750 Phil. 949

SECOND DIVISION

[G.R. No. 211211, January 14, 2015]

ROMMEL B. DARAUG, PETITIONER, VS. KGJS FLEET MANAGEMENT MANILA, INC., KRISTIAN GERHARD JEBSEN SKIPSREDER, MR. GUY DOMINO A. MACAPAYAG AND/OR M/V "IBIS ARROW," RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This resolves the petition for review on *certiorari*[1] filed by petitioner Rommel B. Daraug *(petitioner)* questioning the September 25, 2013 Decision[2] and the January 29, 2014 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 121327. The assailed CA issuances affirmed the Decision[4] and the Resolution[5] of the National Labor Relations Commission (NLRC), which reversed the August 12, 2010 Decision[6] of Labor Arbiter Geobel A. Bartolabac *(LA)*, granting petitioner's claim for permanent disability compensation, sick wages, damages, and attorney's fees by disposing the case as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay jointly and severally complainant as follows:
>
> 1. Permanent Disability compensation [in] accordance with the AMOSUP CBA in the sum of US$89,100.00;
> 2. Sick wages for 130 days in the sum of US$1,986.38;
> 3. Moral and Exemplary damages in the sum of THREE HUNDRED THOUSAND PESOS (p300,000.00);
> 4. Attorney's fees in the sum equivalent to ten percent (10%) of the judgment award.
>
> SO ORDERED.[7]

The Facts

Petitioner was employed by respondent KGJS Fleet Management Manila, Inc. *(KGJS)* for the *second time* on December 7, 2007 to serve as motorman on board the vessel *M/V Fayal Cement.*

On December 23, 2007, while petitioner was working in the storage room, several steel plates fell and hit his leg. Specifically, it resulted in the fracture of his right fibula and

tibia. He was then medically repatriated, examined and treated by the company-designated physicians, Dr. Fidel C. Chua *(Dr. Chua)* of Trans-Global Health Systems, Inc., Makati City; and Dr. Tiong Sam Lim *(Dr. Lim)*, an orthopedic surgeon from Chinese General Hospital. After his treatment, Dr. Lim and Dr. Chua concluded that petitioner's right leg was *fully healed* and that he was *fit to work.*[8] On January 16, 2009, he executed the Certificate of Fitness to Work[9] releasing KGJS of any liability that might arise as a result of his injury. Much later, he underwent several examinations which confirmed that he was fit to work.[10]

On May 12, 2009, petitioner was hired again by KGJS for the third time, for and in behalf of its foreign principal, respondent Kristian Gerhard Jebsen Skipsreder AS *(KGJS AS)*, as a motorman on board *M/V Ibis Arrow*. The contract of employment,[11] approved by the Philippine Overseas Employment Administration *(POEA)*, was for a period of nine (9) months with a basic salary of US$643.00 exclusive of overtime and other benefits commencing on January 4, 2009. It contained a clause stating that "[t]he NSA/NMU-AMOSUP Model Agreement CBAs as applicable shall be considered to be incorporated into and to form part of the contract."[12]

On October 31, 2009, while petitioner was working in the engine room, he accidentally slipped and fell, injuring his right leg again. On November 3 and 12, 2009, the doctors of Meyer Servicos Medicus Clinic in Brazil found that he had sustained a **severe bruise/hematoma** on his right leg and recommended that he disembark from the vessel and continue his treatment in his home port.[13] He was then medically repatriated on November 14, 2009.

Almost immediately upon his arrival on November 16, 2009, petitioner reported to Dr. Chua who, in turn, referred him again to Dr. Lim. After an x-ray test found no fracture on his leg, Dr. Lim recommended that he take anti-inflammatory drugs and antibiotics for his injury. Concurring in the findings and recommendations of Dr. Lim, Dr. Chua diagnosed petitioner to have suffered from **contusion hematoma**.[14] After re-evaluating him on December 4, 2009, and again on December 21, 2009, Dr. Lim found that petitioner had **recovered** from his injuries and **declared him fit to work**. From the time he was repatriated until he was declared fit to work, he was paid his sick wages.[15] Again, he executed another Certificate of Fitness to Work.[16]

About two and a half months later, on March 5, 2010, petitioner filed a complaint[17] against KGJS and KGJS AS, seeking permanent disability benefits under the NSA/NMU-AMOSUP CBA, sick wages, damages, and attorney's fees. In his Affidavit-Complaint,[18] he claimed that his latest injury which occurred on board the *M/V Ibis Arrow*, together with his previous accident on board the *M/V Fayal Cement,* rendered him permanently disabled.

It appears that on April 13, 2009, *after the filing of his complaint*, petitioner sought the services of Dr. Manuel C. Jacinto, Jr. (*Dr. Jacinto*) of Sta. Teresita General Hospital in Quezon City. Dr. Jacinto issued a medical certificate[19] attesting that petitioner was suffering from open fracture on his right fibula and that he was no longer fit to work.

Dr. Jacinto also noted that:

> The patient still complains of pains particularly on ambulation and in the performance of his duties which entails prolonged standing, thus, he was assessed to be physically unfit to go back to work.[20]

Thus, when petitioner filed his position paper[21] on June 9, 2010, he contended that the injuries he had suffered while in the service of the respondents entitled him to be compensated.

Ruling of the Labor Arbiter

After the submission of all the pleadings, the LA rendered his decision granting petitioner's claims. In finding them meritorious, the LA found the medical assessment of the company-designated physicians unreliable and biased in favor of the respondents.[22] The LA observed that petitioner was injured twice, once while he was assigned to work in the vessel *M/V Fayal Cement* and, again, on board the *M/V Ibis Arrow.* Also, the LA personally observed petitioner to have difficulty in walking, bending and carrying any weight and concluded that the diagnosis of Dr. Jacinto was more credible and superior than the findings of the company-designated physicians.[23]

As to petitioner's claim for 130 days of sick wages, the LA also found it to be meritorious but limited it to $1,986.38, considering that the respondents had already paid a portion of it.

The LA likewise sustained his claim for damages and attorney's fees, opining that the respondents acted in bad faith when they unjustifiably refused to give what was due him under the circumstances.

Ruling of the NLRC

As stated above, the NLRC reversed the LA ruling. The NLRC was of the considered view that the finding of Dr. Lim that petitioner was fit to work should have been given credence, considering the time and effort that he spent in monitoring and treating his condition. The NLRC noted that he was under the care of Dr. Lim from November 17, 2009 until he was declared fit to work on December 21, 2009. It also found that there was neither any medical evidence to dispute Dr. Lim's findings nor any proof that he questioned the findings of Dr. Chua. The NLRC concluded that his open fracture must have been sustained *after he was declared fit to work* on December 21, 2009. [24]

Ruling of the Court of Appeals

The CA opined, as the NLRC did, that the findings of Dr. Lim and Dr. Chua should have been given credence. For the appellate court, the extensive medical attention given by the company-designated physicians to petitioner from the very beginning enabled them to be familiar with, and acquire a detailed knowledge of, his medical condition, as

compared to just one (1) day of examination by Dr. Jacinto. For said reason, the CA concluded that petitioner was no longer entitled to disability benefits when he was declared fit to work by the company-designated physicians.

Hence, this petition.

Petitioner charges that the CA "abused its discretion and committed a palpable error" in reversing the findings of the LA. According to him, the findings of the LA, being a trier of facts, should be "given high regard and respect even finality on appeal."[25]

In asserting his right to claim disability compensation, petitioner argues that because of the injury to his right leg, he continues to experience difficulty in walking, standing and "is incapacitated to perform the usual physical, strenuous and stressful activities which are the usual function of seafarers on board a vessel."[26] For him, the findings of Dr. Jacinto should have been given weight because the said doctor examined and treated him as an independent orthopedic medical specialist who had no special relationship with him, other than that of doctor-patient. He ascribes bias to the company-designated physicians considering that they regularly receive retainer fees from the respondents.

Lastly, petitioner imputes bad faith on the part of the respondents claiming that during the mediation proceedings before the CA, the parties, upon the initiative of the respondents, agreed to settle the case for the amount of $35,000.00. The hearing was set on July 20, 2013 for the settlement, but the respondents, without any justifiable reason, did not comply. Petitioner, in the alternative, prays for the enforcement of the settlement agreement.[27]

Position of the Respondents

For their part, the respondents counter that petitioner merely suffered a bruise while on board the *M/V Ibis Arrow* for which he was accorded extensive treatment until he was declared fit to work. According to the respondents, considering that the medical documents submitted would show that he was already declared fit to work, he must have fractured his right fibula sometime in April of 2010, that is, after his employment with them. They posit that his claim for permanent disability should be dismissed.[28]

As for the alleged settlement in the CA, the respondents contend that they simply withdrew their offer to petitioner because he misrepresented himself as recuperating in his hometown in Iloilo during the mediation proceedings in the CA when all the while he was actually abroad working as a seafarer under the Imperial Victory Shipping Agency (*Imperial*). They claimed that the evidence would show that the pre-employment medical examinations conducted on petitioner showed that he was fit to work; and in fact had already served two (2) employment contracts with Imperial. Furthermore, the respondents found out that he also filed a claim against Imperial for disability benefits. [29]

The Court's Ruling

Petitioner is in error in its submission that the findings of the LA in labor cases were final and binding upon courts exercising appellate jurisdiction. The general rule is that due to its recognized expertise as a result of its specific jurisdiction, the findings of the LA are accorded great respect if: *one,* they concurred with the findings of the NLRC; and *two,* if they are supported by substantial evidence.

The foregoing rule is not absolute and admits of exceptions. Thus, in the following instances, the Court is compelled to resolve both factual issues along with the legal ones: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[30]

In the case at bench, the factual findings of the LA differ from those of the NLRC and the CA. This divergence of positions constrains the Court to review and evaluate assiduously the evidence on record and determine whether or not petitioner is entitled to disability benefits.

Petitioner Did Not Comply
With The Procedures

In *Vergara v. Hammonia Maritime Services, Inc.*[31] *(Vergara)*, it was stated that 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. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract *(POEA-SEC)* as a condition *sine qua non* prior to the deployment of the seaman for overseas work. The POEA-SEC is supplemented by the Collective Bargaining Agreement *(CBA)* between the owner of the vessel and the covered seaman.

In this case, the parties entered into a contract of employment in accordance with the POEA-SEC and they agreed to be bound by the CBA. Thus, in resolving petitioner's claim for disability compensation, the Court will be guided by the procedures laid down in the POEA-SEC and in the CBA. On this point, Section 20(B)(3) of the POEA-SEC provides:

> 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.
>
> For this purpose, the seafarer shall submit himself to a postemployment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to so, in which case, a written notice to the agency within the same period is deemed a 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 doctor's decision shall be final and binding on both parties.

On the other hand, the CBA between petitioner and the respondents states that:

> 20.1.3.2 The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. **If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties**. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer.
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> [Emphases supplied]

Interpreting an almost identical provision of the CBA, the Court ruled, in the recent case of *Philippine Hammonia Ship Agency, Inc. v. Dumadag*[32] *(Dumagdag)*, that a seafarer's non-compliance with the mandated procedure under the POEA-SEC and the CBA militates against his claims. In *Dumagdag*, the Court explained:

> The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. **The two instruments are the law between them. They are bound by their terms and conditions,** particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In *Magsaysay Maritime Corp. v. Velasquez,* the Court said: "The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them." **Dumadag, however, pursued his claim without**

observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued his fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.

x x x x

The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag's physicians that he was unfit for sea duty, and awarded him permanent total disability benefits.

We find the rulings of the labor authorities seriously flawed as they were rendered in total disregard of the law between the parties — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.**

As we earlier stressed, Dumadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a **third doctor** as was his duty. He offered no reason that could have prevented him from following the procedure. Before he filed his complaint, or between July 19, 2007, when he came home *upon completion of his contract,* and November 6, 2007, when Dr. Dacanay declared him fit to work, he had been under examination and treatment (with the necessary medical procedures) by the company specialists. All the while, the petitioners shouldered his medical expenses, professional fees and costs of his therapy sessions. In short, the petitioners attended to his health condition despite the expiration of his contract. We, therefore, find it puzzling why Dumadag did not bring to the petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion.

> Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 – whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)* and similar other cases, or sustained the opinion of the seafarer's chosen physician as in *HFS Philippines, Inc. v. Pilar,* cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.
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> **Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld.** In *Santiago v. Pacbasin Ship Management, Inc.,* the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability."
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> On a different plane, Dumadag cannot insist that the "favorable" reports of his physicians be chosen over the certification of the company-designated physician, especially if we were to consider that the physicians he consulted examined him for only a day (or shorter) on four different dates between December 5, 2007 and April 13, 2008. Moreover, we point out that they merely relied on the same medical history, diagnoses and analyses provided by the company-designated specialists. Under the circumstances, we cannot simply say that their findings are more reliable than the conclusions of the company-designated physicians. [33]
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> [Emphases supplied]

As in *Dumadag,* petitioner in this case failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion. Considering that petitioner failed to observe the procedures laid down in the POEA-SEC and CBA, the Court is left without a choice but to uphold the certification issued by the respondents' physicians with respect to his fitness or disability.

Petitioner's Claim for Benefits
Was Premature

Actually, petitioner's filing of his claim was premature. The Court has held that a

seafarer may have basis to pursue an action for total and permanent disability benefits, if any of the following conditions are present:

> (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
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> (b) 240 days had lapsed without any certification issued by the company designated physician;
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> **(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;**
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> (d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
>
> (e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
>
> (f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
>
> (g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
>
> (h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods. [34]

Significantly, however, when petitioner filed his complaint with the arbitration office on April 5, 2010, he **had yet to consult his own physician,** Dr. Jacinto. It means that, at that time, he was simply armed with: 1] the medical findings of the company-designated physician that he was fit to work; and 2] his Affidavit Complaint[35] where **he made his own conclusion** that his right leg was again fractured because of the incident that occurred in the M/V Ibis Arrow, stating:

11. That my injuries which I sustained in my previous accident on board the vessel "FAYAL CEMENT" had recurred and its recurrence was triggered by my injury which I sustained due to the bad fall on board the vessel MV "IBIS ARROW."
12. x x x x
13. That I feel that my injuries has (sic) already rendered me permanently disabled, hence I am now seeking my permanent disability compensation in accordance with my CBA, my sick wages for 130 days, moral and exemplary damages and attorney's fees and other benefits provided by law.

Dr. Jacinto's findings cannot be accorded more weight over those of the Company-Designated Physicians

Moreover, in *Dumadag,* the seafarer consulted his own physician on four (4) dates. The petitioner in the case at bench was examined by his own doctor for only one (1) day, that is, on April 13, 2010, almost four (4) months after he was declared fit to work by the company-designated doctors. Even worse, the medical certificate of Dr. Jacinto failed to state the reasons on which he based his conclusion. Thus, the Court finds that the conclusions of Dr. Jacinto cannot prevail over the findings of the respondents' physicians.

Petitioner is Fit to Work

Aside from the finding of the company-designated physicians, it is worthy to note that the evidence on record indubitably shows that petitioner continued to work as a seaman under another employer. As aptly pointed out by the respondents, petitioner was able to acquire gainful employment with Imperial and was able to fully serve two (2) separate employment contracts with them.[36] Several medical certifications from his pre-employment examinations were even issued attesting to his overall fitness.[37] Certainly, the Court cannot ignore these facts.

Petitioner is not Entitled to his Monetary Claims

In view of the foregoing, petitioner is not entitled to his monetary claims. It should be remembered that permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature, that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity.[38] As petitioner was never actually incapacitated, it would be highly unjust if he would be awarded the disability benefits which the law accords only to the deserving and utterly unfair to the respondents if they would be made to pay.

The Court also denies the ancillary claims for sick wages, damages and attorney's fees for lack of factual and legal bases.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,* *Del Castillo,* and *Leonen, JJ.,* concur.

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* Designated Acting member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

[1] *Rollo*, pp. 3-43.

[2] Penned by Associate Justice Socorro B. Inting, with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez, concurring; id. at 32-38.

[3] Id. at 40-41.

[4] CA *rollo,* pp. 55-61.

[5] Id. at 63-64

[6] Id. at 44-53.

[7] Id. at 52-53.

[8] Id. at 176-177.

[9] Id. at 178.

[10] Id. at 94-99.

[11] Id. at 92-93.

[12] Id. at 93.

[13] Id. at 100-101.

[14] Id. at 143.

[15] Id. at 259-260.

[16] Id. at 145.

[17] Id. at 65-68.

[18] Id. at 67.

[19] Id. at 103.

[20] Id.

[21] CA *rollo,* pp. 69-127.

[22] Id. at 46.

[23] Id. at 48-49.

[24] Id. at 59-60.

[25] *Rollo*, pp. 11-12.

[26] Id. at 14.

[27] Id. at 23-24.

[28] Id. at 45-46.

[29] Id. at 46-47.

[30] *Pasos v. Philippine National Construction Corporation,* G.R. No. 192394, July 3, 2013, 700 SCRA 608, 628, citing *Development Bank of the Philippines v. Traders Royal Bank,* G.R. No. 171982, August 18, 2010, 628 SCRA 404, 413-414.

[31] *Vergara v. Hammonia Maritime Services, Inc*., G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623-625.

[32] G.R. No. 194362, June 26, 2013, 700 SCRA 53.

[33] Id. at 65-68.

[34] *C.F. Sharp Crew Management, Inc. v. Taok,* G.R. No. 193679, July 18, 2012 677 SCRA 296, 315.

[35] CA *rollo,* p. 67.

[36] Id. at 506-507.

[37] Id. at 509-512.

[38] *Bejerano v. Employees' Compensation Commission*, G.R. No. 84777, January 30, 1992, 205 SCRA 598, 601-602.
