

SECOND DIVISION

[G.R. No. 220904, September 25, 2019]

**JEBSENS MARITIME, INC. AND HAPAG-LLOYD
AKTIENGESELLSCHAFT, PETITIONERS, VS. RUPERTO S. PASAMBA,
RESPONDENT.**

DECISION

REYES, J. JR., J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] dated December 17, 2014 and Resolution^[3] dated September 30, 2015 of the Court of Appeals (CA) in CA-G.R.SP No. 134720.

The Facts

On November 19, 2009, for and on behalf of its foreign principal, Hapag-Lloyd Aktiengesellschaft, local manning agency Jebsons Maritime, Inc.(collectively, petitioners) hired Ruperto S. Pasamba (respondent) as an Able Seaman for a period of six months. On December 21, 2009, respondent boarded CMS Dusseldorf Express.^[4]

On January 24, 2010, respondent started experiencing clogged nose, dizziness, and headache.^[5]

On February 4, 2010, as his illness persisted despite medications, respondent consulted an on-shore physician at the port, of Japan, wherein he was diagnosed with "Sinusitis, Myringitis (both), Vascular Headache, and Unstable Angina (suspicion)." He was then recommended to be immediately repatriated for treatment.^[6]

On February 5, 2010, respondent was repatriated.^[7]

On February 6, 2010, respondent reported to petitioners' office and was referred to the company-designated doctors.^[8]

On February 9, 2010, respondent was diagnosed with "Polysinusitis, Hypoplastic Frontal Sinuses, Congested Turbinates while Mastoid Series showed Bilateral Mastoiditis." On February 25, 2010 and May 14, 2010, respondent underwent Mastoidectomy with Tympanoplasty procedures as advised by the company-designated doctors.^[9]

On July 9, 2010, the company-designated doctors issued a Certificate of Physical Condition, declaring respondent "fit for work" with the following relevant notations:

[Respondent] subsequently underwent Canal-Up Mastoidectomy, Tympanoplasty type I, Left last February 25, 2010 and after almost 3 months of recovery period, his right ear underwent the same procedure on May 4, 2010.

For both surgeries, pre-operative and post-operative events were unremarkable. He tolerated the said procedure and patient was discharged improved. During his recovery period, he experienced blunted hearing acuity and ear fullness and watery nasal discharge. These were all expected post-surgery and usually temporary. He was then prescribed by our ENT with Clarithromycin 500mg/tab, OD, Levocetirizine dHCl 10mg/tab, OD and Fluticasone furoate (Avamys) nasal spray 1 puff each nostril BID for 1 month.

After 5-7 weeks after each surgery, patient has noted improvement with his hearing. Operative sites showed bilaterally, re-assessment of both ears showed no active ear infections. Turbinates were not congested. Tympanic membranes were also closed and free from any infections. Patient can carry on a normal conversation. He was cleared by our ENT specialist to go back to work.^[10]

More than a year thereafter, or sometime in November 2011, respondent was able to obtain re-employment also as an Able Seaman with a contract duration of eight months albeit, from another manning agency and principal, Philippine Transmarine Carriers, Inc. and Marin Shipmanagement Limited, respectively.^[11]

On July 31, 2012, respondent consulted an independent doctor who diagnosed him to be suffering from "Moderate Sensorineural Hearing Loss, AD, and Profound Mixed Hearing Loss, AS."^[12]

This prompted respondent to claim permanent and total disability benefits against petitioners. Hence, a complaint before the Labor Arbiter was filed on August 13, 2012.^[13]

For their part, petitioners countered that respondent is not entitled to permanent and total disability benefits because he was already declared fit to work on July 9, 2010. Petitioners pointed out that the fact that respondent was able to subsequently secure another deployment as an Able Seaman from another company belies his claims that he is permanently and totally disabled.^[14]

The Ruling of the Labor Arbiter

Upholding the findings of the company-designated doctors that respondent is already fit to work and considering the fact that respondent was subsequently re-employed, the Labor Arbiter ruled that respondent is not entitled to permanent and total disability benefits. It was, however, ruled that respondent is entitled to attorney's fees and sickness allowance, which should be reckoned from the date of sign-off from the vessel

on February 5, 2010 until he was declared fit to work on July 9, 2010. In his July 18, 2013 Decision,^[15] the Labor Arbiter disposed, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioners] JEBSENS MARITIME, INCORPORATED and HAPAG-LLYOD AKTIENGESELLSCHAFT, jointly and severally, to pay [respondent] RUPERTO S. PASAMBA sickness allowance for USD4,800, plus, 10% attorney's fees of the monetary award.

All other claims are DISMISSED for lack of merit.

SO ORDERED.^[16]

The Ruling of the National Labor Relations Commission

On appeal, the National Labor Relations Commission (NLRC) reversed and set aside the Labor Arbiter's Decision. In its December 11, 2013 Decision,^[17] the NLRC ruled that respondent is entitled to permanent and total disability benefits in accordance with the Collective Bargaining Agreement (CBA) considering that he was unable to work for more than 120 days. The NLRC pounded on the fact that respondent was declared fit to work only on July 9, 2010 or 154 days after sign off from the vessel.

According to the NLRC, respondent's subsequent re-employment is of no moment as it came only after a year from the company-designated doctors' declaration of his fitness to work. Despite such re-employment, the fact remains that respondent was still unable to work for more than 120 days. The NLRC cited the case of *Crystal Shipping, Inc. v. Natividad*,^[18] wherein the Court ruled that the fact that the seafarer was cured after a couple of years is not relevant to his claim for disability benefits as "[t]he law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability."

Further, the NLRC also found that the exceptional 240-day period is not applicable to this case as such extension for the company-designated doctors to issue their final assessment "requires, as a condition *sine qua non*, that further treatment is required beyond 120 days and the company-designated physician must declare such." The NLRC found that the company-designated doctors made no such declaration in this case, concluding, thus, that the 240-day extension period cannot be applied.^[19]

Anent the sickness allowance, the NLRC found that the documentary evidence proved that payment made by the petitioners therefor covered only the period from March 1, 2010 to June 15, 2010. Thus, additional sickness allowance was ordered to be paid to cover the period from the date of respondent's sign off on February 5, 2010 to February 28, 2010.^[20]

The dispositive portion of the NLRC Decision reads, thus:

IN VIEW WHEREOF, [respondent's] appeal is **GRANTED**. The assailed Decision is hereby **MODIFIED**. The corporate [petitioners] are hereby **ORDERED** to pay the [respondent] permanent and total disability benefits in the amount of US\$80,000.00 or its peso equivalent at the prevailing exchange rate on the date of actual payment. Said [petitioners] are, likewise, directed to pay the [respondent] sickness allowance for the period starting from the 5th to the 28th of February 2010 and attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.^[21]

Petitioners' motion for reconsideration was denied in the NLRC Resolution^[22] dated January 28, 2014:

WHEREFORE, the Motion for Reconsideration is hereby **DENIED**. No second Motion for Reconsideration of the same nature shall be entertained and the filing thereof shall subject the movant to be cited in contempt in accordance to the power of this Commission as provided under Article 218 of the Labor Code of the Philippines vis-a-vis Section 15 of Rule VII and Rule IX of the 2011 Revised Rules of Procedure of this Commission.

SO ORDERED.^[23]

The Ruling of the Court of Appeals

In its December 17, 2014 assailed Decision,^[24] the CA affirmed the NLRC's conclusion that respondent is entitled to permanent and total disability benefits. The CA ruled that "the fact that [respondent] was unable to perform his customary work as an Able Seaman for more than 120 days establishes permanent total disability."^[25] According to the CA, "[t]his holds true despite a declaration by the company-designated doctors that the seafarer is fit to work; the disability is still considered permanent and total if such declaration is made after the expiration of 120 days from repatriation."^[26]

The award of sickness allowance was also upheld but modified to include the periods from February 5 to 28, 2010; June 16 to 30, 2010, through July 1 to 9, 2010 for the entitlement thereto.^[27]

The attorney's fees awarded were also upheld.^[28]

The CA disposed, thus:

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby **DENIED**. **ACCORDINGLY**, the challenged Decision dated 11 December 2013 and Resolution dated 28 January 2014 rendered by the NLRC, Fourth Division in NLRC LAC NO.-OFW-M-08-000762-13, NLRC NCR(M)-08-I 1911-12 are **AFFIRMED** with **MODIFICATION** in that [petitioners] are **ORDERED** to pay, jointly and severally, [respondent] sickness allowance for

the period starting from the 5th to the 28th of February 2010, the 16th to the 30th of June 2010, and the 1st to the 9th of July 2010, plus 10% attorney's fees of the monetary award. The rest of the assailed Decision **STANDS**.

SO ORDERED.^[29]

Petitioners' motion for reconsideration was denied in the CA's September 30, 2015 assailed Resolution,^[30] which reads:

We **DENY** the *Motion for Reconsideration* filed by Petitioners of this Court's Decision dated 17 December 2014 as no meritorious or strong reasons were raised therein which would warrant the modification, much less reversal, of the Decision sought to be reconsidered.

SO ORDERED.^[31]

Hence, this petition.

It is undisputed that respondent was not able to go back to work as an Able Seaman for more than 120 days from his repatriation. It is also undisputed that the company-designated doctors declared respondent fit to work only on the 154th day from repatriation.

Petitioners, however, argue that respondent's inability to work for more than 120 days does not, by itself, amount to permanent and total disability. Neither would the fact that the fit-to-work declaration was issued beyond the 120-day period lead to the conclusion that respondent was permanently and totally disabled. Petitioners cite the case of *Vergara v. Hammonia Maritime Services, Inc.*^[32] and the subsequent ruling of the Court, where it was held that when no declaration is made as to the seafarer's disability grading or fitness to work within the 120-day period because further medical treatment is required, the seafarer cannot be deemed permanently and totally disabled unless such treatment exceeds the maximum period of 240 days.^[33]

Petitioners also argue that respondent is entitled to sickness allowance equivalent to his basic wage only for the period of 130 days invoking the CBA, which is more than the maximum 120 days provided under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).^[34]

Lastly, petitioners question the award of attorney's fees.^[35]

The Issues

I.

Is respondent entitled to permanent and total disability benefits?

II.

Is respondent entitled to sickness allowance from repatriation until final assessment of the company-designated doctors?

III.

Is respondent entitled to attorney's fees?

This Court's Ruling

The petition is partly meritorious.

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings.^[36]

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI of the Labor Code, in relation to Rule X, Section 2 of the Implementing Rules and Regulations (IRR) of the Labor Code. Article 192(C)(1) of the Labor Code provides:

ART. 192. Permanent disability, x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

Similarly, Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation provides:

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

Relevantly, Section 2, Rule X of the Implementing Rules and Regulations (IRR) Book IV of the Labor Code states:

Section 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency execute prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.^[37] In this case, petitioners and respondent entered into a contract of employment on December 19, 2009, hence, the 2000 POEA-SEC is the applicable version. Section 20(B)(3) thereof reads in part as follows:

SEC. 20. COMPENSATION AND BENEFITS

x x x x

B. 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:

x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of HIS permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. 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.

Lastly, *by the medical findings*, the assessment of the company-designated doctor generally prevails, unless the seafarer disputes such assessment by exercising his right to a second opinion by consulting a doctor of his choice, in which case, the medical report issued by the latter shall also be evaluated by the labor tribunal and the court, based on its inherent merit. In case of disagreement in the findings of the company-designated doctor and the seafarer's personal doctor, the parties may agree to jointly refer the matter to a third doctor whose decision shall be final and binding on them.^[38]

Guided by the foregoing, we now resolve whether or not the NLRC, as affirmed by the CA, correctly awarded the disability benefits that respondent claims.

I.

In this case, the NLRC and the CA heavily anchored their ruling in favor of respondent's entitlement to permanent and total disability benefits on the fact of respondent's inability to work beyond 120 days from repatriation and the company-designated doctors' failure to issue a final assessment as to his fitness to work or disability grading within the said 120-day period, citing the case of *Crystal Shipping*,^[39] Further, the NLRC and the CA denied the application of the 240-day extension period as originally pronounced by the Court in the case of *Vergara v. Hammonia Maritime Services, Inc.*,^[40] reasoning that the company doctors failed to make a declaration that further treatment is necessary beyond the 120-day period to justify the application of the 240-day extension.

A judicious review of the records of this case, however, reveals otherwise.

In *Crystal Shipping*, it was ruled that the seafarer's inability to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body, entitles him to permanent and total disability benefits. In *Vergara*, the Court clarified that the doctrine expressed in *Crystal Shipping* cannot be applied in all situations.

The apparent conflict between the two pronouncements — based on the provisions of 120-day period under the Labor Code and the POEA-SEC on one hand, and the 240-day period under the IRR on the other - has long been harmonized in subsequent cases.^[41]

In *ElburgShipmanagement Phils., Inc. v. Quiogue, Jr.*,^[42] the Court laid down the following guidelines, to wit:

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.

Clearly, as it stands now, the mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits.

The company-designated doctors' declaration of respondent's fitness to work beyond the 120-day period, or specifically on the 154th day, will likewise not work in favor of respondent's case. Contrary to the NLRC's findings, the records clearly show that the company doctors had sufficient justification for extending the issuance of its final assessment beyond the 120-day period, *i.e.*, further medical treatment and observation were still necessary.

The NLRC and the CA failed to consider that respondent underwent a surgery for his left ear on February 25, 2010 and that almost three months recovery period was needed before respondent underwent the same procedure for his right ear on May 14, 2010. Respondent's treatment did not stop after said last surgery, which notably, was on the 99th day after his repatriation. Records also reveal that five to seven weeks after said surgery, respondent was still under observation and medication for his full recovery.^[43] Clearly, thus, respondent's treatment necessarily went beyond the 120-day period. Hence, contrary to the NLRC's findings, the 240-day extension period applies in this case. Notably, the company-designated doctors' assessment of respondent's fitness to work fell on the 154th day, which is well-within the 240-day extension.

It is noteworthy that respondent never raised any question as to the company-designated doctors' findings and declaration of his fitness to go back to work until after two years when he filed the complaint. In fact, respondent was able to obtain re-employment for the same position albeit, from a different principal/manning agency.

The NLRC and the CA erred in disregarding such fact merely because said re-employment came only a year after he was declared fit to work by the company-designated doctors. To be sure, there was neither allegation nor proof to relate such delay in re-employment to the illness subject of his repatriation. On the contrary, such delay bolsters the fact that the company-designated doctors did not err when they declared respondent fit to work after 154 days of treatment and medication as it shows that even a year after said company-designated doctors' final assessment, respondent was able to pass the pre-employment medical examination to get another employment as an Able Seaman from another company. It only demonstrates that the company-designated doctors successfully treated him of the illness subject of his repatriation, contrary to his claim.

Further, it took respondent two years and another re-employment before he consulted an independent doctor to question the company-designated doctors' declaration of his fitness to work. Such belated assessment issued by the independent doctor cannot prevail over the final assessment made by the company-designated doctors who observed and treated respondent since his repatriation up to his recovery.

What is more, respondent's failure to comply with the procedure under Section 20(B) (3) of the POEA-SEC in disputing the company-doctors' final assessment justifies the disregard of the independent doctor's assessment and reliance upon that of the company-designated doctors.' The referral to a third doctor is a mandatory procedure which necessitates from the provision that it is the company-designated doctor whose assessment should prevail.^[44] Simply stated, if the company-designated doctor

declares the seafarer fit to work within the 120 or 240-day periods, such declaration should be respected unless the doctor chosen by the seafarer and the doctor selected by both the seafarer and the employer declare otherwise.^[45]

In sum, the Labor Arbiter correctly ruled that there is no factual or legal basis for respondent's entitlement to permanent and total disability benefits.

II.

Anent the award for sickness allowance, the Labor Arbiter, NLRC, and the CA correctly ruled that respondent is entitled thereto for the entire period of temporary disability (154 days) from repatriation until the declaration of fitness to work, *i.e.*, from February 5, 2010 to July 9, 2010.

As explained above, the provision under Section 20(B)(3) of the POEA-SEC, which provides that upon sign off, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed 120 days, should be harmonized with the provisions of the Labor Code and its IRR which allows the 240-day extension period under certain circumstances.

Thus, while we deny respondent's claim for permanent and total disability benefits, we are one with the labor tribunals and the court *a quo* that he is entitled to the income benefit of temporary total disability during the period of his treatment, although exceeding beyond the 120-day period but within the 240-day extension, as his condition required further treatment and observation.^[46] This is computed from the date of his repatriation on February 5, 2010 until he was declared fit to work on July 9, 2010.

Neither can the provision in the CBA that respondent is entitled to sickness pay only for a period not exceeding 130 days prevail, the same being contrary to the law and established jurisprudence above-discussed.

III.

The Court finds no ground to disturb the uniform findings of the Labor Arbiter, NLRC, and the CA in awarding attorney's fees pursuant to Article 2208 (8)^[47] of the Civil Code, which states that the award of attorney's fees is justified for indemnity under the workmen's compensation and employer's liability laws.^[48]

WHEREFORE, the petition is **PARTLY GRANTED**. Accordingly, the Decision of the Court of Appeals dated December 17, 2014 in CA-G.R. SP No. 134720 is hereby **AFFIRMED with MODIFICATION** in that the award of permanent and total disability benefits is **DELETED**, while the awards for sickness allowance and attorney's fees **STAND**.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

* Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[1] *Rollo*, pp. 3-30.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela, concurring; *id.* at 37-48.

[3] *Id.* at 49-50.

[4] *Id.* at 7.

[5] *Id.* at 38-39.

[6] *Id.* at 39.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 118.

[11] *Id.* at 121.

[12] *Id.* at 39.

[13] *Id.* at 10.

[14] *Id.* at 40.

[15] *Id.* at 161-167.

[16] *Id.* at 166-167.

[17] *Id.* at 226-236.

[18] 510 Phil. 332, 341 (2005).

[19] *Rollo*, p. 234.

[20] Id. at 234-235.

[21] Id. at 235.

[22] Id. at 255-256.

[23] Id.

[24] Supra note 2.

[25] *Rollo*, p. 45.

[26] Id.

[27] Id. at 47.

[28] Id.

[29] Id. at 48.

[30] Id. at 49-50.

[31] Id.

[32] 588 Phil. 895 (2008).

[33] *Rollo*, pp. 15-16.

[34] Id. at 23-25.

[35] Id. at 26.

[36] *Aldaba v. Career Philippines Shipmanagement, Inc.*, G.R. No. 218242, June 21, 2017, 828 SCRA 55, 64.

[37] Id.

[38] *Tradephil Shipping Agencies, Inc. v. Dela Cruz*, 806 Phil. 338, 355-356 (2017).

[39] Supra note 18, at 341.

[40] Supra note 32.

[41] *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717 (2013); *Montierro v. Rickmers*

Marine Agency Phils., Inc., 750 Phil. 937 (2015); *Carcedo v. Maine Marine Phils., Inc.*, 758 Phil. 166 (2015; *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341 (2015).

[42] 765 Phil. 341,362-363 (2015).

[43] *Rollo*, pp. 118-119.

[44] *Supra* note 38, at 356.

[45] *Oriental Shipmcmagement Co., Inc. v. Ocangas*, G.R. No. 226766, September 27, 2017, 841 SCRA 258, 272.

[46] *Solpia Marie and Ship Management, Inc. v. Postrano*, G.R. No. 232275, July 23, 2018.

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

x x x x

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

[48] *Cutanda v. Marlow Navigation Phils., Inc.*, G.R. No. 219123, September 11, 2017, 839 SCRA 272, 302.



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