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SECOND DIVISION

[G.R. No. 220002, August 02, 2017]

EUGENIO M. GOMEZ, PETITIONER, VS. CROSSWORLD MARINE SERVICES, INC., GOLDEN SHIPPING COMPANY S.A., AND ELEAZAR DIAZ, RESPONDENTS.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals[2] dated February 5, 2015 and its Resolution[3] dated August 7, 2015, declaring petitioner Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8 and ordering respondents Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay petitioner Gomez his disability compensation in the amount of US$30,527.26 or its peso equivalent at the exchange rate prevailing at the time of actual payment as well as attorney's fees equivalent to 10% of the said amount due.

The facts are as follows:

On October 12, 2011, Crossworld Marine Services, Inc., in behalf of its principal, Golden Union Shipping Company, hired petitioner Eugenio M. Gomez as an Ordinary Seaman in the vessel M/V Elena VE for a period of 11 months, with a basic monthly compensation of US$583.00. At the time of petitioner's employment, the employees of M/V Elena VE were covered by a special agreement known as *ITF UNIFORM "TCC" Collective Agreement* between the ship owner and the union.[4]

Before being hired by respondents, petitioner underwent the required pre-employment medical examination and he was declared fit to work. Petitioner, 42 years old then, joined respondents' vessel on October 30, 2011 in Belgium.[5]

On February 29, 2012, at about 8:00 a.m., the Chief Officer of the vessel told petitioner to remove the ice from the lower and upper decks of the ship. While performing this task, petitioner accidentally slipped and hit his lower back on the steel deck. Petitioner was immediately in pain, but thought it was just temporary. He rested a moment and then continued to work despite the pain. He reported the incident to his superior when he asked for pain relievers.[6]

After 15 days or on March 15, 2012, petitioner could no longer bear the pain on his back and went to the vessel's master and requested for medical examination. He was told to go to the hospital the next day.[7]

Petitioner was examined and treated in Belgium; x-ray was done, intravenous fluid was administered, and medicine was injected twice on his back. He was diagnosed with Lumbago. The doctor-in-charge recommended petitioner's repatriation for further treatment.[8] Petitioner was repatriated to the Philippines on March 18, 2012.[9]

Petitioner arrived in the Philippines on March 19, 2012. The next day, petitioner reported to respondents and requested for further medical examination and treatment.[10] Petitioner was referred to the company's accredited doctors at the International Health Aide Diagnostic Services, Inc. (*IHADS*) for medical evaluation. He underwent six sessions of physical therapy, but the pain in his lumbar area still persisted. On May 11, 2012, IHADS referred petitioner for magnetic resonance imaging (*MRI*) of his lumbosacral spine at the University Physicians Medical Center. The MRI yielded this result:

> IMPRESSION:
>
> Multilevel discogenic and osteophytic central canal and bilateral foraminal stenosis as described, L4-L5 and L5-S1.
>
> Disc dessication, L4-L5 and L5-S1[11]

On June 6, 2012, petitioner was hospitalized at the Medical Center Manila to undergo two surgical procedures: lumbar laminectomy[12] and foraminotomy[13] to address petitioner's herniated disc, as advised by the company doctor. The Record of Operation[14] dated June 7, 2012 showed the preoperative diagnosis: slipped disc, L4-L5, L5-S1. Petitioner was discharged from the hospital on June 13, 2012 with home medication.

Petitioner went to IHADS for a follow-up checkup on June 20, 2012; July 16, 2012 and August 17, 2012.[15]

On July 24, 2012, the company-designated doctor, Dr. Ma. Dolores Tay, submitted a medical report[16] to Captain Eleazar Diaz, president of respondent Crossworld Marine Services, Inc., stating that petitioner can walk without difficulty, but petitioner complained about a mild pain on the left buttock area on prolonged sitting or standing; mild activities are allowed; and the interim disability assessment is Grade 8 based on the POEA Contract Schedule of Disability.

On August 18, 2012, Dr. Tay submitted another report[17] to the President of respondent Crossworld Marine Services, Inc., stating that petitioner still complained of mild low back discomfort; he was advised to maintain ideal weight; and the attending spine surgeon recommended rehabilitation for flexibility and strengthening.

Petitioner was referred to Dr. Emily P. Noche-Cabungcal for physical therapy. Petitioner completed six sessions of physical therapy, but he still complained of low back pain. On September 8, 2012, Dr. Noche-Cabungcal recommended the continuation of physical

therapy.[18] Petitioner, however, stated that respondents already refused to shoulder further medical expenses.[19]

On September 11, 2012, Dr. Tay submitted another report on the condition of petitioner to the President of respondent Crossworld Marine Services, Inc., stating thus:

> PRESENT EXAMINATION:
>
> He still complains of mild low back discomfort although no neurologic deficits noted. **Functional capacity testing was done according to his job description which he did not pass due to back pain on certain motions.** He should continue flexibility and strength exercises through his physiatrist. Follow up is scheduled on October 11, 2012.
>
> DIAGNOSIS: Status post laminectomy L4L5-L5S1 and foraminotomy L4L5-L4S1. Ongoing physiotherapy.
>
> DISPOSITION: Prognosis is fair to good. His symptoms at present are subjective. If he will pass the functional capacity testing after adequate flexibility is attained, he can resume work at sea.
>
> This is seen in 2 to 3 more months. **Interim disability assessment is unchanged at Grade 8 based on the POEA Contract Schedule of Impediments.**[20] (Emphasis supplied.)

Meantime, petitioner went to see another physician, Dr. Renato P. Runas, an orthopedic surgeon, for a second opinion regarding his low back pain. In a Medical Evaluation Report dated September 7, 2012,[21] Dr. Runas made this finding:

> x x x x
>
> At present, Seaman Gomez is still incapacitated due to pain on the lower back with numbness of the left lower extremity. Lower back pain is triggered by exertion. He cannot tolerate prolonged walking and standing because of pain. Forward and backward trunk motion is limited because of pain. He has difficulty standing from a sitting position. x x x
>
> Seaman Gomez is still saddled with persistent and chronic moderate to severe low back pain. The residual pain is secondary to the disc disease and osteoarthritis. This chronic residual low back pain proved to be refractory to medications and physiotherapy management. He is unable to carry and lift heavy objects due to stiffness and pain. It is also difficult for him to bend, pick up and carry objects from the floor because of the limitation of trunk motion. **The surgery has lessened the intensity of pain but he did not regain his physical capacity to work. As an Ordinary Seaman, he does strenuous and heavy jobs which are no longer possible after the surgery. He needs complete activity modification to avoid further damage to the spine. He is unfit for sea duty in whatever capacity**

> **with a permanent disability since he can no longer perform his work which he is previously engaged in.** (Emphasis supplied)

Petitioner asked respondents for payment of his disability benefits, but respondents refused. Efforts toward an amicable settlement was unsuccessful. Hence, on September 13, 2012, petitioner filed a complaint[22] before the Labor Arbiter, praying that his disability be declared as work-related, total and permanent, and that respondents be declared solidarity liable to pay him permanent total disability benefit, moral and exemplary damages and attorney's fees.

In their Position Paper,[23] respondents stated that in view of the medical report of their accredited doctor dated September 11, 2012 stating that petitioner can eventually resume his sea duties, they declined petitioner's claim for permanent total disability benefit.

The Labor Arbiter's Ruling

In a Decision[24] dated November 22, 2013, the Labor Arbiter held that petitioner was permanently and totally disabled and that he could no longer resume sea duty. The Labor Arbiter cited the medical report dated September 11, 2012 of the company-designated physician, which stated that petitioner did not pass the functional capacity test done according to petitioner's job description and he should continue flexibility and strength exercises through his physiatrist. The Labor Arbiter found as unmeritorious respondent's contention that petitioner's resumption of work at sea is expected, because petitioner did not pass the functional capacity test and was required to continue physical therapy, and he was still suffering from disability and has not returned to his previous job for more than 120 days. The Labor Arbiter cited *Crystal Shipping, Inc. v. Natividad*,[25] which held that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

The Labor Arbiter stated that while the company-designated physicians did not state in categorical terms that petitioner was permanently disabled, they did not also state that he was already fit to work with disability Grade 8 and petitioner has not returned to his previous job for more than 120 days. The Labor Arbiter held that the findings of the company-designated physicians is not binding on the Labor Arbiter or the courts for the said reports would have to be evaluated on their inherent merit.

The Labor Arbiter ruled that petitioner's employment was covered by the ITF Uniform "TCC" Collective Bargaining Agreement (CBA), and petitioner is entitled to disability compensation under Section 21 (a) and (b) thereof in the amount of US$156,816.00. The dispositive portion of the Decision reads:

> WHEREFORE, a Decision is hereby rendered ordering Respondents Crossworld Marine Services, Inc. and Golden Union Shipping Company, S.A. to jointly and severally pay complainant Eugenio M. Gomez permanent disability benefit Grade 1, in the amount of US$156,816 or its peso

> equivalent at the exchange rate prevailing at the time of actual payment plus 10% thereof as and by way of attorney's fees.[26]

Respondents appealed the Decision of the Labor Arbiter to the National Labor Relations Commission (*NLRC*).

The NLRC's Ruling

In a Decision[27] dated April 11, 2013, the NLRC affirmed the Decision of the Labor Arbiter. The NLRC stated that given the medical condition of petitioner as elaborated by petitioner's specialist of choice and with due regard to the observations of the company-designated doctors that complainant's back pain persisted despite surgery and rehabilitation for a period of six months, it was inclined to believe that petitioner was suffering from permanent total disability as he is already permanently impaired in his earning capacity as an Ordinary Seaman or in any other work of a similar nature. Permanent total disability does not mean absolute helplessness. It 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 can do.[28]

The NLRC stated that as the vessel MV Elena VE was actually covered by the ITF TCC CBA when petitioner was engaged in the vessel in October 2011, it agreed with the Labor Arbiter's findings that petitioner is entitled to Disability 21 (a) and (b) of the said CBA in the amount of US$156,816.00 as full disability benefit for ratings, including an ordinary seaman.

The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the appeal of the respondents is DENIED for lack of merit and the Labor Arbiter's Decision is hereby AFFIRMED in its entirety.[29]

The NLRC denied respondents' motion for reconsideration in a Resolution[30] dated June 20, 2013.

Respondents filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the award in favor of petitioner of full disability benefit in the amount of US$156,816.00 under the ITF Standard CBA.[31]

The Court of Appeals' Ruling

The Court of Appeals stated that the crux of the controversy is whether petitioner's injury is permanent total disability, in order to ascertain the rate of disability compensation that should be awarded to him.

The Court of Appeals found that the evidence clearly established that petitioner's injury rendered him permanently disabled, which hindered him from performing the work he

was trained for or accustomed to do. Despite immediate and extensive medical treatment which lasted for six months or 180 days, the company-designated physician's assessment of petitioner's injury did not show remarkable progress. The surgical procedures (laminectomy and foraminotomy) performed to address petitioner's herniated discs did not entirely free him from low back pain. Although the company-designated physician, Dr. Tay, made a prognosis of "fair to good" on September 11, 2012, petitioner's disability with a Grade 8 impediment remained unchanged. Dr. Tay also noted that petitioner did not pass the functional capacity test that was tailored to petitioner's job description and recommended further therapy session for flexibility enhancement, and the therapy would take another two to three months.[32]

The Court of Appeals averred that although the provisions of the POEA Standard Employment Contract (POEASEC) and the applicable ITF TCC Collective Agreement state that it is the duty of the company-designated doctor to declare the employee's fitness or unfitness to resume sea duty, the said rule does not deprive the seaman to consult another doctor to make an independent evaluation of his medical condition. Moreover, if the doctor of the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be chosen jointly by the company and the seafarer, and the decision of the third doctor shall be final and binding on both parties. However, since the parties did not appoint a third physician, the Court of Appeals evaluated the findings of the company-designated doctor, Dr. Tay, and petitioner's private doctor, Dr. Runas, based on their inherent merit.[33]

The Court of Appeals found no genuine inconsistency between the findings of the two doctors.

> x x x We reiterate that although Dr. Tay made no definitive findings as to the fitness of Gomez to resume his duties as Ordinary Seaman, she noted that the latter could not yet resume his work because he failed the functional capacity test; and that his disability with an impediment of Grade 8 shall continue up to three months. On the other, hand, while Dr. Tay's findings were vague and inconclusive, Dr. Runas was explicit in declaring that Gomez' injury is permanent because the same is resistant to physical therapy and treatment. Consistent with the findings of the company-designated physician, Dr. Runas observed that Gomez' low back pain is triggered by exertion, thus, limiting his forward and backward trunk motion. Dr. Runas opined that regardless of continuous medical intervention, Gomez could no longer perform strenuous and heavy work, making him "unfit for sea duty in whatever capacity x x x."[34]

As between Dr. Runas' express declaration that petitioner is suffering from permanent disability and Dr. Tay's more positive assessment, the Court of Appeals gave merit to Dr. Runas' assessment that petitioner is suffering from permanent disability thus:

> As between Dr. Runas' express declaration that Gomez is suffering from permanent disability and Dr. Tay's more positive assessment, We give merit to the former's findings. In *Abante v. KJGS Fleet Management Manila, et al.*, the Supreme Court recognized the propensity of the company-designated physicians, who are employed by the shipowner or the manning agency, to

> be more hopeful in their evaluation than that of a physician of the seafarer's choice. If We uphold the more positive outlook of the company-designated physician, the seaman would inevitably be denied of his right to disability compensation under Our labor laws and the parties' agreement. We should be cognizant of the social justice principle upon which Our labor laws are founded - that when there is doubt, the same should be resolved in favor of the working man x x x.[35]

However, the Court of Appeals stated that the issue of whether or not the injury of petitioner is total or partial is another matter as the NLRC failed to state the factual basis in declaring petitioner totally disabled. The findings of Dr. Runas was silent with respect to the disability grade of petitioner. It noted that petitioner's injury is not among those listed under Section 32 of the POEA SEC with Grade 1 impediment, which is considered as total disability.[36]

Moreover, the Court of Appeals said that the Labor Arbiter's reliance on Article 192 of the Labor Code, which provides that temporary total disability lasting continuously for more than 120 days shall be deemed total and permanent, cannot be applied in this case. Prevailing jurisprudence[37] clarifies that when the seafarer who is suffering from an illness or injury needs further treatment in order to fully recover, the period of 120 days may be extended up to 240 days. It is only when the company-designated physician fails to arrive at a definite assessment of the seafarer's fitness to work or disability within the 240-day period that the seafarer shall be deemed permanently and totally disabled.[38]

The Court of Appeals held that in this case, the legal presumption of permanent total disability does not operate in favor of petitioner as he filed his complaint only on September 13, 2012 following his repatriation on March 19, 2012. Petitioner filed his complaint [179] days from the date of his repatriation or before the lapse of the 240-day period upon which Dr. Tay may make her final assessment of petitioner's medical condition.[39]

For these reasons, the Court of Appeals adopted the disability impediment of Grade 8 given by Dr. Tay. Grade 8 has an equivalent rating of 33.59% under the Schedule of Disability provided in Section 32 of the POEA SEC.[40]

The Court of Appeals held that it was undisputed that the vessel of petitioner was covered by the ITF TCC Collective Agreement.[41] Under Section 24.3 of the Agreement, the rate of compensation for total permanent disability of an Ordinary Seaman like petitioner is USS90,882.00, and not US$156,816, which is the rate under the ITF Standard Contract,[42] as erroneously applied by the Labor Arbiter and the NLRC. The Court of Appeals computed petitioner's disability compensation in this manner: 33.59% (degree of disability) x US$90,882 = US$30,527.26.[43]

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the instant Petition for Certiorari is PARTIALLY GRANTED. The Decision dated April 11, 2013 and Resolution dated June 30, 2013 of the National Labor Relations Commission, Fourth.Division (Formerly Seventh Division), rendered in NLRC LAC No. OFW (M) 01-000126-13, NLRC NCR Case No. 09-13737-11, are hereby MODIFIED as follows:

1. Declaring Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8;

2. Ordering the petitioners Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay Gomez his disability compensation in the amount of US$30,527.26 or its peso equivalent at the exchange rate prevailing at the time of actual payment as well as attorney's fees equivalent to 10% of the said amount due.[44]

Issues

Petitioner filed this petition for *certiorari* under Rule 45 of the Rules of Court, alleging that the Court of Appeals gravely abused its discretion amounting to lack or excess of jurisdiction when (1) it reversed the decision of the NLRC, which affirmed the decision of the Labor Arbiter; (2) it ruled that he is not entitled to full disability benefits despite his factual medical condition; (3) it refused to apply to him the landmark case of *Kestrel Shipping Company, Inc. v. Francisco Munar* (G.R. No. 198501, January 30, 2013).[45]

Petitioner contends that the Court of Appeals gravely abused its discretion in refusing to follow the Labor Code's provision concerning total permanent disability as 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, and when it adopted the medical findings of the company-designated physician despite being hearsay, with absence of a categorical declaration of fitness to return to work.

The Court's Ruling

The main issue is the propriety of awarding disability benefits to petitioner Gomez considering that he was not declared fit to work within the period.allowed by law.

A seafarer's right to disability benefits is a matter governed by law, contract and medical findings.[46] The material legal provisions are Articles 191 to 193[47] of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees' Compensation.[48] The relevant contracts are the POEA SEC and the CBA.

The provision on permanent total disability is contained in Article 192 of the Labor Code thus:

Article 192. Permanent total disability. — x x x

x 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;

x x x

The rule referred to by Article 192 (c) (1) of the Labor Code is Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code, which states:

> Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. **If caused by an injury or sickness it shall not be paid longer than 120 consecutive days <u>except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability</u> 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.)

Forming an integral part of petitioner's contract of employment[49] is the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships contained in POEA Memorandum Circular No. 10, Series of 2010, Section 20 of which states:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
>
> 2. If the injury or illness requires medical x x x treatment in a foreign port, the employer shall be liable for the full cost of such medical, x x x surgical and hospital treatment x x x until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from

the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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 x x x. 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.

x x x x

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

   The 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.

7. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws, such as from the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-ibig Fund).

Vergara v. Hammonia Maritime Services, Inc.,[50] explained:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in

> no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[51]

A temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.[52]

In this case, the treatment of petitioner's injury required spine surgery and physical therapy which extended beyond the initial 120-day period into the maximum 240-day treatment period. The company-designated doctor's medical report dated September 11, 2017 (made 195 days from the time petitioner was injured on February 29, 2012) stated that petitioner failed the functional capacity test and recommended that petitioner continue therapy for two to three months. Petitioner filed his complaint on September 13, 2012 or 197 days from the date he was injured, and, therefore, before the lapse of the maximum 240-day treatment period within which the company-designated physician should assess the fitness of petitioner to return to work. Since the company-designated doctor has not declared that petitioner is not fit to work within the 240-day period, and the 240-day period has not lapsed when petitioner filed his complaint, the petitioner cannot be legally presumed as permanently and totally disabled to be entitled to permanent total disability. To reiterate, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he/she fails to make such declaration.[53]

However, considering that the Labor Arbiter, the NLRC, and the Court of Appeals all found petitioner Gomez to be disabled due to a work-related injury, this fact is now binding on the respondents and this Court.[54] The Court concurs with the Court of Appeals' finding that petitioner suffers from a partial permanent disability grade of 8 given by the company-designated doctor based on the POEA SEC Schedule of Disability.[55] The disability grade is in accordance with Section 20-A (6) of the POEA SEC, which states: "The 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."

Moreover, petitioner contends that the medical reports by the company-designated doctor, Dr. Tay, are mere hearsay evidence since she is only the medical coordinator of

respondents at their company-designated clinic, but the actual medical findings of the spine surgeon were not presented in evidence.

Petitioner should have raised the issue on the medical reports being hearsay evidence before the Labor Arbiter. As a general rule, points of law, theories, and arguments not brought below cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result.[56] In the interest of justice, however, the Court may consider and resolve issues not raised below if it is necessary for the complete adjudication of the rights and obligations of the parties, and it falls within the issues found by the parties.[57]

The medical reports of Dr. Tay, referred to by petitioner, are the reports addressed to the President of respondent Crossworld Marine Services, Inc., informing him about the medical condition of petitioner. These medical reports on petitioner's series of medical treatments - from his referral to the company doctors for six sessions of physical therapy, MRI, two surgical procedures (laminectomy and foraminotomy) to address the slipped disc in petitioner's lumbar area, and six sessions of physical therapy after his operation - were not disputed by petitioner before the Labor Arbiter, NLRC and the Court of Appeals and he even confirmed the medical treatments contained in the said reports in his Complaint and his Petition before us. The report dated May 12, 2012 (Annex "E")[58] particularly referred to by petitioner states, among others, that the attending spine surgeon re-evaluated the condition of petitioner and "[s]urgery is indicated." Although the actual medical finding of the attending spine surgeon was not presented in evidence, yet, petitioner actually underwent the spine surgery recommended by the attending spine surgeon to address the slipped disc of petitioner in the lumbar area. Apparently, Dr. Tay and the spine surgeon and other company-designated doctors who attended to petitioner worked closely with each other in monitoring the medical condition of petitioner and their findings are reflected in the medical reports of Dr. Tay. In the absence of substantial evidence from the petitioner that Dr. Tay did not have personal knowledge of the findings in the medical reports, the contention that the medical reports are hearsay is without basis and, therefore, unmeritorious.

As regards Dr. Tay's advice that petitioner should continue therapy for two to three months because he failed the functional capacity test, petitioner cited *Esguerra v. United Philippines Lines, Inc.*,[59] which held that the uncertain effect of further treatment intimates nothing more but that the injury sustained by the seafarer bars him from performing his customary and strenuous work as a seafarer/fitter. As such, he is considered permanently and totally disabled.

This case is different from *Esguerra*. In *Esguerra*, the Court found that the orthopedic surgeon designated by the respondents therein and the independent specialist of the petitioner therein were one in declaring that the petitioner therein was permanently unfit for sea duty. The petitioner's doctor categorically stated in a medical certificate that petitioner therein was permanently unfit for sea-faring duty, while the report of respondent's designated-surgeon conveyed a similar conclusion when he stated: "[f]urther treatment would probably be of some benefit but will not guarantee (the petitioner's) fitness to work." Hence, the Court held in *Esguerra*: "The uncertain effect

of further treatment intimates nothing more but that the injury sustained by the petitioner bars him from performing his customary and strenuous work as a seafarer/fitter." "As such, he is considered permanently and totally disabled." In this case, the company-designated doctor's prognosis of petitioner's fitness to resume sea duty was fair to good, and she recommended that petitioner should continue flexibility and strength exercises through his physiatrist.

Further, petitioner contends that the Court of Appeals committed grave abuse of discretion when it refused to apply to him the case of *Kestrel Shipping Company, Inc. v. Munar*.[60]

Indeed, *Kestrel Shipping Company, Inc.* is inapplicable to this case. It involved a complaint for disability benefit for an injury that happened in 2006. Hence, the Court applied the prevailing rule enunciated in *Crystal Shipping, Inc. v. Natividad*,[61] promulgated on October 20, 2005, that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. *Crystal Shipping, Inc.* was promulgated almost three years before *Vergara* was promulgated on October 6, 2008. *Vergara* pronounced that a temporary total disability.only becomes permanent when so declared by the company physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.[62]

Kestrel Shipping Company, Inc. explained:

> This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days. [63]

The Court of Appeals correctly found that the CBA that covers petitioner's employment is the *ITF Uniform "TCC" Collective Agreement*, which was admitted by respondents, agreed to by the Labor Arbiter and the NLRC, but the Labor Arbiter and the NLRC erroneously used the rate of compensation of the *ITF Standard Collective Agreement*, which is a different agreement. Hence, the Court of Appeals correctly computed petitioner's disability benefit under the *ITF Uniform TCC Collective Bargaining Agreement* as follows:

> Disability compensation = 33.59% (Grade 8 disability) x US$90,882
> = US$30,527.26

The Court of Appeals correctly awarded attorney's fees in favor or petitioner. Under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws.[64]

In addition, pursuant to the case of *Nacar v. Gallery Frames*,[65] the Court imposes on the monetary award for permanent partial disability benefit an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.[66]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals dated February 5, 2015 and its Resolution dated August 7, 2015 in CA-G.R. SP No. 131729 are **AFFIRMED WITH MODIFICATION**. The Court declares petitioner Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8 and hereby orders the respondents Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay Gomez his disability compensation in the amount of US$30,527.26 or its peso equivalent at the exchange rate prevailing at the time of actual payment, **plus interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction**, and attorney's fees equivalent to ten percent (10%) of the said amount due.

SO ORDERED.

Carpio, (Chairperson), Mendoza, Leonen, and *Martires, JJ.*, concur.

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[1] *Rollo*, pp. 8-20.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Elihu A. Ybanez and Florito S. Macalino, concurring.

[3] *Id.* at 22-24.

[4] CA Decision, *rollo*, p. 9; Respondents' Position Paper, *rollo*, p. 140.

[5] Complainant's Position Paper, *rollo*, p. 89; records, p. 11.

[6] *Id.*

[7] *Id.* at 90.

[8] Records, "Annex "C," p. 45.

[9] Complainant's Position Paper, *rollo*, p. 90.

[10] Id.

[11] *Rollo*, Annex "F," p. 112.

[12] A laminectomy is a surgical removal of the posterior arch of a vertebra. (Webster's Third New International Dictionary, 1993 edition.)

[13] It is a minimally invasive surgical procedure performed to expand the opening of the spinal column where the nerve roots exit the spinal canal. Its purpose is to relieve the pressure resulting from foraminal stenosis. This is a painful condition caused by a narrowing of the foramen, the opening within each of the spinal bone that allows nerve roots to pass through. Herniated discs and thickened ligaments and joints may also be the cause of the narrowing of the foramen. (As defined in the CA Decision taken from www.orthospineinst.com, *rollo*, p. 10.)

[14] Records, Annex "G," p. 134.

[15] Records, Annex "I," p. 136.

[16] *Rollo*, Annex "H," p. 534.

[17] *Supra* note 15.

[18] Records, Annex "H," p. 52.

[19] Complainant's Position Paper, *rollo*, p. 92.

[20] CA *rollo*, Annex "M," p. 117.

[21] Records, Annex "I," p. 152.

[22] Docketed as NLRC-NCR-OFW-CASE No. (M) 09-13737-12.

[23] Records, p. 82.

[24] *Rollo*, pp. 233-244.

[25] 510 Phil. 332, 340 (2005).

[26] *Rollo*, p. 244.

[27] *Id.* at 285-296.

[28] Citing *Philippine Transmarine Carriers v. National Labor Relations Commission*, 405 Phil. 487, 494(2001).

[29] *Rollo*, p. 295.

[30] *Id.* at 308-311.

[31] *Id.* at 13.

[32] *Id.* at 15.

[33] *Id.* at 16.

[34] *Id.* at 16-17.

[35] *Id.* at 17-18.

[36] *Id.* at 18.

[37] Citing *Kestrel Shipping Company, Inc. v. Munar*, 702 Phil. 717, 733 (2013), which cited *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

[38] *Rollo*, pp. 18-19.

[39] *Id.* at 19.

[40] *Id.*

[41] The complete title of the agreement is "ITF Uniform "TCC" Collective Agreement," Annex "B," Records, p. 100.

[42] The complete title of the agreement is "ITF Standard Collective Agreement," Annex "J," *rollo* p. 118.

[43] *Rollo*, p. 19.

[44] *Id.* at 20.

[45] *Id.* at 44.

[46] *C.F. Sharp Crew Management, Inc. v. Tao*, 691 Phil. 521, 533 (2012).

[47] Under Chapter VI on Disability Benefits.

[48] *Vergara v. Hammonia Maritime Services, Inc., supra* note 37, at 911.

[49] Records, p. 5.

[50] *Supra* note 37.

[51] *Vergara v. Hammonia, Maritime Services, Inc., id.* at 912.

[52] *Id.* at 913.

[53] *Millan v. Wallem Maritime Services, Inc., et al.*, 698 Phil. 437, 445 (2012).

[54] *Pacific Ocean Manning, Inc. v. Penales*, 694 Phil. 239, 252 (2012).

[55] *Rollo*, Annex "J," p. 196.

[56] *Figuera v. Ang*, G.R. No. 204264, June 29, 2016.

[57] *Id.*

[58] Records, p. 131.

[59] 713 Phil. 487, 497 (2013).

[60] *Supra* note 37.

[61] *Supra* note 25, at 340.

[62] *Vergara v. Hammonia Maritime Services, Inc., supra* note 37, at 913.

[63] *Kestrel Shipping Company, Inc. v. Munar, supra* note 37, at 738.

[64] *Esquerra v. United Philippines Lines, Inc., supra* note 59, at 501.

[65] 716 Phil. 267 (2013).

[66] *Acomarit Phils. v. Dotimas*, G.R. No. 90984, August 19, 2015, 767 SCRA 490, 507.