794 Phil. 286

THIRD DIVISION

[G.R. No. 220608, August 31, 2016]

MARCELINO T. TAMIN, PETITIONER, VS. MAGSAYSAY MARITIME CORPORATION AND/OR MASTERBULK PTE. LTD., RESPONDENTS.

DECISION

VELASCO JR., J.:

Nature of the Case

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the June 25, 2015 Decision[1] and the September 18, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 137055, which reversed and set aside the June 11, 2014 Decision[3] and the August 4, 2014 Resolution[4] of the Panel of Voluntary Arbitrators (VA) which granted a seafarer's claim for permanent and total disability benefits.

The Facts

On June 1, 2011, petitioner Marcelino T. Tamin entered into a contract of employment[5] with respondent Magsaysay Maritime Corporation (Magsaysay), for and in behalf of its principal, respondent Masterbulk Pte. Ltd. (Masterbulk), to work as Chief Cook on board MV Star Heranger for a period of nine (9) months with a basic monthly salary of US$865. Aside from the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the employment contract is also governed by a Memorandum of Agreement[6] entered into by and among Magsaysay, Masterbulk, and the Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP), as well as a Collective Bargaining Agreement (CBA).[7]

After undergoing the requisite Pre-Employment Medical Examination (PEME) and having been declared as "fit for sea duty," petitioner immediately assumed his responsibilities on-board the vessel.

As chief cook, petitioner was the overall in charge of the food catering department. His responsibilities included the supervision of activities of the kitchen personnel, coordination with the ship's Master on food supplies and equipment, preparation of meat for cooking, and inspection of the galley mess hall and equipment.

On November 16, 2011, while on kitchen duty and chopping pork knuckles for lunch, the chopping knife accidentally slid down and cut petitioner's left forefinger at about 1.5 inches, causing it to detach from the joint bone. The Chief Officer and Second

Officer immediately applied paraffin gauze and prescribed antibiotics to petitioner to prevent infection. Petitioner was then brought to a hospital in China on November 18, 2011 for removal of the damaged tissue and repair of his finger.

On November 27, 2011, petitioner was repatriated and referred to the company-designated physician, Dr. Benigno Agbayani, Jr. (Dr. Agbayani), at the Manila Doctors Hospital. Dr. Agbayani found that there was a failed replantation of petitioner's injured finger; thus, amputation was recommended. On November 30, 2011, petitioner underwent "tenolysis, amputation of left index finger" and was discharged from the hospital on December 3, 2011. Thereafter, he was subjected to physical and occupational therapy sessions. In a Final Out Patient Consult Report[8] elated May 11, 2012, Dr. Agbayani assessed petitioner with a Grade 11 disability, but declared him as "fit to return to work as seafarer." Dr. Agbayani's Report states:

Final Diagnosis: Amputation/Removal of non viable replanted finger and wound closure left index finger.

Recommendation: Our patient is now fit to return to work as a seafarer.

Compensation grading: Our patient's schedule of impediment based on the POEA schedule equivalent to 'Total loss of index finger' or Grade 11.

Notwithstanding Dr. Agbayani's "fit to work" recommendation, petitioner continued to feel persistent pain on his left hand, rendering him incapable to close it or carry even light objects with it. Thus, on June 22, 2012, he wrote a letter[9] to respondent Magsaysay requesting further treatment.

Not receiving any response, petitioner wrote another letter[10] on July 9, 2012 informing respondent Magsaysay of his intention to seek a second opinion from another doctor to determine his true condition. Respondents, however, referred him back to Dr. Agbayani, who saw petitioner on July 10, 2012 and noted a contracture of the 3[rd], 4[th], and 5th fingers on his left hand. Dr. Agbayani then recommended another ten (10) sessions of physical therapy for petitioner.[11]

Meanwhile, on July 31, 2012, petitioner went to another orthopedic surgeon, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who found him permanently disabled with a Grade 9 impediment. Dr. Magtira explained in detail his diagnostic conclusion that the left-handed petitioner is unfit for further sea duties in any capacity:

> On physical examination, the patient is ambulatory and well nourished. Me complained of tenderness on the left hand. There is amputation of the distal phalanx with the presence of wound on the stump of 2nd digits of the left hand. There is limitation of motion on his 3rd, 4th, 5th digit with loss of [gripping] power of the left hand was observed. Patient is positive for phantom limb on the tip of index finger on the left hand.
>
> **Mr. Tamin** remains incapacitated. Despite his previous surgeries, he is still

> experiencing pain of his amputated fingers and inability to grasp objects. He is therefore also not capable of working at his previous occupation from said impediment. x x x
>
> x x x x

It is worth mentioning also that Mr. Tamin is a left handed person. The injury to his dominant hand is a big burden and addition to his disability. He presently does not have physical capacity to return to work he has performing at the time of his injury. He is therefore permanently **UNFIT** in any capacity for further sea duties.[12]

With the above findings, petitioner demanded payment of his disability benefits, which demand respondents refused to heed. Grievance proceedings were, thus, conducted during which petitioner turned down respondents' offer of US$35,000 as settlement. Instead, petitioner requested for the amount of US$100,000 as full payment of his disability benefits under the CBA.[13] As a result, the grievance proceedings proved unsuccessful and the parties brought the matter up for voluntary arbitration. The parties were then instructed to submit their respective position papers.

As per the parties' Submission Agreement, the issue to be resolved by the VA is petitioner's entitlement to sickness allowance, medical reimbursement and disability benefits as per CBA, attorney's fees, and other damages.[14]

Petitioner claimed that he was not restored to his pre-employment and pre-injury condition even after physical and occupational therapy, rendering him incapacitated to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform. He maintained that he is entitled to maximum compensation in view of his inability to work for more than 120 days as a result of the injury. Thus, so petitioner claimed, he is entitled to permanent disability benefits. Nevertheless, he still expressed his willingness to appoint a third doctor in accordance with the 2010 POEA-SEC.[15]

Respondents, on the other hand, claimed that it is the company-designated physician's disability assessment that is determinative of a seafarer's entitlement to disability benefits. Respondents argued that Dr. Agbayani's assessment of Grade 11 only entitles petitioner to an impediment rate of 4%, which is equivalent to US$4,000 under the CBA.[16]

The Ruling of the VA

On June 11, 2014, the VA rendered a Decision awarding full disability compensation to petitioner, disposing the case as follows:

> **WHEREFORE, THE FOREGOING CONSIDERED**, judgment is promulgated ORDERING respondents, jointly and severally, to pay complainant full disability compensation in the amount of US$100,000.00, plus 10% thereof by way of attorney's fees.

All other claims are hereby DENIED.

SO ORDERED.[17]

The focal point of the VA's Decision dealt with petitioner's capacity to go back to his former work as chief cook despite his disability. In this regard, the VA ruled that disability is intimately related to one's earning capacity. Since the nature of a chief cook's job requires the use of both hands and petitioner's injured hand cannot be moved without pain and limitation, the VA was convinced that the disability has impaired petitioner's capacity to work as a chief cook on board a vessel.[18] Hence, so the VA held, petitioner's disability is total. The VA also found that petitioner's disability has gone beyond 240 days and so concluded that it is permanent.[19]

Respondents moved for reconsideration but the same was denied by the VA in its August 4, 2014 Resolution. Thus, respondents filed a petition for review with the CA.

Meanwhile, on October 17, 2014, the parties filed with the VA a Conditional Satisfaction of Judgment stating that respondents resorted to paying petitioner an amount of P4,829,880, without prejudice to the outcome of their petition for review pending before the CA. Petitioner undertook to return the money conditionally paid should the award be reversed.[20]

Ruling of the CA

In its June 25, 2015 Decision, the CA resolved to grant respondents' petition for review. The *fallo* of the Decision reads:

> **WHEREFORE**, based on the foregoing, the petition is **GRANTED**. The 11 June 2014 Decision and 04 August 2014 Resolution of the Honorable Panel of Voluntary Arbitrators in AC-305-NCMB-NCR-001-01-01-2014 are hereby **REVERSED and SET ASIDE**.[21]

In reversing the Decision of the VA, the appellate court held that a claim for disability benefits should be based on the findings and declaration of the company-designated physician who, in this case, declared a disability grading within the 240-day extension provided for by law. The CA made the following conclusions:

> In the case at bench, this Court finds that the company-designated [physician] ha[s] complied with the responsibility incumbent upon [him]. Upon careful review of the records, [petitioner] started his treatment with Dr. Agbayani, Jr. on 27 November 2011 and was discharged on 03 December 2011. On May 2012, after his operation and treatment, he was given a disability grading of Grade 11 'total loss of index finger' and was declared fit for sea duty. Such declaration was made after 165 days from [petitioner's] treatment and well within the 240-day extension provided by law. Thus, this Court gives credence to the findings given by the company-designated [physician] as to [petitioner's] disability.[22]

The CA also found that the CBA did not provide for any permanent unfitness clause; hence, no grounds exist in the CBA to warrant an award of maximum disability. Moreover, the CA ruled that petitioner disregarded the procedure laid out in the POEA-SEC as regards the appointment of a third doctor.

Petitioner filed a Motion for Reconsideration, while respondents filed a Manifestation with Motion for the restitution of the amount they paid to petitioner. In its Resolution dated September 18, 2015, the CA denied petitioner's Motion for Reconsideration and granted respondents' Manifestation with Motion.

Hence, the instant petition.

The Issues

Petitioner anchors his plea for the reversal of the assailed Decision on the following grounds:[23]

I.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT FAILED TO HOLD THAT PETITIONER'S DISABILITY IS PERMANENT AND TOTAL IN THE ABSENCE OF A DEFINITE AND FINAL ASSESSMENT OF FITNESS OR PERMANENT DISABILITY FROM THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE 240-DAY PERIOD.

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN DISMISSING THE DISABILITY CLAIM ALLEGEDLY BECAUSE PETITIONER DID NOT SECURE THE OPINION OF A THIRD DOCTOR

III.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ORDERING RESTITUTION OF THE EXECUTED JUDGMENT AWARD.

Succinctly put, the pivotal issue to be resolved is whether or not petitioner is entitled to permanent and total disability benefits.

Petitioner postulates, in the main, that the May 11, 2012 assessment of the company-designated physician cannot be deemed as final since, on July 20, 2012, he still reported back to the company-designated physician who recommended that he undergo further physical therapy due to the contracture of the other fingers of his left hand. As such, the POEA-SEC provision regarding the appointment of a third doctor does not apply in his case since there is no assessment to contest as the company-designated physician failed to come up with a final and definite assessment of his condition.

In their Comment, respondents hinge their arguments on the CA's findings that the

CBA involved does not have a permanent unfitness clause; that the 240-day rule does not apply to the case since the company doctor timely assessed petitioner; and that no third doctor was appointed so the opinion of the company doctor prevails.

The Court's Ruling

The Court resolves to grant the petition.

The 120/240-day rule still subsists under the 2010 POEA-SEC

Respondents argue that the "120/240-day rule" is a thing of the past and is rendered obsolete by the 2010 version of the POEA-SEC. According to respondents, the provisions under the POEA-SEC providing that disability is not determined on the basis of duration of inability to work but on disability gradings alone should be recognized. [24] Their contention is inaccurate.

Indeed, amendments were placed in the POEA-SEC, which is the primary contract that regulates a seafarer's employment. Section 20 (A) (6) of the 2010 POEA-SEC now provides that "[t]he disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid."[25] Nevertheless, before the disability gradings under Section 32 should be considered, these disability ratings must be properly established and inscribed in a valid and timely medical report of a company-designated physician. Thus, the foremost consideration should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein shall be disregarded.[26]

The POEA-SEC was enacted to provide the minimum acceptable terms in a seafarer's employment contract. However, in assessing whether a seafarer's injury is total and permanent, due consideration is accorded not only to the disability gradings found in Section 32 of the POEA-SEC, but also to the relevant provisions on disability of the Labor Code,[27] and the Amended Rules on Employees' Compensation (AREC) implementing Title II, Book IV of the Labor Code.

The law that defines permanent and total disability of laborers is Article 192 (c) (1) of the Labor Code,[28] which provides:

> 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 in the Rules

Accordingly, the rule referred to, Rule X, Section 2 of the AREC, which implemented Book IV of the Labor Code (IRR), states:

> 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. (emphasis supplied)

It should be highlighted, therefore, that the standard terms of the POEA-SEC are intended to be read and understood in accordance with the foregoing laws.

Thus, the amendment to Section 20 (A) (6) of the POEA-SEC cannot render the 120/240-day period imposed by law nugatory since the application of Section 32 of the POEA-SEC still requires the company-designated physician's timely and valid disability assessment.

Petitioner's disability is total and permanent

Permanent disability is the inability of a worker to perform his or her job for more than 120 days, regardless of whether or not a worker loses the use of any part of .his or her body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do.[29]

In *C.F. Sharp Crew Management, Inc. v. Taok*,[30] the Court provided the bases for a seafarer's action for total and permanent disability benefits, as follows:

> x x x Thus, a seafarer may pursue an action for total and permanent disability benefits if: (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; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for j 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 2O-B(3) of the POEA-SEC are of a contrary opinion; (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 2O-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 the said periods**. (emphasis supplied)

In the case at bar, it has to be noted that the company-designated physician did not issue a final medical assessment on petitioner's disability rating within 120 days from petitioner's repatriation. Petitioner was repatriated on November 27, 2011. On November 30, 2011, he underwent "tenolysis, amputation of left index finger" and was discharged from the hospital on December 3, 2011. Thereafter, he was subjected to physical and occupational therapy sessions. Petitioner was certainly still disabled to return to work as a cook on board an ocean-going vessel.

Since petitioner required further therapy sessions beyond the 120-day period, his total and temporary disability extended. The company-designated physician then had until 240 days from repatriation to give the final assessment.

On May 11, 2012, or after a period of 166 days, the company-designated physician issued a report assessing petitioner with a Grade 11 disability and declaring him as "fit to return to work as seafarer." However, despite the company-designated physician's "fit to work" declaration, petitioner still felt persistent pain in his left hand, rendering him incapable to close it or carry even light objects with it. As a consequence, he was again referred by the respondents to Dr. Agbayani who saw petitioner on July 10, 2012.

On July 10, 2012, or after a period of 226 days from petitioner's repatriation, Dr. Agbayani found a contracture of the 3rd, 4th, and 5th fingers on petitioner's left hand. [31] At this point, Dr. Agbayani is nearing the end of the extended period of 240 days within which to give petitioner's final disability assessment, yet he gave none. Instead, Dr. Agbayani recommended for petitioner to undergo another ten (10) sessions of physical therapy.

In effect, Dr. Agbayani's subsequent findings and recommendation on July 10, 2012 abandoned his May 11, 2012 disability assessment and caused the 240-day extended period to expire without a final and definite assessment of petitioner's disability.

Jurisprudence is replete with cases where the Court struck down a company-designated physician's disability assessment for being belatedly issued, insufficient, or due to lack of finality.

In *Kestrel Shipping Co., Inc. v. Munar*,[32] the Court explained that 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. Should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[33]

Similarly, in *Carcedo v. Maine Marine Phils., Inc.*,[34] the seafarer's foot was wounded while on duty. When he was repatriated, the company-designated physician subjected him to a medical examination and subsequently issued a disability assessment stating that the seafarer merely had an "[i]mpediment disability grading of 8% loss of first toe and some of its metatarsal bone." Yet, the seafarer required further medical treatments and underwent amputation. The Court concluded that the company-designated physician's disability assessment was not definitive and, because he failed to issue a final assessment, the seafarer was certainly under permanent total disability.

Indubitably, the timely and definite declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade.

In the instant case, the company-designated physician failed to give a definitive impediment rating on petitioner's disability beyond the extended temporary disability period of over 120 but not more than 240 days. The May 11, 2012 disability assessment issued by the company-designated physician was merely interim because petitioner still experienced recurring pain in his left hand and was required to undergo further therapy sessions even after May 11, 2012.

It also bears stressing that when petitioner sought for a grievance conference on July 27, 2012, the period of 240 days had already lapsed on July 24, 2012 without a final and definite disability assessment from the company-designated physician. At that point, the law steps in to consider petitioner's disability as permanent and total.[35] By operation of law, petitioner's total and temporary disability lapsed into a total and permanent disability.[36] Clearly then, the third-doctor-referral provision as provided in the POEA-SEC[37] does not find application in the case at bar. Petitioner's cause of action arose when his disability went beyond the 240-day period without a final assessment having been issued by the company-designated physician.

Furthermore, beyond the 240-day period, petitioner was still incapacitated to perform his usual sea duties as he was still feeling persistent pain in his injured hand and was advised to undergo further therapy sessions. Verily, in spite of the lapse of the extended 240-day period, petitioner was still incapacitated to perform his sea duties. Due to the injury he sustained, he could no longer perform his usual tasks as chief cook in any vessel. Thus, it resulted in his unemployment until this very day. As correctly held by the VA, this clearly indicates petitioner's total and permanent disability.

In *Remigio v. NLRC*,[38] the Court held:

> **Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers.** In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico, GSIS v. CA*, and *Bejerano v. ECC* that **'disability should not be understood more on its medical significance but on the loss of earning capacity. 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. It does not mean absolute helplessness.' It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.** (emphasis supplied)

The law is clear on the total and permanent nature of petitioner's disability. As it were, petitioner was not able to perform his gainful occupation as chief cook and seafarer for more than 240 days. Given petitioner's loss of gripping power and inability to carry light objects, it is highly improbable that he would be employed as a chief cook again.

Jurisprudence has repeatedly held that disability is intimately related to one's earning capacity. It is the *inability to substantially do all material acts necessary to the pursuit of an occupation he was trained for without any pain, discomfort, or danger to life*. A total disability does not require that the seafarer be completely disabled or totally paralyzed. What is necessary is that the injury incapacitates an employee from pursuing and earning his or her usual work. A total disability is considered permanent if it lasts continuously for more than 120 days.[39]

Disability compensation due

Having established that petitioner is entitled to permanent and total disability benefits, the next issue to be resolved is the amount of disability compensation due him.

The CBA involved in this case contains the following pertinent medical and disability provisions:

		Capital Sum Insured US$100,000
1 All Ratings		
2 Compensation shall be paid to any seaman who sustains injuries through accident as follows:		
		% of Capital Sum Insured
2.1 Death		100%
2.2 Total and Permanent Disablement		100%
2.3 Total Paralysis or injuries resulting in being permanently bedridden		100%
2.4 Dismemberment		
x x x x		
2.4.14 Loss of index finger -	three phalanges	10%

two phalanges	8%
one phalanx	4%

Claiming that his injury has rendered him totally and permanently unfit for any sea duty, petitioner sought for the payment of permanent disability benefits based on the above-quoted provisions of the CBA. Petitioner claims that he is entitled to a 100% disability compensation under total and permanent disablement, which is equivalent to US$100,000.

On the other hand, respondents refused to acknowledge that they are liable for 100% disability compensation under the CBA, arguing that the CBA does not contain a permanent unfitness clause which is a provision that entitles seafarers unable to return to sea duties to maximum disability benefits regardless of the degree of disability.[40] Respondents counter that petitioner's loss of index finger (one phalanx), under the CBA, merely entitles him to 4% of the maximum disability amount equivalent to US$4,000. Respondents' argument is misplaced.

First, it is not only the contract between the parties that governs the determination of the disability compensation due the seafarer.[41] The Court has ruled that to determine whether a seafarer is entitled to permanent and total disability benefits, both the law and contract which govern his or her overseas employment should be taken into account.[42] As discussed above, the pertinent laws are the provisions on disability of the Labor Code,[43] in relation with Rule X, Section 2 of the AREC,[44] which implemented Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, Series of 2000, of the Department of Labor and Employment, and the parties' CBA bind the seafarer and his or her employer to each other.[45]

Thus, while it has been established that the CBA is the contractual consideration in determining the rights of a seafarer to disability benefits, it cannot be read and interpreted in isolation of the foregoing statutory provisions, implementing rules, and prevailing jurisprudence. In determining the disability compensation due to a seafarer, the Court does not only consider the physical injury sustained, but the effect of such injury to the seafarer's capacity to perform the usual tasks that he was trained for or accustomed to perform. In *Seagull Maritime Corp. v. Jaycee Dee and NLRC*,[46] the Court held:

> It is in accord with judicious reasoning for the NLRC to cite the rule that a **claimant's disability should not be understood solely on its medical significance, but also on the real and actual effects of the injury to the claimant's right and opportunity to perform work and earn a living**. (emphasis supplied)

In the instant case, the Court looks not only into the physical loss of petitioner's index finger, but the effect of such loss to his capacity to perform his usual tasks on board an ocean-going vessel. The character of petitioner's injury may seem insignificant at the outset, but considering the nature of his work, the Court cannot turn a blind eye to the obvious value of petitioner's hands to his job as a chief cook.

As a result of petitioner's injury, his entire left hand was permanently affected and was totally disabled. The debilitating injury he sustained on board the vessel rendered him incapable of performing his tasks. Thus, while the CBA classified petitioner's injury under "loss of index finger (one phalanx)," it has nonetheless disabled him permanently from performing strenuous work as a chief cook. As such, it would be absurd to grant only 4% compensation for the injury sustained by petitioner when the said injury has rendered him totally and permanently disabled. Clearly then, the correct disability compensation due to petitioner under the CBA is 100% "Total and Permanent Disablement" benefits equivalent to the amount of US$100,000.

Second, the lack of a so-called "permanent unfitness clause" in the parties' CBA is immaterial in the instant case as there is nothing in the said CBA which prohibits petitioner from claiming total and permanent disability benefits under it. There is no stipulation in the CBA which bars petitioner from receiving the maximum compensation in the amount of US$100,000 as a result of his total and permanent disability. In fact, Section 2.2 of the said CBA provides for a 100% "Total and Permanent Disablement" compensation benefit. At any rate, even if We were to assume arguendo that there exists a stipulation in the CBA which excludes a "permanent unfitness clause," such stipulation is invalid. The law is read into, and forms part of, contracts; and provisions in a contract are valid only if they are not contrary to law, morals, good customs, public order or public policy.[47]

All told, petitioner's loss of his index finger does not preclude an award for total and permanent disability because, in labor laws, disability . need not render the seafarer absolutely helpless or feeble to be compensable. It is enough that it incapacitates him to perform his customary work.[48] The Court has consistently ruled that disability should not be understood more on its medical significance but on the loss of earning capacity.[49] What is crucial is whether the seafarer who suffers from disability could still perform his or her work notwithstanding the disability the seafarer incurred.

Evidently, petitioner was not able to return to his job after the injury he sustained on board the respondents' vessel. Records show that the petitioner did not get a new overseas assignment after his disability. This only shows that his disability effectively barred his chances to be deployed abroad as a chief cook of an ocean-going vessel. Therefore, it is fitting that petitioner be entitled to total and permanent disability benefits considering that he would not be able to resume his previous occupation and the probability that he would be hired by other maritime employers would be close to impossible.

Lastly, considering that petitioner was forced to litigate and incur expenses to protect his valid claim, his right to attorney's fees as recognized by the VA is affirmed by this Court. Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.[50]

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The June 25, 2015 Decision and September 18, 2015 Resolution of the Court of Appeals in CA-G.R.

SP No. 137055 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision of the Panel of Voluntary Arbitrators in AC-305-NCMB-NCR-001-01-01-2014 is hereby **REINSTATED**.

SO ORDERED.

Peralta, Perez, Reyes, and *Jardeleza, JJ.*, concur.

September 27, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **August 31, 2016** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 27, 2016 at 10:40 a.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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[1] *Rollo*, pp. 250-264. Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles.

[2] Id. at 290-294.

[3] Id. at 149-169. Penned by Accredited Voluntary Arbitrator (AVA) Chairman Jesus S. Silo, with AVA Gregorio C. Biares, Jr. concurring and AVA Leonardo B. Saulog dissenting.

[4] Id. at 187-188.

[5] Id. at 36.

[6] Id. at 39.

[7] Id. at 43-45.

[8] Id. at 296.

[9] Id. at 56.

[10] Id. at 57.

[11] Id. at 58.

[12] Id. at 59-60.

[13] Id. at 61.

[14] Id. at 149.

[15] Id. at 115.

[16] Id. at 78.

[17] Id. at 165.

[18] Id. at 163.

[19] Id. at 164.

[20] Id. at 254-255.

[21] Id. at 264.

[22] Id. at 256-257.

[23] Id. at 20-21.

[24] Id. at 310-312.

[25] See *Magsaysay Maritime Corp. v. Simbajon*, G.R. No. 203472, July 9, 2014, 729 SCRA 631, 652-653, where the Court acknowledged the said amendment to the POEA-SEC.

[26] *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015.

[27] LABOR CODE, Arts. 191-193.

[28] Now Art. 198 (c) (I) based on the renumbered Labor Code, per DOLE Department Advisory No. 01, Series of 2015.

[29] *Hanseatic Shipping Philippines Inc. v. Ballon*, G.R. No. 212764, September 9,

2015; *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015; *Maersk Filipinas Crewing, Inc. v. Mesina*, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 619, citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 273-274 (2011).

[30] G.R. No. 193679, 18 July 2012, 677 SCRA 296, 314-315.

[31] *Rollo*, p. 58.

[32] G.R. No. 198501, January 30, 2013.

[33] See also *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, G.R. No. 211882, July 29, 2015.

[34] G.R. No. 203804, April 15, 2015.

[35] *Fil-Pride Shipping Company, Inc. v. Balasta*, G.R. No. 193047, March 3, 2014; *United Philippine Lines v. Sibig*, G.R. No. 201072, April 2, 2014; *Magsaysay Maritime Corporation v. Lobusta*, G.R. No. 177578, January 25, 2012.

[36] *Carcedo v. Maine Marine Phils., Inc.*, G.R. No. 203804, April 15, 2015; *Libang v. Indochina Ship Management, Inc.*, G.R. No. 189863, September 17, 2014; *United Philippine Lines v. Sibig*, G.R. No. 201072, April 2, 2014; *Fil-Pride Shipping Company, Inc. v. Balasta*, G.R. No. 193047, March 3, 2014, 717 SCRA 624, 626; *Magsaysay Maritime Corporation v. Lobusta*, G.R. No. 177578, January 25, 2012, 664 SCRA 134, 147-148; and *Oriental Shipmanagement Co., Inc. v. Bastol*, 636 Phil. 358 (2010).

[37] 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 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

[38] 521 Phil. 330, 346-347 (2006); also cited in *Carcedo v. Maine Marine Phils., Inc.*, G.R. No. 203804, April 15, 2015.

[39] *Maersk Filipinas Crewing, Inc. v. Mesina*, G.R. No. 200837, June 5, 2013, 697

SCRA 601.

[40] *Rollo*, p. 305.

[41] *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016 and *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et al.*, 630 Phil. 352, 362 (2010).

[42] As discussed herein, Ihe material statutory provisions are Articles 191 to 193, 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, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' CBA bind the seaman and his employer to each other.

[43] LABOR CODE, Arts. 191-193.

[44] Section 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.

[45] *Austria v. Crystal Shipping, Inc.*, supra note 41 and *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et al.*, supra note 41.

[46] G.R. No. 165156, April 2, 2007.

[47] New Civil Code, Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient provided they are not contrary to law, morals, good customs, public order, or public policy.

[48] *Esguerra v. United Philippines Lines, Inc.*, G.R. No. 199932, July 3, 2013, citing *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 671 (2007).

[49] *Philippines Transmarine Carriers, Inc. v. NLRC*, G.R. No. 123891, February 28, 2001.

[50] *United Philippine Lines, Inc. v. Sibug*, G.R. No. 201072, April 2, 2014 and *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, G.R. No. 193047, March 3, 2014.