THIRD DIVISION

[G.R. No. 213482, June 26, 2019]

GEORGE M. TOQUERO, PETITIONER, VS. CROSSWORLD MARINE SERVICES, INC., KAPAL CYPRUS, LTD., AND ARNOLD U. MENDOZA, RESPONDENTS.

DECISION

LEONEN, J.:

Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits.[1]

This Court resolves a Petition for Review on Certiorari[2] assailing the April 16, 2014 Decision[3] and July 17, 2014 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 132195. The Court of Appeals ruled that George M. Toquero's (Toquero) injury is not compensable under the Collective Bargaining Agreement and the Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract).

On January 16, 2012, Toquero was employed by Crossworld Marine Services, Inc. (Crossworld) on behalf of its principal, Kapal Cyprus, Ltd., as a fitter for vessel MV AS VICTORIA.[5] His employment had the following terms and conditions:

Duration of contract	: 07 Months (+/-1)
Position	: FITTER
Basic Monthly Salary	: USD 774.00
Hours of Work	: 40hrs/week
Guaranteed Overtime	: USD 576.00 in excess of 103 [hours] at USD 5.59
Leave Pay	: USD 206.00
Subsistence Allowance	: USD 152.00
Monthly Bonus	: USD 31.00
Total	: USD 1,739.00
Point of	: MANILA, PHILIPPINES

Hire
CBA
Reference No. : IMEC-CBA[6]

On January 12, 2012, Toquero underwent a pre-employment medical examination and was declared fit for sea duty. He was deployed on January 23, 2012.[7]

On April 24, 2012, while on board the vessel, Toquero was assaulted by his fellow seafarer, Jamesy Fong (Fong).[8]

According to Toquero, he was instructed by the master of vessel to check and repair a generator. Fong, who was an oiler, was ordered to assist him.[9]

While Fong was removing both the generator's cover lube oil pump and the flanges from the flexible rope, Toquero advised him not to remove the flanges because the problem was in the generator.[10]

This irked Fong, who complained that Toquero had no right to give him orders. Fong recalled their prior altercation and challenged Toquero to a fistfight. Toquero ignored Fong and continued working.[11]

Suddenly, Fong hit the back of Toquero's head with a big and heavy metal spanner, knocking him unconscious. He was given first aid treatment at the ship clinic, where his vital signs were monitored. Meanwhile, Fong was jailed in the immigration office and was scheduled for repatriation.[12]

Toquero was later hospitalized in Lome, Togo, Africa, where he was evaluated by a neurosurgeon, Dr. Tchamba Bambou. The Medical Certificate "noted a large lacerated wound with a large depression on the left parietal area."[13] Toquero underwent urgent craniectomy, debridement, and evacuation of hematoma, which left a hole in his skull. He was discharged from the hospital on May 10, 2012.[14]

On May 14, 2012, Toquero was repatriated to the Philippines.[15] He was then referred to the company-designated physician, Dr. Fe A. Bacungan (Dr. Bacungan), who concluded that his frequent headaches and dizziness were due to the jarring of the brain.[16]

Dr. Bacungan, the vice president and medical director of S.M. Lazo Medical Clinic, Inc., Crossworld's healthcare provider, recommended an electroencephalography for Toquero. She wrote:

> At the clinic, he was examined by one of our doctors and physical examination findings showed a scar and depression on the left parietal area.
>
> Initial Impression: Status-Post Craniotomy, Left Parietal area, with residual Paresthesia of the C1-C4; Depressed Skull, Left Parietal

> Last May 23, 2012, Eng. Fitter Tuquero was referred to our Neurologist, Dr. Epifania Collantes and was again examined. Diagnosis given: Status-Post Head Trauma Secondary to Mauling with Depressed Skull, Left Parietal Area.
>
> . . . .
>
> Recommendation:
>
> 1. To undergo EEG (Electro-Encephalogram).[17]

On June 11, 2012, Toquero underwent a routine electroencephalography conducted by Dr. Benilda C. Sanchez-Gan, an epileptologist.[18] The Medical Report indicated:

> TECHNICAL DESCRIPTION:
>
> . . . .
>
> Photic stimulation and hyperventilation had no effect. No focal abnormality or epileptiform activity was present. Simultaneous single lead EKG showed irregular heart rate of 66-72/minute.
>
> IMPRESSION:
>
> This is a normal awake, drowsy and sleep EEG recording.[19]

Toquero requested that a metal plate be implanted in his skull to cover the hole in it, since only his scalp and hair protected his brain from further injury. The company-designated physician assured him that they would make the proper request, but to no avail.[20]

Alarmed by his physical condition, Toquero consulted his chosen physicians, Dr. Leonardo R. Pascual (Dr. Pascual) and Dr. Renato P. Runas (Dr. Runas).[21]

Dr. Pascual assessed that Toquero's physical discomfort was due to trauma and skull defect. Dr. Runas declared Toquero "permanently unfit to return to work as a seaman in any capacity"[22] and diagnosed him with a total and permanent disability. Dr. Runas' Medical Evaluation Report read:

> Seaman Toquero became incapacitated because of the serious head injury that he incurred on board. He has frequent headache and dizziness as a result of severe jarring of the brain. The physiological state of the brain has been altered by the injury. Numbness of the face and scalp is also a permanent manifestation of the injury. **He has a large bone defect which may pose further damage to his brain.** Contusion of the brain tissue also occurred at the site of the **skull fracture**. Permanent physiological and functional damage may not be apparent initially but will gradually and progressively develop later. At this time, he is no longer allowed to engage in heavy physical activities. The ship's environment is also dangerous to him because of the unsteady state of the vessel when sailing at high seas.

> Dizziness may set anytime and may result to fall, which may cause further irreparable injury. Because of the impediment, **he is permanently unfit to return to work as a seaman in any capacity and considered for total permanent disability**.[23] (Emphasis in the original)

Toquero then asked Crossworld for his sickness allowance, but this was rejected.[24]

On June 18, 2012, Toquero was declared by the company-designated physician as fit to go back to work. However, he only learned about this much later, after he had filed on June 25, 2012 a Complaint against Crossworld for sickness allowance, money claims, moral and exemplary damages, and attorney's fees.[25]

After having learned during the conciliation conference that the company-designated physician had declared him fit for sea duty, he accordingly amended his Complaint to include a claim for total permanent disability benefits.[26]

As an officer with a rating of an above Abie-Bodied Seaman, Toquero prayed for US$250,000.00 as total disability benefits under the Collective Bargaining Agreement covered by the Vereinte Dienstleistungsgewerkschaft (Ver Di Agreement).[27] Section 19 stated:

> A seafarer who suffers injury as a result of an incident from any cause whatsoever whiles in the employment of the Managers/Owners, including accidents occur[r]ing whilest travelling to or from the ship or as a result of marine or other similar peril, and whose ability to work is reduced as a result thereof, shall receive from the Managers/Owners, in addition to his/her sick pay compensation as stated below: Compensation:
>
> a) Masters and Officers and ratings above AB - US$250,000
> b) All ratings AB and below- - US$125,000
>
> Loss of Profession caused by disability (accident) shall be secured by 100% of the compensation.[28]

On January 31, 2013, the Labor Arbiter rendered a Decision[29] dismissing the Complaint for lack of merit. However, since Toquero was injured while working on board, it ruled that Toquero was entitled to the award of US$5,000.00 in the interest of justice and equity and for humanitarian considerations.[30] The dispositive portion of the Decision read:

> WHEREFORE, premises considered, the complaint is hereby dismissed for lack of merit.
>
> Respondents are held solidarity liable to pay complainant his monetary award as specified above.
>
> SO ORDERED.[31]

On appeal, the National Labor Relations Commission, in its June 14, 2013 Decision,[32] modified the Labor Arbiter's Decision. It vacated and set aside the US$5,000.00 award, but ordered Crossworld to pay Toquero sickness allowance and attorney's fees equivalent to 10% of the judgment award.[33] The dispositive portion of its Decision read:

> WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered finding partial merit in the instant appeal; the appealed Decision is hereby MODIFIED in that Respondents are hereby ordered to pay Complainant sickness allowance, and attorney's fees equivalent to ten percent (10%) of the judgment award.
>
> The award of US$ 5,000.00 is hereby VACATED or SET-ASIDE.
>
> So Ordered.[34]

The National Labor Relations Commission found that Toquero's injury was work-related because the master of vessel directed Toquero and Fong to work together despite knowing their previous altercation. Despite this, it ruled that Toquero's injury was not compensable because it resulted from a criminal assault, which was not an accident. It also did not give weight to the findings of Toquero's chosen physicians as they were not supported by medical examinations.[35]

Toquero filed a Motion for Partial Reconsideration, but this was denied. Thus, he filed before the Court of Appeals a Petition for Certiorari.[36]

In its April 16, 2014 Decision,[37] the Court of Appeals dismissed the Petition. It upheld the findings of the company-designated physician who regularly monitored and treated Toquero.[38] Akin to the National Labor Relations Commission, it found that while the injury suffered by Toquero was work-related, it cannot be classified as an accident because it resulted from his co-worker's criminal assault.[39] It ruled that Toquero should have expected the attack because of his previous quarrel with Fong.[40]

Nevertheless, the Court of Appeals reinstated the award of US$5,000.00 in the interest of justice and equity and for humanitarian considerations.[41] The dispositive portion of its Decision read:

> **WHEREFORE**, the instant Petition is hereby **DENIED**. The assailed June 14, 2013 Decision and July 31, 2013 Resolution of the National Labor Relations Commission (Second Division) in NLRC LAC No. 04-000343-13 (NLRC-OFW Case No. 06-09574-12) are **AFFIRMED** with the only **MODIFICATION** that We award the sum of US$5,000.00 in favor of Toquero for his further medical treatment. We, however, affirm in all other aspects.
>
> **SO ORDERED.**[42] (Emphasis in the original)

Toquero filed a Motion for Reconsideration, but this was denied in the Court of Appeals' July 17, 2014 Resolution.[43]

Hence, on August 8, 2014, Toquero filed this Petition for Review on Certiorari.[44]

In its November 12, 2014 Resolution,[45] this Court required respondents to comment on the Petition and petitioner to submit the proof of service and verified statement of the material date of filing.

On January 13, 2015, respondents filed their Comment.[46] On January 26, 2015, petitioner submitted his Affidavit of Service. He subsequently filed an ex-parte Manifestation stating that he would no longer file a reply to the Comment.[47]

Petitioner argues that the Court of Appeals erred in upholding the findings of the company-designated physician, Dr. Bacungan, pointing out that her findings were unreliable and without basis. With doubts on these findings, he avers that he was not prohibited from seeking a second or third medical opinion. He claims that a company-designated physician's findings should not be given evidentiary weight as they tend to be self-serving and biased in favor of the company that pays for the physician's services.[48]

Petitioner further points out that the Medical Reports and letters, on which respondents relied in their Position Paper, were never presented as evidence. Supposedly, Dr. Bacungan wrote in a letter that a certain Dr. Epifania Collantes examined him and found his electroencephalography results normal. But these documents were never submitted.[49]

Meanwhile, in another Medical Report presented by respondents, a neurologist opined that "[a] complete neurologic examination includes memory and cognitive assessment and should be done before declaring the patient incapacitated."[50] Petitioner alleges these tests were never conducted.[51]

Petitioner asserts that these medical opinions highlight the company-designated physician's deficient examination before she declared petitioner fit to return to work as a seafarer. Dr. Bacungan allegedly failed to conduct the recommended complete neurologic examination, and only did a simple electroencephalography, the result of which was never presented as evidence. Hence, the supposed pieces of evidence are mere hearsay, which do not have evidentiary value.[52]

Contrary to the company-designated physician's findings, petitioner claims that he suffers from total and permanent disability and is unfit to work. He laments that his brain can easily be damaged due to the hole and fracture in his skull, posing an imminent danger to his life.[53] His unfitness to work, he points out, is even reflected in respondents' pleadings, which stated that petitioner "still experiences physical discomfort due to the head trauma with resultant skull defect. . . headache, dizziness, and discomfort[.]"[54]

Petitioner also questions the Court of Appeals' reliance on the letters submitted by respondents. It erroneously considered these letters as Medical Certificates, when they were mere correspondences issued by Dr. Bacungan. He further notes that Dr. Bacungan was not the physician who actually conducted the tests on him. As such, her opinions are hearsay and have no probative value.[55]

Conversely, petitioner claims that the findings of his chosen physicians, Dr. Runas and Dr. Pascual, are more credible and reliable because they are independent medical experts who evaluated and examined him in person.[56]

Petitioner also argues that his injury resulted from an accident, contrary to the Court of Appeals' conclusion. He reasoned that he was unaware of Fong's intention to hurt him, believing that their previous squabble had already been resolved. He says that he could not have foreseen what had happened as it was impossible to anticipate what Fong intended to do.[57]

Finally., petitioner argues that while he raises questions of facts improper in a Rule 45 petition, these questions fall under the exceptions to the rule. He alleges that the Court of Appeals: (1) committed grave abuse of discretion; (2) premised its findings on a misapprehension of facts; and (3) based its conclusions on facts without citing specific evidence.[58]

On the other hand, respondents contend that the company-designated physician's assessment was correctly given more weight since it was a more extensive and thorough evaluation of petitioner's condition. They question petitioner's allegation that the company-designated physician's finding is erroneous, as the assessment was based on evaluative tests and procedures.[59]

Respondents further argue that contrary to petitioner's claim that he is unfit to work or is suffering from disability, his chosen physician's Medical Report only stated that he suffers from physical discomfort and is keen on reconstructive surgery.[60]

Respondents also claim that the company-designated physician's evaluation should be upheld since petitioner failed to comply with the mandatory rule of referring the matter to a third doctor.[61]

Moreover, respondents argue that because the Collective Bargaining Agreement precludes disability claims due to willful acts, it is not applicable to petitioner's case since his injury did not result from an accident. Hence, his claim should be denied.[62]

Furthermore, respondents claim that the controlling Collective Bargaining Agreement, which provides maximum disability benefits at US$90,882.00, prevails over the Collective Bargaining Agreement that petitioner presented, which provides maximum disability benefits of US$250,000.00.[63]

Respondents also claim that the position of a fitter, which is not a licensed crew, has

never been considered to fall under the category of an officer or an Abie-Bodied Seaman. Hence, the maximum disability benefits do not apply to petitioner.[64]

Lastly, respondents argue that because petitioner's condition was not work-related, sickness allowance must not be granted. This is since it is only provided for work-related injury under the POEA Standard Employment Contract. Moreover, respondents assert that attorney's fees should be deleted since there is no bad faith on respondents' part, and the claim was denied on valid, legal, and factual grounds.[65]

The issues for this Court's resolution are the following:

First, whether or not petitioner George M. Toquero may raise questions of fact in a Rule 45 petition;

Second, whether or not petitioner's injury is compensable; and

Third, whether or not the company-designated physician's findings must be upheld. Subsumed under this issue are the issues of whether or not referral to a third doctor is mandatory, and whether or not the evidence presented by respondents Crossworld Marine Services, Inc., Kapal Cyprus Ltd., and Arnold U. Mendoza should be excluded for being hearsay; and

Finally, whether or not petitioner is entitled to sickness allowance and attorney's fees.

We grant the Petition.

I

Only questions of law should be raised in petitions for review on certiorari under Rule 45 of the Rules of Court. This Court is not a trier of facts and a review of appeals is not a matter of right.

Nevertheless, this Court admits of exceptions subject to its sound judicial discretion.[66] In *Medina v. Mayor Asistio, Jr.*,[67] findings of fact by the Court of Appeals may be reviewed by this Court:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed

absence of evidence and is contradicted by the evidence on record.[68] (Citations omitted)

For this Court to review the facts of the case, these exceptions must be alleged, substantiated, and proved by the parties.[69]

While petitioner concedes that his Petition raises questions of fact, he alleges that it falls under several exceptions. Petitioner alleges that: (1) the Court of Appeals committed grave abuse of discretion in the appreciation of facts; (2) its judgment is premised on a misapprehension of facts; and (3) the findings of fact are conclusions without citation of the specific evidence.

After a careful review of the Court of Appeals' ruling and petitioner's assignment of errors, this Court finds that the review should be granted.

II

A disability is compensable under the POEA Standard Employment Contract if two (2) elements are present: (1) the injury or illness must be work-related; and (2) the injury or illness must have existed during the term of the seafarer's employment contract. Hence, a claimant must establish the causal connection between the work and the illness or injury sustained.[70]

The 2010 POEA Standard Employment Contract[71] defines "work-related injury" as injury "arising out of and in the course of employment." Thus, a seafarer has to prove that his injury was linked to his work and was acquired during the term of employment to support his claim for sickness allowance and disability benefits.[72]

Unlike the 1996 POEA Standard Employment Contract, in which it was sufficient that the seafarer suffered injury or illness during his employment, the 2000 and 2010 POEA Standard Employment Contracts require that the disability must be the result of a work-related injury or illness.[73]

To be deemed "work-related," there must be a reasonable linkage between the disease or injury suffered by the employee and his work.[74]

Thus, for a disability to be compensable, it is not required that the seafarer's nature of employment was the singular cause of the disability he or she suffered.[75] It is sufficient that there is a reasonable linkage between the disease or injury suffered by the seafarer and his or her work to conclude that the work may have contributed to establishment or, at least, aggravate any preexisting condition the seafarer might have had.[76]

In *Sy v. Philippine Transmarine Carriers, Inc.*,[77] the phrase "arising out of and in the course of employment" refers to the cause and character of the injury and the circumstances under which the injury or accident took place:

> . . . The two components of the coverage formula — "arising out of and in the course of employment" — are said to be separate tests which must be independently satisfied; however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words arising out of refer to the origin or cause of the accident, and are descriptive of its character, while the words in the course of refer to the time, place and circumstances under which the accident takes place.
>
> *As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.* [78] (Emphasis supplied)

In *Jebsens Maritime, Inc. v. Babol*,[79] the 'principle of work-relation' was explained in this wise:

> Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise. Work-relation must, therefore, be established.
>
> As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in nature, Section 20 (B) paragraph 4 of the POEA-SEC provides that such diseases are disputably presumed as work-related.
>
> In this case, it is undisputed that NPC afflicted respondent while on board the petitioners' vessel. As a non-occupational disease, it has the disputable presumption of being work-related. This presumption obviously works in the seafarer's favor. Hence, unless contrary evidence is presented by the employers, the work-relatedness of the disease must be sustained.[80] (Citations omitted)

Here, the two (2) elements of a work-related injury are present. Not only was petitioner's injury work-related, it was sustained during the term of his employment contract. His injury, therefore, is compensable.

As with the lower courts, this Court finds that petitioner's injury was work-related. Moreover, the labor tribunals also found that respondents breached their contractual obligation by hiring another employee who was prone to committing felonious acts.[81] Under Section 1(A)(4) of the POEA Standard Employment Contract, respondents must "take all reasonable precautions to prevent accident and injury to the crew[.]"[82] The National Labor Relations Commission reasoned that the master of vessel instructed petitioner and his assailant to work together when prudence dictates that they should

have been prevented from working together.[83]

Nevertheless, while the labor tribunals and the Court of Appeals ruled that petitioner's injury is work-related, they found that it is not compensable because it was not caused by an accident. They reason that the assault could have been foreseen from the previous altercation between petitioner and Fong. The Court of Appeals even noted that because the assailant's action was only based on human instinct, petitioner should have expected the attack. Since the incident resulted from Fong's criminal assault, it is an intentional felony, not an accident. Hence, it is no longer compensable.[84]

Law and jurisprudence do not support these findings.

Once petitioner had established that the two (2) elements are present, he is deemed entitled to disability compensation under the POEA Standard Employment Contract. The labor tribunals and the Court of Appeals erroneously imposed a new prerequisite for the disability's compensability — that the injury must be caused by an accident.

Respondents' argument that the claim is precluded because the injury is due to the willful acts of another seafarer is also untenable. The POEA Standard Employment Contract disqualifies claims caused by the willful or criminal act or intentional breach of duties done by the claimant, not by the assailant.[85] It is highly unjust to preclude a seafarer's disability claim because of the assailant's willful or criminal act or intentional breach of duty.

Between the ship owner/manager and the worker, the former is in a better position to ensure the discipline of its workers. Consequently, the law imposes liabilities on employers so that they are burdened with the costs of harm should they fail to take precautions. In economics, this is called internalization, which attributes the consequences and costs of an activity to the party who causes them.[86]

The law intervenes to achieve allocative efficiency between the employer and the seafarer. Allocative efficiency refers to the satisfaction of consumers in a market, which produces the goods that consumers are willing to pay.[87] In cases involving seafarers, the law is enacted to attain allocative efficiency where the occupational hazards are reflected and accounted for in the seafarer's contract and the Philippine Overseas Employment Administration regulations.[88]

Petitioner was able to prove that his injury was work-related and that it occurred during the term of his employment. With these two (2) elements established, this Court finds his injury compensable.

III

The POEA Standard Employment Contract provides a procedure on the medical assessment of the seafarer's injury or illness. Section 20(A)(3) states in part:

> 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.

This Court has held that failure to observe the procedure under this Section means that the assessment of the company-designated physician prevails.[89] In *Nonay v. Bahia Shipping Services, Inc.*:[90]

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. *If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.*
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.
>
> Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the respondent was "fit to go back to work."[91] (Emphasis supplied, citation omitted)

Referral to a third doctor is a mandatory procedure. Failure to comply with this rule, without any explanation, is a breach of contract that is tantamount to failure to uphold the law between the parties.[92] Hence, when the seafarer fails to express his or her disagreement by asking for the referral to a third doctor, the findings of the company-designated physician is given more credence and is final and binding on the parties.[93]

In *Transocean Ship Management (Philippines), Inc. v. Vedad*,[94] the rationale behind the third-doctor referral is expounded:

> In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above.[95]

Nevertheless, this is not a hard and fast rule. This Court has acknowledged that the company-designated physician's findings tend to be biased in the employer's favor. In instances where the company-designated physician's assessment is not supported by medical records, the courts may give greater weight to the findings of the seafarer's personal physician.[96]

Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits.[97] As explained by this Court:

A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[98]

On the contrary, tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician, have been repeatedly set aside by this Court.[99]

Here, the medical assessment issued by the company-designated physician cannot be regarded as definite and conclusive. A review of the records shows that the company-designated physician failed to conduct all the proper and recommended tests. Dr. Bacungan's letter[100] discloses that a complete neurologic examination was recommended to adequately assess petitioner's disability rating. It read:

> According to the attending Neurologist, an orthopedic surgeon cannot adequately assess the neurologic status of the patient. A complete neurologic examination includes memory and cognitive assessment and should be done before declaring the patient incapacitated. This will show whether the patient has mild, moderate or severe brain dysfunctions. In addition, neurologic examination will evaluate the motor strength, gait, balance and other deficits of the patient.[101]

Despite the recommendation, Dr. Bacungan did not conduct all the proper tests to fully evaluate petitioner's condition. Respondents solely relied on an electroencephalography run by the company-designated physician. In their Comment, respondents only referred to this test in concluding that petitioner was not suffering from a total and permanent disability.[102] Nothing in the records shows that other tests were

conducted.

Contrary to her own recommendation, Dr. Bacungan failed to conduct a complete neurologic examination. There were no memory and cognitive assessment to conclusively declare petitioner's disability. There were no explanations from respondents as to why the recommended medical tests were not conducted. Hence, we cannot consider the company-designated physician's assessment conclusive.

Similarly, this Court cannot consider the company-designated physician's finding of petitioner's fitness to work because it is deficient. Between the company-designated physician's assessment and the findings of the petitioner's chosen physician, we give more weight to the latter's assessment of permanent and total disability.

As to the applicable Collective Bargaining Agreement and disability rating, we uphold the version submitted by petitioner. Respondents contend that a different Collective Bargaining Agreement and a lower disability allowance are applicable to petitioner. However, we reiterate that doubts shall be resolved in favor of labor in line with the policy enshrined in the Constitution,[103] the Labor Code,[104] and the Civil Code,[105] to provide protection to labor and construe doubts in favor of labor. This Court has consistently held that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter."[106]

Therefore, in accordance with the Collective Bargaining Agreement submitted by petitioner, he is entitled to a total and permanent disability allowance of US$250,000.00.

IV

Section 20 of the POEA Standard Employment Contract provides that seafarers are entitled to receive sickness allowance in the amount equivalent to their basic wage computed from the time they signed off until they are declared fit to work, or once the degree of disability has been assessed by the company-designated physician. This period shall not exceed 120 days.[107]

Here, petitioner is entitled to sickness allowance equivalent to his basic wage for 55 days. This is counted from the day he signed off of work on April 24, 2012 until he was declared fit to go back to work on June 18, 2012.

Finally, the award of attorney's fees is granted under Article 2208[108] of the Civil Code, which allows the award in actions for indemnity under workers' compensation and employers' liability laws.

WHEREFORE, the Petition is **GRANTED**. The April 16, 2014 Decision and July 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP. No. 132195 are **REVERSED and SET ASIDE**. Respondents Crossworld Marine Services, Inc., Kapal Cyprus, Ltd., and Arnold U. Mendoza are solidarity liable to pay petitioner George M. Toquero the following:

1) total and permanent disability allowance in the amount of Two Hundred Fifty Thousand US Dollars (US$250,000.00) or its equivalent in Philippine Peso at the time of payment;

2) sickness allowance equivalent to 55 days of his basic wage; and

3) attorney's fees equivalent to 10% of the total monetary award.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until their full satisfaction.[109]

SO ORDERED.

Peralta, (Chairperson), A. Reyes, Jr., Hernando, and *Inting, JJ.*, concur.

August 19, 2019

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **June 26, 2019** 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 August 19, 2019 at 10:20 a.m.

Very truly yours,

(SGD) WILFREDO V. LAPITAN
Division Clerk of Court

---

[1] *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018, <http://elibrary.judiciaiygov.ph/thebookshelf/showdocs/1/64478> [Per J. Leonen, Third Division].

[2] *Rollo*, pp. 3-30. Filed under Rule 45 of the Rules of Court.

[3] Id. at 110-122. The Decision was penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fourteenth Division, Court of Appeals, Manila.

[4] Id. at 124-125. The Resolution was penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Former Fourteenth Division, Court of Appeals, Manila.

[5] Id. at 4.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 4 and 253.

[10] Id. at 4-5.

[11] Id. at 5.

[12] Id.

[13] Id. at 5 and 35.

[14] Id. at 5.

[15] Id.

[16] Id.

[17] Id. at 126-127.

[18] Id. at 6 and 38.

[19] Id. at 38.

[20] Id. at 6.

[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id. at 7 and 90.

[26] Id. at 7.

[27] Id.

[28] Id.

[29] Id. at 85-93. The Decision in NLRC-NCR 06-09574-12 OFW(M) was penned by Labor Arbiter Edgardo M. Madriaga of the National Labor Relations Commission, Quezon City.

[30] Id. at 92-93.

[31] Id. at 93.

[32] Id. at 95-106. The *rollo* lacked some of the Decision's pages.

[33] Id. at 8.

[34] Id.

[35] Id. at 105-106.

[36] Id. at 3.

[37] Id. at 110-122.

[38] Id. at 119.

[39] Id. at 120.

[40] Id. at 121.

[41] Id.

[42] Id. at 121-122.

[43] Id. at 124-125.

[44] Id. at 3-30.

[45] Id. at 134-135.

[46] Id. at 145-165.

[47] Id. at 165-168.

[48] Id. at 14-15.

[49] Id. at 16-17.

[50] Id. at 17.

[51] Id.

[52] Id. at 18.

[53] Id. at 19.

[54] Id.

[55] Id. at 23-24.

[56] Id. at 26.

[57] Id. at 27.

[58] Id. at 10.

[59] Id. at 156.

[60] Id.

[61] Id. at 156-158.

[62] Id. at 158-159.

[63] Id. at 160.

[64] Id. at 160-161.

[65] Id. at 161.

[66] *Pascual v. Burgos*, 116 Phil. 167 (2016) [Per J. Leonen, Second Division].

[67] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[68] Id. at 232.

[69] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[70] *Tagle v. Anglo-Eastern Crew Management, Philippines, Inc.*, 738 Phil. 871 (2014) [Per J. Mendoza, Third Division].

[71] POEA Memorandum Circular No. 010-10(2010). Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, available at <http://poea.gov.ph/memorandumcirculars/2010/10.pdf> last accessed on June 26, 2019.

[72] *Ebuenga v. Southfield Agencies, Inc.*, G.R. No. 208396, March 14, 2018, <http://elibraryjudiciarygov.ph/thebookshelf/showdocs/1/64089> [Per J. Leonen, Third Division].

[73] *NYK-Fil Ship Management Inc. v. Talavera*, 591 Phil. 786 (2008) [Per J. Carpio Morales, Second Division].

[74] Id.

[75] *Grieg Philippines, Inc. v. Gonzales*, 814 Phil. 965 (2017) [Per J. Leonen, Second Division].

[76] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210 (2013) [Per J. Mendoza, Third Division].

[77] 703 Phil. 190 (2013) [Per J. Peralta, Third Division].

[78] Id. at 198-199 *citing Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*, 135 Phil 95 (1968) [Per J. Castro, En Banc].

[79] 722 Phil. 828 (2013) [Per J. Mendoza, Third Division].

[80] Id. at 838-839.

[81] *Rollo*, pp. 241 and 254-255.

[82] Id. at 254.

[83] Id. at 253.

[84] Id. at 269.

[85] Philippine Overseas Employment Administration-Standard Employment Contract (2010), sec. 20(D) states:

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional

breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

[86] 1 ROBERT COOTER, LAW AND ECONOMICS 310 (4th ed., 2003).

[87] 5 ROBERT D. COOTER, *Economic Theories of Legal Liability*, THE JOURNAL OF ECONOMIC Perspectives, 11, 16 (1991).

[88] 1 ROBERT COOTER, LAW AND ECONOMICS 386 (4th ed., 2003).

[89] *Nonay v. Bahia Shipping Services, Inc.*, 781 Phil. 197 (2016) [Per J. Leonen, Second Division] *citing Veritas Maritime Corporation v. Gepanaga*, 753 Phil. 308 (2015) [Per J. Mendoza, Second Division].

[90] 781 Phil. 197 (2016) [Per J. Mendoza, Second Division].

[91] Id. at 226-227.

[92] *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, 712 Phil. 507 (2013) [Per J. Brion, Second Division].

[93] *Manansala v. Marlow Navigation Philippines, Inc.*, G.R. No. 208314, August 23, 2017, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63536> [Per J. Leonen, Third Division].

[94] 707 Phil. 194 (2013) [Per J. Velasco, Jr., Third Division].

[95] Id. at 207.

[96] *Nonay v. Bahia Shipping Services, Inc.*, 781 Phil. 197 (2016) [Per J. Mendoza, Second Division].

[97] *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018, <http;//elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64478> [Per J. Leonen, Third Division].

[98] Id. *citing Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017, 818 SCRA 663 [Per J. Velasco, Jr., Third Division].

[99] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234 (2015) [Per J. Mendoza, Second Division].

[100] *Rollo*, pp. 130-131.

[101] Id. at 130.

[102] Id. at 150-152.

[103] CONST., art. XIII, sec. 3 provides:

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[104] LABOR CODE, art. 4 provides:

ARTICLE 4. *Construction in favor of labor*. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

[105] CIVIL CODE, art. 1702 provides:

ARTICLE 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

[106] *Malabunga, Jr. v. Cathay Pacific Steel Corporation*, 759 Phil. 458, 479 (2015) [Per J. Del Castillo, Second Division] *citing Asuncion v. National Labor Relations Commission*, 414 Phil. 329 (2001) [Per J. Kapunan, First Division].

[107] Philippine Overseas Employment Administration-Standard Employment Contract (2010), sec. 20(A)(3) provides:

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.

[108] CIVIL CODE, art. 2208 provides:

ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10)When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[109] *See Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].