THIRD DIVISION

[G.R. No. 225899, July 10, 2019]

JESSIE C. ESTEVA, PETITIONER, V. WILHELMSEN SMITH BELL MANNING, INC. AND WILHELMSEN SHIP MANAGEMENT AND/OR FAUSTO R. PREYSLER, JR., RESPONDENTS.

D E C I S I O N

LEONEN, J.:

When a company-designated physician fails to arrive at a final and definite assessment of a seafarer's fitness to work or level of disability within the prescribed periods, a presumption arises that the seafarer's disability is total and permanent.[1]

This Court resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals March 22, 2016 Decision[3] and July 19, 2016 Resolution[4] in CA-G.R. SP No. 137635. The Court of Appeals found that Jessie C. Esteva (Esteva) was not entitled to the payment of total and permanent disability benefits.

On January 26, 2012, Wilhelmsen Smith Bell Manning, Inc. (Smith Bell Manning), on behalf of its principal, Wilhelmsen Ship Management, hired Esteva as a seafarer for nine (9) months, with a basic monthly salary of US$675.00.[5]

Esteva was deployed on April 15, 2012.[6] He underwent the prescribed medical examination and was pronounced fit to work. On April 16, 2012, he boarded the vessel Ikan Bagang.[7]

Sometime in June 2012, while he was onboard the vessel, Esteva began to suffer severe back pains. As the vessel arrived in China on June 20, 2012, he asked the Indian Master to refer him to a physician because the back pains were getting worse.[8]

On June 24, 2012, Esteva went to a small clinic where he underwent x-ray and was given oral and topical pain relievers.[9]

On October 5, 2012, while the vessel was at Richards Bay, South Africa, Esteva was diagnosed by Dr. W. Watson (Dr. Watson) with lumbar disc prolapse. According to the Injury/Illness Report, his condition required a specialist treatment and possible operation. Dr. Watson declared Esteva to have a temporary total disability and unfit for work. The physician further recommended that Esteva undergo immediate repatriation. Wilhelmsen Ship Management also wrote a letter requesting that Esteva be examined by the company-designated physician in the Philippines.[10]

On October 7, 2012, Esteva returned to the Philippines and reported to his employer. He was then referred to the Metropolitan Medical Center, where he underwent several medical examinations. His x-ray results revealed that he had osteodegenerative changes in his lumbar spine.[11]

On April 3, 2013, the company-designated physician, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon), issued a Medical Certificate indicating that Esteva was given medications for Pott's disease, a form of tuberculosis of the spine. She prescribed that Esteva take at least one (1) year of treatment. In the Medical Certificate, Esteva's suggested disability grading was Grade 8, with 2/3 loss of lifting power.[12]

On July 19, 2013, Dr. Cruz-Balbon issued another Medical Certificate confirming the finding of both Pott's disease and disc protrusion L2-L5.[13]

On September 13, 2013, Esteva consulted another doctor, Dr. Maricar P. Reyes-Paguia (Dr. Reyes-Paguia), who issued a Medical Certificate indicating that Esteva was suffering from:

> Impression:
>
> 1. Multilevel lumbar spondylosis
> 2. Mild retrolisthesis, L2 on L3
> 3. Grade 1 spondylolisthesis, L4 on L5
> 4. Disc desiccation, L2-L3, L3-L4 and L4-L5
> 5. L2-L3 and L3-L4 posterior disc bulge indenting the thecal sac and facet joint hypertrophy with mild neuroforaminal narrowing.
> 6. L4-L5 circumferential disc bulge, facet joint arthrosis and ligamentum flavum thickening with moderate spinal and neuroforaminal narrowing impinging the exiting nerve roots.[14]

In his Complaint, Esteva also stated that on September 17, 2013, he consulted another doctor, Dr. Alan Leonardo R. Raymundo (Dr. Raymundo), an orthopedic surgeon.[15] The physician issued a Medical Report, which read in part:

> Physical examination today showed the patient to be ambulatory but walking with a limp. He has pain on bending forward and backwards and on rotation. He has a positive straight leg raising test on the right at 70 degrees and has weakness of both lower leg muscles, the right weaker than the left.
>
> I have explained to Mr. Esteva that his condition will no longer allow him to return to his previous occupation as an able bodied seaman.[16]

Thus, Esteva filed a Complaint for total permanent disability benefits.[17] Esteva sought to recover: (1) disability benefits worth US$90,000.00 under the Collective Bargaining Agreement; (2) sickness[18] allowance; (3) reimbursement of medical, hospital, and transportation expenses; (4) moral and exemplary damages; and (5) attorney's fees.[19]

In its January 29, 2014 Decision,[20] Labor Arbiter Romelita N. Rioflorido granted Esteva's claims for disability compensation, sickness allowance, and attorney's fees.

She gave weight to the findings of Esteva's own doctors that his disability was total and permanent over that of the company-designated physician.[21]

The dispositive portion of the Decision read:

> WHEREFORE, a decision is hereby rendered ordering respondents Wilhe[l]msen Smith Bell Manning, Inc. and Wilhe[l]msen Ship Management jointly and severally liable to pay complainant Jessie C. Esteva, US$90,000.00, in peso equivalent at the time of payment, representing the disability compensation benefit under the CBA, plus US$2,700.00 as and for sickwage allowance and ten (10%) percent of the total money claims as attorney's fees. Other claims are denied.
>
> SO ORDERED.[22]

Thus, Smith Bell Manning filed before the National Labor Relations Commission a Petition for Certiorari.

In its June 18, 2014 Decision, the National Labor Relations Commission affirmed the Labor Arbiter's findings and explained that Esteva was "essentially rendered permanently disabled."[23] It highlighted the company-designated physician's assessment that Esteva's treatment would take at least a year, which was beyond the maximum period of 240 days for temporary disability, and that he had lost 2/3 of his lifting power.[24]

Smith Bell Manning filed a Motion for Reconsideration, which was denied in the National Labor Relations Commission July 31, 2014 Resolution.[25]

Thus, Smith Bell Manning filed before the Court of Appeals a Petition for Certiorari.

In its March 22, 2016 Decision,[26] the Court of Appeals annulled the judgments of the Labor Arbiter and the National Labor Relations Commission.[27] The dispositive portion of its Decision read:

> **WHEREFORE**, in view of the foregoing premises, the instant petition for certiorari is hereby **GRANTED**. The assailed NLRC decision and resolution are hereby **ANNULLED**, and a new judgment is hereby **ENTERED** upholding Dr. Cruz-Balbon's disability rating of Grade 8 for private respondent Jessie C. Esteva. Private respondent is also declared entitled to sickness allowance in the amount of US$2,700. Petitioners are hereby **ORDERED** to make the necessary payment to private respondent.
>
> **SO ORDERED.**[28] (Emphasis in the original)

The Court of Appeals gave more weight to the assessment of the company-designated physician, Dr. Cruz-Balbon, than that of Esteva's chosen physican, Dr. Raymundo. Per the assessment, the Court of Appeals found that Esteva had a Grade 8 rating, which meant that he was only entitled to partial disability compensation, not total and permanent disability.[29]

According to the Court of Appeals, the dispute must be guided by the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract), specifically Section 20-A,[30] which provides:

> SECTION 20. *Compensation and 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.

The Court of Appeals found that Esteva did not follow the procedure prescribed in the POEA Standard Employment Contract. Instead of referring the matter to a third doctor agreed by both parties, he immediately filed a Complaint for permanent disability benefits. Failing to observe this procedure, the Court of Appeals gave more credence to the certification issued by the company-designated physician.[31]

The Court of Appeals also doubted Dr. Raymundo's certification due to the discrepancy in dates. It found that Esteva had alleged seeing Dr. Raymundo on September 17, 2013, which is a later date than the certificate's date of issuance on July 19, 2013.[32]

Lastly, the Court of Appeals deleted the award of attorney's fees after it found that Smith Bell Manning did not act in gross and evident bad faith in refusing to pay Esteva's disability benefits.[33] However, the Court of Appeals sustained the award of sickness allowance amounting to US$2,700.00.[34]

On August 10, 2016, Esteva filed before this Court a Petition for Review on Certiorari.[35]

In its September 21, 2016 Resolution,[36] this Court ordered respondent Smith Bell Manning to file a comment and petitioner to submit a softcopy of his Petition with a verified declaration. In his October 26, 2016 Compliance,[37] Esteva sent electronic copies of the Petition and its annexes.

On November 7, 2016, Smith Bell Manning filed its Comment.[38] On November 24, 2016, Esteva filed his Reply.[39]

Petitioner asserts that the referral to a third doctor is not mandatory and may be agreed upon by both parties under the POEA Standard Employment Contract.[40] This, petitioner points out, is supported by the very provision that the Court of Appeals had relied on: that "a third doctor may be agreed jointly between the employer and the seafarer."[41] He avers that respondents have neither offered nor asked him to refer his injuries to a third doctor for an assessment. Thus, he did not breach the provision.[42]

Petitioner adds that respondents failed to inform him that the company-designated physician had already made an assessment of his condition. He claims that he was never furnished copies of the disability assessment, and that he only knew of this after both parties had filed their position papers before the Labor Arbiter.[43]

Moreover, petitioner questions the reliance of the Court of Appeals on the company-designated physician's assessment. He argues that neither the POEA Standard Employment Contract nor the Collective Bargaining Agreement provides that the company-designated physician's assessment would be the lone basis to determine if a seafarer suffers from permanent total disability. Citing jurisprudence, he claims that the company-designated physician's findings may be prone to being biased in the company's favor.[44]

Petitioner stresses that the company-designated physician's assessment that he only required a one (1)-year treatment is inaccurate, as he still underwent medication and therapy due to the injuries.[45]

Petitioner also clarifies that he consulted Dr. Raymundo on July 13, 2013, not September 17, 2013. He claims that the error in dates is immaterial because the relevant facts remain: after respondents cut off the medical assistance when the 240-day period lapsed, he consulted Dr. Raymundo, an independent orthopedic surgeon.[46]

Petitioner claims that the Court of Appeals erred in solely relying on the company-physician's disability grading and ignoring that even this assessment had shown that the injury was serious. He argues that his inability to work for more than 120 days or 240 days has rendered his disability permanent.[47]

Since his repatriation, "petitioner has not been able to engage in any meaningful activity . . . and there was no . . . indication that he will recover normalcy."[48] He argues that this makes him more strongly entitled to disability benefits, as his injury occurred during his employment on board the vessel of respondents. For having been incapacitated since October 2012, he claims that he must be awarded disability compensation for permanent and total disability in the amount of US$90,000.00.[49]

Petitioner also argues that the Court of Appeals erred in deciding on respondents' Petition for Certiorari as the issues involved alleged misapprehension of facts and misappreciation of evidence, which are correctable only on appeal. Citing jurisprudence, petitioner asserts that a writ of certiorari may not be used to correct a lower tribunal's evaluation of the evidence and factual findings. He argues that since the labor tribunals did not commit any grave abuse of discretion in their judgments, there is no reason to overturn their findings.[50]

Finally, petitioner asserts that he is entitled to sickness allowance worth US$2,700.00 and reimbursement of medical and transportation expenses worth P85,000.00. This is since respondents stopped providing medical support since January 2013, leaving petitioner to shoulder the costs. He further claims to be entitled to P300,000.00 as moral and exemplary damages, as well as attorney's fees, because respondents' refusal to pay their contractual obligations is tainted with bad faith.[51]

On the other hand, respondents argue that the Court of Appeals is correct in giving more credence to the company-designated physician's assessment than that of petitioner's personal doctor. They argue that the latter's Medical Certificate is riddled with doubt, since the form appears to have been purposely issued only for disability evaluation.[52]

Citing jurisprudence, respondents further claim that the company-designated doctor is in the best position to determine the seafarer's condition.[53] Thus, the assessment of Dr. Cruz-Balbon, the company-designated physician, is more credible.[54]

Moreover, respondents argue that petitioner failed to timely object to his disability assessment and refer his condition to a third doctor per the POEA Standard Employment Contract. His failure, according to respondents, constitutes a breach, which overturns any consideration to favor a medical certificate that appears to be secured only to claim disability benefits.[55]

Petitioner's failure, as well as his premature filing of the Complaint, cost him his right to claim compensation. Respondents emphasize that the referral to a third doctor has been held mandatory. Hence, an employer "can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor[.]"[56]

Furthermore, respondents disagree with petitioner's contention that the lapse of 120 or 240 days bolstered his unfitness to work. They point out that the POEA Standard Employment Contract clearly provides that the disability shall not be measured by the number of days a seafarer is under treatment or the number of days when sickness allowance is paid. Instead, it should be based solely on the disability grading provided under his contract.[57]

The issues for this Court's resolution are:

First, whether or not the Court of Appeals erred in making its own factual determination in the special civil action for certiorari;

Second, whether or not the Court of Appeals erred in ruling that petitioner Jessie C. Esteva is not entitled to total disability benefits. Subsumed under this issue is whether or not referral to a third doctor is mandatory;

Third, whether or not petitioner is entitled to the award of sickness allowance, medical expenses, and transportation expenses; and

Finally, whether or not petitioner is entitled to moral and exemplary damages and attorney's fees.

I

Petitioner assails the Court of Appeals Decision in substituting its own findings of facts with the labor tribunals' findings. He asserts that a writ of certiorari may not be used to correct a lower tribunal's evaluation of the facts and evidence.

In a special civil action for certiorari, the Court of Appeals has ample authority to conduct its own factual determination when it finds that there was grave abuse of discretion.[58] In *Plastimer Industrial Corporation v. Gopo*:[59]

> In a special civil action for certiorari, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of Appeals can grant a petition for certiorari when it finds that the NLRC committed

> grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination. In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals.[60] (Citations omitted)

Here, despite the factual and evidentiary issues involved, the Court of Appeals correctly made its own factual determination in resolving respondents' Petition for Certiorari. Contrary to petitioner's assertion, the Court of Appeals can have a factual finding, even if it is contrary to the findings of the Labor Arbiter and the National Labor Relations Commission.[61]

Hence, we proceed to resolve the substantial issues of this case.

II

The entitlement of an overseas seafarer to disability benefits is governed by law, the employment contract, and the medical findings.[62]

The POEA Standard Employment Contract, which prescribes the procedure in recovering compensation from occupational hazards, is deemed incorporated in every seafarer's employment contract.[63]

The POEA Standard Employment Contract provides that the company-designated physician is responsible for determining a seafarer's disability grading or fitness to work.[64] Conformably, it outlines the procedure when the seafarer contests the company-designated physician's findings and assessment.

Section 20 of the POEA Standard Employment Contract 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:
>
> . . . .
>
> 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.
>
> The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-

> designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.
>
> 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.* (Emphasis supplied)

The assessment referred to in this provision is the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness to work before the 120-day or 240-day period expires.[65]

In *Marlow Navigation Philippines, Inc. v. Osias*,[66] this Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment made by the company-designated physician; and (2) the seafarer's appointed doctor refuted such assessment. These two (2) conditions must be present to trigger the mandatory rule on third doctor referral.

However, as the one contesting the company-designated physician's findings, it is the seafarer's duty to signify the intention to resolve the conflict through the referral to a third doctor.[67] If the seafarer' does not contest the findings and fails to refer the assessment to a third doctor, "the company can insist on its disability rating even against a contrary opinion by another physician[.]"[68] Securing a third doctor's opinion is the duty of the employee,[69] who must actively or expressly request for it.[70]

This Court has held that despite the wording of the provision in Section 20 of the POEA Standard Employment Contract, the referral of a disputed medical assessment to a third doctor is mandatory. Its significance was explained in *INC Shipmanagement, Inc. v. Rosales*,[71] where this Court emphasized that the procedure is mandatory:

> This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for

> the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp., Santiago v. Pacbasin Shipmanagement, Inc., Andrada v. Agemar Manning Agency, and Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[72] (Emphasis in the original, citations omitted)

Noncompliance with this procedure militates against the seafarer's claim, particularly in cases where the company-designated physician concluded that there is no permanent total disability.[73] Without the referral to a third doctor, there is no valid challenge to the company-designated physician's findings. Ultimately, the company-designated physician's assessment must be upheld.[74] In *Dionio v. Trans-Global Maritime Agency, Inc.*:[75]

> When there is conflict between the findings of the company-designated doctor and the doctor chosen by the seafarer, the latter is bound to initiate the process of referring the findings to a third-party physician by informing his employer. The referral to a third doctor has been held by the Court to be a mandatory procedure as a consequence of the provision in the POEA-SEC that the company-designated doctor's assessment should prevail in case of non-observance of the third-doctor referral provision in the contract.
>
> *Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the terms under the POEA-SEC, and without a binding third-party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor.* [76] (Emphasis supplied, citations omitted)

III

The applicable procedure and periods for a seafarer's medical assessment was explained in *Vergara v. Hammonia Maritime Services, Inc.*:[77]

> [T]he 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.[78] (Citations omitted)

In *Talaroc v. Arpaphil Shipping Corporation*,[79] this Court has outlined the company-designated physician's duty to issue a final medical assessment of seafarers and the significance of the 120-day and 240-day period:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[80] (Citation omitted)

The POEA Standard Employment Contract provides that the disability is based on the schedule provided, not on the duration of the seafarer's treatment. Section 20(A)(6) is clear:

> 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.* (Emphasis supplied)

However, this Court has clarified that this provision does not disregard the seafarer's period of treatment. A presumption that the seafarer is totally and permanently disabled will still arise "if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total)[.]"[81]

Further, this Court has held that a temporary total disability becomes permanent when the company-designated physician declares it "within the periods he [or 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."[82] After the 240-day period has lapsed, the disability becomes total and permanent.

Kestrel Shipping Company, Inc. v. Munar[83] has affirmed this rule:

> A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. *Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent*.[84] (Emphasis supplied)

IV

Here, Dr. Cruz-Balbon, the company-designated physician, found that petitioner was suffering from a Grade 8 disability, which is classified as a temporary, partial disability. Skeptical with the findings, petitioner consulted Dr. Reyes-Paguia and, eventually, Dr. Raymundo, who certified that petitioner's condition would no longer allow him to work as a seafarer. Afterward, petitioner filed the Complaint for permanent disability benefits.

Petitioner failed to signify his intention to resolve the conflicting assessments of the company-designated physician and his chosen physicians. After consulting Dr. Raymundo, he did not submit the conflicting findings to a third doctor. Instead, he immediately filed the claim for permanent disability benefits. Clearly, petitioner failed to comply with the mandatory rule on referral to a third doctor.

On the other hand, respondents also failed to discharge their duty. Petitioner claims that they did not inform him that the company-designated physician has already issued an assessment. Respondents did not dispute his contention that he was never furnished copies of the disability assessment, and that only after filing the Complaint did he become aware of it.

Absent a final, definite disability assessment from a company-designated physician, the mandatory rule on a third doctor referral will not apply here.

When petitioner learned of Dr. Cruz-Balbon's assessment during the submission of the position papers before the Labor Arbiter, the prescribed 240-day period had already lapsed. Based on the records, petitioner immediately submitted himself to the company-designated physician's examination on October 7, 2012.[85] He later filed the Complaint after his chosen physician, Dr. Raymundo, had issued the Medical Certificate on July 19, 2013.[86] It is unclear when petitioner filed the Complaint or when the position papers were received. Nonetheless, even if this Court will only consider the date of issuance of the last Medical Certificate, a total of 285 days had already lapsed from October 7, 2012 to July 19, 2013, which is beyond the period allowed by the law.

Hence, petitioner cannot be faulted for not referring the assessment to a third doctor at the time he filed his Complaint. There was no medical assessment from a company-

designated physician to contest then as it had not been timely disclosed to him. Not only did respondents not refute that the findings were belatedly disclosed to petitioner, there is also nothing on record showing that they submitted the findings within the prescribed period. Hence, when the period had lapsed, there was a presumption that petitioner's disability is total and permanent.

It was also not contested that petitioner is still incapacitated to perform his usual duties and that his health has not regained normalcy. He has not been able to engage in any meaningful activity since 2012. He could not perform any manual labor, and had to continue undergoing physical therapy.

Thus, petitioner's failure to refer the assessment to a third doctor is not fatal to his disability claim. The mandatory rule on third doctor referral does not apply here. Consequently, the company-designated physician's findings cannot be given credence due to the presumption that petitioner's disability is total and permanent.

Hence, petitioner is entitled to total and permanent disability benefits amounting to US$90,000.00 under the Collective Bargaining Agreement.

Law and economics can provide the policy justification of our existing jurisprudence. The contract between the manning agency and the seafarer is strictly regulated by the Philippine Overseas Employment Administration due to the unaccounted consequences that these contracts produce, mostly in the form of work-related risks and injuries. In economics, these are referred to as "externalities," which are unintended effects or consequences of an activity that affects the parties but are not reflected and imposed as a cost.[87]

In employing seafarers, the manning agency and the shipping company, which have control over the ship, bear the burden of complying with safety regulations. When externalities such as occupational hazards are not accounted for, they escape the burden of shouldering the cost of keeping the vessel safe for their seafarers.[88]

Imposing a liability induces the employers and the injured seafarers to be burdened with the cost of the harm when they fail to take precautions. This process of "internalization" means the consequences and costs are accounted for and are attributed to the party who causes the harm.[89] Thus, the occupational hazards are internalized through a claim of damages paid by the employer. Seafarers are compensated for the injuries they suffered.

Here, the law intervenes to achieve allocative efficiency between the parties. Allocative efficiency means that both parties reach a mutually beneficial agreement. In a strict economic sense, allocative efficiency concerns the satisfaction of individual preferences where an optimal market is producing goods that consumers are willing to pay.[90] A choice or policy increases allocative efficiency only if it makes an individual better off and no one worse off.[91] Hence, allocative efficiency compels the law to help the parties achieve their goals as fully as possible.[92]

Allocative efficiency for both employers and seafarers is reached by internalizing the occupational hazards through a seafarer's employment contract and Philippine

Overseas Employment Administration regulations.[93] The disability claims internalize the costs of injury and hazards by making employers compensate the seafarers without the need to bargain for the amount and process of compensation. When employers internalize the costs of the harm caused, they are constrained to both comply with legal standards and invest in the seafarers' safety.[94] On the other hand, seafarers are also constrained to internalize the cost of their injuries if they will not take precautions.[95] This policy provides an incentive for the seafarers to work efficiently because the risks to occupational hazards are reduced. By internalizing the externalities through legal standards, both employers and seafarers are encouraged to work at an efficient level.

In cases of worker's compensation, no fault is needed to be ascribed to employers for the seafarers to qualify for disability compensation. This no-fault system guarantees injured employees a "relatively swift and certain compensation for their job-related harms. The system relieves employees and their employers of the costs of demonstrating and challenging fault, respectively."[96] Thus, to be compensated under the POEA Standard Employment Contract, seafarers only need to prove that: (1) an injury is work-related; and (2) it occurred during the period indicated in a seafarer's employment contract.[97]

V

In *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*,[98] this Court awarded damages in favor of the seafarer due to the company's belated release of disability assessment and its scheme to discredit the findings of a seafarer's doctor for noncompliance with the third doctor rule. These were considered as acts of bad faith that justified the award of damages:

> By not timely releasing Dr. Cruz's interim disability grading, petitioners revealed their intention to leave respondent in the dark regarding his future as a seafarer and forced him to seek diagnosis from private physicians. Petitioners' bad faith was further exacerbated when they tried to invalidate the findings of respondent's private physicians, for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, despite their own deliberate concealment of their physician's interim diagnosis from respondent and the labor tribunals. Thus, this Court concurs with the Court of Appeals when it stated:
>
> > We also grant petitioner's prayer for moral and exemplary damages. Private respondents acted in bad faith when they belatedly submitted petitioner's Grade 8 disability rating only via their motion for reconsideration before the NLRC. By withholding such disability rating from petitioner, the latter was compelled to seek out opinion from his private doctors thereby causing him mental anguish, serious anxiety, and wounded feelings, thus, entitling him to moral damages of P50,000.00. Too, by way of example or correction for the public good, exemplary damages of P50,000.00 is awarded.[99] (Citation omitted)

Similarly, here, petitioner claims to be entitled to moral and exemplary damages because respondents refused to pay their contractual obligations in bad faith. He alleges that they employed a scheme to deceive and escape their liability.

The award of moral damages is proper. Respondents insist that petitioner failed to follow the procedure when they themselves committed a breach by keeping petitioner in the dark about his medical assessment. Despite this, respondents, in bad faith, disregarded the findings of petitioner's chosen physicians as petitioner supposedly failed to consult a third doctor. Due to respondents' delay, petitioner was left on his own after they had stopped supporting his treatment and therapy.

In addition, the award of exemplary damages is correct by way of example or correction for the public good. Accordingly, it is also proper to grant attorney's fees.

VI

Petitioner claims that he is entitled to sickness allowance and reimbursement of medical and transportation expenses under Section 20(A)(3) of the POEA Standard Employment Contract, which states:

> 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.
>
> The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

The Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals uniformly ruled that petitioner is entitled to the award of sickness allowance. In accordance with the POEA Standard Employment Contract, the payment of sickness allowance to petitioner shall not exceed 120 days. Hence, this Court affirms the award.

On the reimbursement of medical and transportation expenses amounting to P85,000.00, petitioner claims that he incurred expenses because respondents had stopped providing financial support since January 2013. He also alleges that he incurred transportation expenses because he had to travel from Iloilo to be treated in Manila.

Reimbursement of the medical and transportation expenses, as provided in the POEA Standard Employment Contract, is subject to the condition that the expenses have a corresponding official receipt or other available proof. Here, since petitioner failed to

substantiate his expenses by presenting any receipt or proof, this Court cannot award the reimbursement of medical and transportation expenses.

WHEREFORE, the Petition is **GRANTED**. The March 22, 2016 Decision and July 19, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 137635 are **REVERSED** and **SET ASIDE**. Respondents Wilhelmsen Smith Bell Manning, Inc. and Wilhelmsen Ship Management and/or Fausto R. Preysler, Jr. are jointly and severally liable to pay petitioner Jessie C. Esteva the following:

1. Total and permanent disability benefits in the amount of Ninety Thousand US Dollars (US$90,000.00) or its equivalent in Philippine Peso at the time of payment, plus ten percent (10%) of it as attorney's fees;

2. Sickness allowance amounting to Two Thousand Seven Hundred US Dollars (US$2,700.00) or its equivalent in Philippine Peso at the time of payment;

3. Moral damages amounting to One Hundred Thousand Pesos (P100,000.00); and

4. Exemplary damages amounting to One Hundred Thousand Pesos (P100,000.00).

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.[100]

SO ORDERED.

Peralta (Chairperson), Caguioa,[*] *Hernando*, and *Inting, JJ*., concur.

August 13, 2019

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **July 10, 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 13, 2019 at 11:25 a.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

---

[*] Designated additional Member per Raffle dated July 1, 2019.

[1] *Sharpe Sea Personnel, Inc. v. Mabunay,* Jr., G.R. No. 206113, November 6, 2017, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63565 > [Per J. Leonen, Third Division].

[2] *Rollo*, pp. 3-33. Filed under Rule 45 of the Rules of Court.

[3] Id. at 34-44. The Decision was penned by Associate Justice Romeo F. Barza, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Agnes Reyes-Carpio of the First Division, Court of Appeals, Manila.

[4] Id. at 45-46. The Resolution was penned by Associate Justice Romeo F. Barza, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Agnes Reyes-Carpio of the First Division, Court of Appeals, Manila.

[5] Id. at 34-35.

[6] Id. at 35.

[7] Id. at 6.

[8] Id.

[9] Id.

[10] Id. at 7-8.

[11] Id. at 35.

[12] Id.

[13] Id.

[14] Id. at 36.

[15] Id. In the *rollo*, Alan was sometimes spelled as "Allan."

[16] Id. at 9-10.

[17] Id. at 36.

[18] In the *rollo*, sickness allowance was at times mistakenly referred to as "sickwage" allowance.

[19] *Rollo*, p. 5.

[20] Id. at 10.

[21] Id. at 36.

[22] Id. at 11.

[23] Id. at 37.

[24] Id.

[25] Id.

[26] Id. at 34-44.

[27] Id. at 43.

[28] Id. at 43-44.

[29] Id. at 39.

[30] Id.

[31] Id.

[32] Id. at 41.

[33] Id. at 42.

[34] Id. at 43.

[35] Id. at 3-33.

[36] Id. at 56-57.

[37] Id. at 58-62.

[38] Id. at 63-84.

[39] Id. at 85-93.

[40] Id. at 14.

[41] Id. at 15.

[42] Id. at 16.

[43] Id. at 15.

[44] Id. at 16-17.

[45] Id. at 17.

[46] Id.

[47] Id. at 22.

[48] Id. at 18.

[49] Id.

[50] Id. at 20-21.

[51] Id. at 26-28.

[52] Id. at 68.

[53] Id. at 70, *citing Silagan v. Southfield Agencies Inc.*, 793 Phil. 751 (2016) [Per J. Perez, Third Division]. In *Silagan*, the findings of the company-designated physician, who had unfettered opportunity to track the physical condition of the seafarer in a prolonged period of time, were upheld over the Medical Report of the seafarer's personal doctor, who only examined the seafarer once and based his assessment solely on the medical records adduced by his patient.

[54] Id. at 71.

[55] Id.

[56] Id. at 74.

[57] Id. at 76-79.

[58] *Crispino v. Tansay*, 801 Phil. 711, 725 (2016) [Per J. Leonen, Second Division].

[59] 658 Phil. 627 (2011) [Per J. Carpio, Second Division].

[60] Id. at 633.

[61] *Maralit v. Philippine National Bank*, 613 Phil. 270, 288 (2009) [Per J. Carpio, First Division].

[62] *Cutanda v. Marlow Navigation Philippines, Inc*., G.R. No. 219123, September 11, 2017, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63416 > [Per J. Peralta, Second Division].

[63] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 385 (2014) [Per J. Brion, Second Division].

[64] *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].

[65] Id.

[66] 773 Phil. 428 (2015) [Per J. Leonen, Second Division].

[67] *Yialos Manning Services, Inc. v. Borja*, G.R. No. 227216, July 4, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534 > [Per J. Caguioa, Second Division].

[68] *Leonis Navigation Company, Inc. v. Obrero*, 794 Phil. 481,495 (2016) [Per J. Jardeleza, Third Division].

[69] *Scanmar Maritime Services, Inc. v. Conag*, 784 Phil. 203, 215 (2016) [Per J. Reyes, Third Division].

[70] *Leonis Navigation Company, Inc. v. Obrero*, 794 Phil. 481, 495 (2016) [Per J. Jardeleza, Third Division].

[71] 744 Phil. 774 (2014) [Per J. Brion, Second Division].

[72] Id. at 787.

[73] *Hernandez v. Magsaysay Maritime Corp.*, G.R. No. 226103, January 24, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63958 > [Per J. Peralta, Second Division].

[74] *Yialos Manning Services, Inc. v. Borja,* G.R. No. 227216, July 4, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534 > [Per J. Caguioa, Second Division].

[75] G.R. No. 217362, November 19, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64702 > [Per J. J.C. Reyes, Jr., Third Division].

[76] Id.

[77] 588 Phil. 895 (2008) [Per J. Brion, Second Division].

[78] Id. at 912.

[79] G.R. No. 223731, August 30, 2017, 838 SCRA 402 [Per J. Perlas-Bernabe, Second Division].

[80] Id. at 417.

[81] *Yialos Manning Services, Inc. v. Borja*, G.R. No. 227216, July 4, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534 > [Per J. Caguioa Second Division]

[82] Id.

[83] 702 Phil. 717 (2013) [Per J. Reyes, First Division].

[84] Id. at 737-738.

[85] *Rollo* p. 35.

[86] Id. at 9-10.

[87] 1 ROBERT COOTER, LAW AND ECONOMICS 44 (4th ed., 2003).

[88] *Toquero v. Crossworld Marine Services, Inc*., G.R. No. 213482, June 26, 2019 [Per J. Leonen, Third Division].

[89] 1 ROBERT COOTER, LAW AND ECONOMICS 310 (4th ed., 2003).

[90] Robert D. Cooter, *Economic Theories of Legal Liability*, 5 THE JOURNAL OF ECONOMIC PERSPECTIVES 11, 16 (1991).

[91] Id. at 16-17.

[92] 1 ROBERT COOTER, LAW AND ECONOMICS 236 (4th ed., 2003).

[93] *See Toquero v. Crossworld Marine Services, Inc*., G.R. No. 213482, June 26, 2019 [Per J. Leonen, Third Division].

[94] Id. at 313. 1 ROBERT COOTER, LAW AND ECONOMICS 313 (4th ed., 2003).

[95] Id. at 324.

[96] Id. at 386.

[97] *Quizora v. Denholm Crew Management (Philippines), Inc*., 676 Phil. 313, 327 (2011) [Per J. Mendoza, Third Division].

[98] G.R. No. 206113, November 6, 2017, [Per J. Leonen, Third Division].

[99] Id.

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