *Vergara* ruling.

Petitioners filed a Motion for Reconsideration,[37] but the CA denied the same in its April 26, 2010 Resolution. Hence, the present Petition.

Issues

Petitioners submit the following issues for resolution:

1. Whether x x x respondent is entitled to disability benefits under the POEA Standard Employment Contract for Seafarers despite the fact that he was declared fit to work.

2. Whether x x x respondent is entitled to attorney's fees.[38]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that a pronouncement be made denying respondent the adjudged disability benefits and attorney's fees, petitioners maintain that respondent is not entitled to disability benefits and attorney's fees; and even granting without admitting that respondent is entitled to disability benefits, the same should be limited to US$10,075.00 in view of the Grade 10 disability rating given by Dr. Vicaldo, respondent's personal physician.

With regard to disability benefits, petitioners argue that although respondent was subjected to treatment for one year and nine months (or from October 20, 2004, respondent's first examination by Dr. Cruz, up to July 3, 2006, respondent's last visit to the latter) and that Dr. Cruz's July 18, 2006 Medical Report *cum* declaration of fitness to work was issued later, the prolonged treatment should be blamed on respondent as he failed to report to Dr. Cruz when required; instead, he sought treatment from his personal physician and abandoned treatment being made by Dr. Cruz.

Petitioners insist further that as between Dr. Cruz and Dr. Vicaldo, the former's opinion and diagnosis as the company-designated physician should prevail, pursuant to the provisions of the employment contract, law, and jurisprudence.

Petitioners add that respondent's own personal physician, Dr. Vicaldo, did not declare respondent to be suffering from permanent total disability; in fact, Dr. Vicaldo diagnosed him as suffering from a mere Grade 10 disability which, under his employment contract, entitles respondent to receive only US$10,075.00, and not the adjudged US$60,000.00. In other words, respondent's illness – nephrolithiasis – is not a Grade 1 disability which entitles him to the maximum disability compensation.

On the issue of attorney's fees, petitioners claim that as a necessary result of the fact that respondent is not entitled to disability compensation, no attorney's fees may be awarded to him as well. They add that they were not amiss in their obligations toward respondent, and saw to it that he was given appropriate treatment and medication until he was finally declared fit to work; and that they acted in good faith and shouldered all of respondent's expenses in obtaining treatment for his condition. In view of their good faith and the faithful observance of their obligations under the law, respondent has no right to recover attorney's fees.

Respondent's Argument

In his Comment,[39] respondent counters that the CA was correct in ruling that the company-designated physician's findings are not conclusive and binding; that Dr. Cruz's findings in his July 18, 2006 Medical Report were self-serving and hearsay as they were based on the opinion of an unnamed urologist and not of his personal knowledge; and that the said July 18, 2006 Medical Report is self-serving for having been issued only after his Complaint was filed.

Respondent adds that he is not guilty of abandonment of treatment, stating that he has been under treatment by the company-designated physician for over eight months, without improvement in his condition, which thus gave him the right to consult another physician.

On the issue of the adjudged disability benefit, respondent argues that he is entitled to the full US$60,000.00, and not merely the lower amount of US$10,075.00 advanced by petitioners. Citing *Oriental Shipmanagement Co., Inc. v. Bastol*,[40] he contends that "permanent disability" is defined as the inability of a worker to perform his job for more than 120 days, without regard to the loss of any part of his body; thus, his inability to perform his usual work as Chief Cook on board an ocean-going vessel for more than 120 days due to his illness makes his disability total and permanent and entitles him to full disability benefits under the law.

Finally, respondent insists on the correctness of the award of attorney's fees, arguing that petitioners' unjustified failure/refusal to satisfy his claim for disability benefits compelled him to litigate to protect his rights and interests, for which he is entitled to attorney's fees equivalent to 10% of the monetary award.

Our Ruling

The Court denies the Petition.

Article 192(c)(1) of the Labor Code provides that:

> Art. 192. Permanent total disability. – x x x
>
> > (c) 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 for in the Rules;

The 120-day period may be extended up to 240 days, under Rule X, Section 2 of the Amended Rules on Employees Compensation and pursuant to the pronouncement in *Vergara v. Hammonia Maritime Services, Inc.*[41] stating that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability.

It is settled that the above provisions of the Labor Code and the Amended Rules on Employees Compensation on disabilities apply to seafarers;[42] the POEA Standard Employment Contract, which respondent holds, is not the sole basis for determining their rights in the event of work-related injury, illness or death. It may likewise be true that under respondent's POEA Standard Employment Contract, only those injuries or disabilities that are classified as Grade 1 are considered total and permanent. However, the Court has made it clear, in *Kestrel Shipping Co., Inc. v. Munar*,[43] that –

> x x x **if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally or permanently disabled.** In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee[s] Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing [sic] the same work he had before his injury or disability or that he is accustomed or trained to do. **Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.**
>
> **Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally or permanently disabled.**
>
> x x x x
>
> **Consequently, if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises.**[44] (Emphasis supplied)

Thus, from the above, it can be said that an employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240[45]-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite

assessment of the employee's fitness or disability. This is true "regardless of whether the employee loses the use of any part of his body."[46]

Respondent was repatriated on October 12, 2004 and underwent treatment by the company-designated physician, Dr. Cruz, until October 14, 2005, or for a *continuous period of over one year* – or for more than the statutory 120-day[47] or even 240-day[48] period. During said treatment period, Dr. Cruz did not arrive at a definite assessment of respondent's fitness or disability; thus, respondent's medical condition remained unresolved. It was only on July 18, 2006 that respondent was declared fit to work by Dr. Cruz. Such declaration, however, became irrelevant, for by then, respondent had been under medical treatment and unable to engage in gainful employment for more than 240 days. Pursuant to the doctrine in *Kestrel*, the conclusive presumption that the respondent is totally and permanently disabled thus arose. The CA is therefore correct in declaring that respondent suffered permanent total disability.

In the same manner, the issue of which among the two diagnoses or opinions should prevail – that of Dr. Cruz or Dr. Vicaldo – is rendered irrelevant in view of the lapse of the said 240-day period. As far as the parties are concerned, respondent's medical treatment and disability continued for more than 240 days without any finding or diagnosis by the company-designated physician that he was fit to resume work. Thus, consonant with law and jurisprudence, respondent is entitled to a declaration of permanent total disability, as well as the corresponding benefit attached thereto in the amount of US$60,000.00.

The Court likewise notes the CA's finding that while respondent was given an Impediment Grade 10 (20.15%) by his physician, he was nevertheless deemed unfit to work as seaman in any capacity and not expected to land gainful employment given his medical background. Moreover, it has been found that surgical intervention may be required to remove respondent's nephrolithiasis; if not, he is prone to develop ascending urinary tract infection. It must be remembered that in August 2004, while respondent was still on ship duty, he was diagnosed with urinary tract infection by a company-approved physician and declared fit to work, but only on a "light duty" basis; and when the same infection recurred with his kidney stones, he was declared unfit to work by the physician at Honmoku Hospital in Japan. If respondent's nephrolithiasis is not cured, certainly he cannot be expected to return to work under his condition.

With respect to attorney's fees, it is clear that respondent was compelled to litigate due to petitioners' failure to satisfy his valid claim. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.[49]

Lastly, while the Labor Arbiter's March 30, 2007 Decision is correct and should be reinstated, a modification thereof is in order, in that the awards therein should be paid in no other form than in Philippine pesos.[50]

WHEREFORE, the Petition is **DENIED**. The assailed December 17, 2009 Decision and April 26, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 105550 are **AFFIRMED**, and the March 30, 2007 Decision of the Labor Arbiter is **REINSTATED**, with the **MODIFICATION** that petitioners Alpha Ship Management Corporation, Junel M. Chan and/or Chuo-Kaiun Company Limited are ordered to jointly and severally pay respondent Eleosis V. Calo the amounts of US$60,000.00 as disability compensation and US$6,000.00 as attorney's fees in Philippine pesos, computed at the exchange rate prevailing at the time of payment.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[1] *Rollo*, pp. 42-70.

[2] Id. at 73-95; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion.

[3] Id. at 314-322; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[4] Id. at 234-244; penned by Labor Arbiter Aliman D. Mangandog.

[5] Id. at 97-98.

[6] Id. at 75.

[7] Id. at 100.

[8] Id.

[9] Id. at 102.

[10] Id.

[11] Id. at 103.

[12] Id. at 104.

[13] Id.

[14] Id at 105.

[15] Id.

[16] Id. at 106.

[17] Id.

[18] Id. at 107-132.

[19] Id. at 228-229.

[20] Id.

[21] Id. at 232.

[22] NLRC records, p. 2.

[23] *Rollo*, p. 132.

[24] Id.

[25] Supra note 4.

[26] Id. at 244.

[27] 521 Phil. 380 (2006).

[28] Id. at 393-394.

[29] Supra note 3.

[30] Id. at 321.

[31] NLRC records, pp. 431-433.

[32] Docketed as CA-G.R. SP No. 105550.

[33] *Rollo*, pp. 94-95.

[34] Id. at 87.

[35] Which provides:

RULE X

Temporary Total Disability

x x x x

Sec. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the

System may declare the total and permanent status at 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.

[36] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 628.

[37] CA *rollo*, pp. 363-376.

[38] *Rollo*, p. 50.

[39] Id. at 331-351.

[40] G.R. No. 186289, June 29, 2010, 622 SCRA 352, 384.

[41] Supra note 36 at 629.

[42] *PHILASIA Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, August 15, 2012, 678 SCRA 503, 515; *Valenzona v. Fair Shipping Corporation*, G.R. No.176884, October 19, 2011, 659 SCRA 642, 651.

[43] G.R. No. 198501, January 30, 2013, 689 SCRA 795.

[44] Id. at 809-814.

[45] If further medical treatment is necessary.

[46] *Maersk Filipinas Crewing Inc. v. Mesina*, G.R. No. 200837, June 5, 2013; *Valenzona v. Fair Shipping Corporation*, supra note 42 at 652; *Quitoriano v. Jebsens Maritime, Inc.*, G.R. No. 179868, January 21, 2010, 610 SCRA 529, 536; *Crystal Shipping, Inc. v. Natividad*, 510 Phil. 332, 340 (2005).

[47] Four months.

[48] Eight months.

[49] *Quitoriano v. Jebsens Maritime, Inc.*, supra note 46 at 537.

[50] Id.