FIRST DIVISION

[G.R. No. 225756, November 28, 2019]

VICTORINO G. RANOA, PETITIONER, VS. ANGLO-EASTERN CREW MANAGEMENT PHILS., INC., ANGLO-EASTERN CREW MGT. (ASIA) LTD., AND/OR CAPT. GREGORIO B. SIALSA, AND COURT OF APPEALS (TENTH DIVISION), RESPONDENTS.

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari*[1] seeks to reverse the Decision[2] dated February 29, 2016 of the Court of Appeals in CA-G.R. SP No. 140690 holding that petitioner Victorino G. Ranoa[3] was not entitled to permanent disability benefits.

Antecedents

On March 19, 2013, private respondent Anglo-Eastern Crew Management Phils., Inc., for and on behalf of its principal, private respondent Anglo-Eastern Crew Management (Asia) Ltd., hired petitioner as Master of its vessel "Genco Bay" for six (6) months with a monthly salary of USD1,943.00.[4]

Petitioner's responsibilities included commanding the ship in the transport of passengers and cargo, setting the course of the ship, inspecting the ship for safe and efficient operation, coordinating the activities of other crew members concerned for signaling devices, and calculating landfall sighting.[5]

Prior to his deployment, petitioner underwent routinary Pre-Employment Medical Examination (PEME). In the process, petitioner was asked whether he was aware of, diagnosed with, or treated for hypertension and heart disease, among others. Petitioner answered in the negative. Based on the results of his examination, petitioner was declared fit for sea duty and got deployed on March 26, 2013.[6]

On May 21, 2013, barely two (2) months on board, petitioner suffered dizziness, vomiting, chest pain, shortness of breath, and cold sweat. He was brought to a doctor in London who noted his elevated blood pressure at 170/100mmHg. Consequently, he got repatriated on May 26, 2013. As soon as he arrived back in the country, he was referred to company-designated doctors Karen Frances Hao-Quan and Marianne C. Sy. [7]

The doctors' initial finding was "*(t)o Consider Cardiac (Dysrythmia); To Consider Coronary Artery Disease; Hypertensive Cardiovascular Disease*." On October 24, 2013, the doctors issued a Grade 12 disability rating.[8]

Dissatisfied, he sought the opinion of a private doctor, Dr. Antonio C. Pascual of the Philippine Heart Center on April 1, 2014. Dr. Pascual found him to be suffering from Stage 2 hypertension and coronary artery disease and advised him to continue with his medication and treatment. Dr. Pascual, thus, opined that petitioner was unfit for sea duties.[9]

Petitioner averred that despite this finding, private respondents refused to award him total and permanent disability benefits. Hence, he got constrained to file the complaint below for permanent total disability benefits.[10]

Private respondents, on the other hand, argued that petitioner willfully concealed the fact that he was previously diagnosed with coronary artery disease and had undergone coronary angiogram. Assuming that petitioner was entitled to disability benefits, he was only entitled to Grade 12 disability benefits, as opined by the company-designated doctors.[11]

The Labor Arbiter's Ruling

By Decision dated October 1, 2014,[12] Labor Arbiter Eric V. Chuanico granted petitioner's claim for total and permanent disability benefits, *viz*.:

> **WHEREFORE**, (p)remises (c)onsidered, this Office finds the Complainant to be (t)otally and (p)ermanently (d)isabled. Respondents, jointly and severally are held liable to the Complainant the amount of US$155,257.00 or its Philippine Peso (e)quivalent at the time of payment as total and permanent disability benefit plus (d)amages of Php100,000.00 as well as to pay (attorney's fees equivalent to ten percent (10%) of the total award.
>
> Complainant's other claims are denied for lack of merit.
>
> **SO ORDERED.**[13]

Labor Arbiter Chuanico found private respondents' charge of concealment of material fact to be unsubstantiated. He held that the company-designated doctors should have required petitioner to present his previous diagnoses to ascertain all available information surrounding his illness. Private respondents' failure to require petitioner to present his previous medical records led to no other conclusion but that the statements made in the company-designated doctors' sworn affidavit were "*nothing more than self-serving allegations bereft of any credence*." As such, he cannot consider this allegation relevant, nay, applicable to the charge of material concealment against petitioner. Too, sustaining the allegation would violate the principle of privileged communication, hence, inadmissible in evidence.

Records showed that petitioner was asymptomatic when he boarded the vessel. He was

also deemed fit for sea duties. If petitioner already had a heart condition prior to boarding, then the same would have been reflected in his PEME, but it was not. Petitioner, therefore, was deemed fit prior to assuming his duties. His work on board caused or at least contributed to the development of his illness; thus, the same is compensable.

The National Labor Relations Commission's (NLRC) Ruling

On private respondents' appeal, the NLRC affirmed with modification through its Decision dated January 30, 2015,[14] to wit:

> WHEREFORE, the appeal is PARTLY MERITORIOUS and GRANTED. The Labor Arbiter's award of damages amounting to P100,000.00 is hereby DELETED.
>
> All other dispositions in the judgment aquo (sic) is hereby AFFIRMED.
>
> SO ORDERED.[15]

The NLRC held that petitioner was not guilty of concealment or misrepresentation when he did not disclose that he had previously undergone an angiogram. It said - that an angiogram was neither an illness nor an operation, it was simply a "*procedure preparatory to an operation*." Since nothing serious came out of it, petitioner did not conceal anything when he did not indicate it in his PEME. In any case, he was found fit for sea duties. More, cardiovascular disease was one of the occupational diseases listed under Section 32-A of the Philippine Overseas Employment Administration - Standard Employment Contract (POEA-SEC).

Private respondents, too, may not insist that petitioner was only entitled to Grade 12 disability benefits in accordance with the company-designated doctors' findings. Petitioner's personal physician found him unfit for sea duties. In any event, it was not the injury which was being compensated, but the incapacity to work resulting in the impairment of one's earning capacity. Petitioner had been out of work for more than two hundred and forty (240) days. By operation of law, he was already deemed totally and permanently disabled to resume work as a seafarer.

Considering, however, that private respondents promptly attended to petitioner's medical need upon his repatriation, the award of damages was unnecessary.

Private respondents' motion for reconsideration was denied under Resolution dated March 31, 2015.[16]

The Court of Appeals' Ruling

On private respondents' petition for *certiorari*, the Court of Appeals, in its Decision dated February 29, 2016,[17] reversed the NLRC Decision.

The Court of Appeals held that while petitioner was indeed diagnosed with hypertensive cardiovascular disease and minor coronary artery disease, he failed to prove the

existence of the circumstances to make the disease compensable under the POEA-SEC. Petitioner did not show that he was indeed exposed to a certain degree of strain in work that would contribute to the deterioration of his health. His employment contract even showed that he was required to work for only six (6) hours a day.

Private respondents' doctors, on the other hand, were consistent in finding that even prior to boarding, petitioner already had cardiovascular disease. These two (2) company-designated physicians from different hospitals swore that petitioner told them he had previously been diagnosed with hypertension and took medicines therefor for a year. Petitioner did not refute this. Notably too, there was no iota of evidence showing that petitioner was complying with his prescribed medications for such illness. Petitioner was even advised during treatment to quit smoking.

Petitioner cannot deny his existing illness, albeit he was found fit to work after his PEME. Jurisprudence had consistently held that a PEME is generally not exploratory in nature, nor a thorough examination of an applicant's medical condition. Neither can petitioner argue that the revelation by the company-designated doctors that he had been previously diagnosed with a heart ailment was a fruit of the poisonous tree. This principle applies only to unreasonable searches and seizures.

Lastly, petitioner did not even ask to be referred to a third doctor after his chosen physician came out with a finding contrary to those of the company-designated doctors. The POEA-SEC commands such referral and so does jurisprudence. This is specially applicable here considering that merely seven (7) days after consulting with his private doctor, petitioner already sought legal recourse.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

Petitioner's Position[18]

Petitioner argues that he is not guilty of material concealment. Aside from the company-designated doctors' self-serving allegations that he supposedly mentioned to them that he was previously diagnosed with hypertension and underwent coronary angiogram in 2010, there is nothing on record to support the same. Dr. Sy even mentioned that he purportedly showed him and the other doctor a copy of the result of his angiogram. If this were true, Dr. Sy should have then obtained a copy of the same when his treatment was ongoing.

In any event, disclosing to others what he supposedly told the company-designated doctors is a blatant violation of the privileged communication between doctor and patient. Thus, it is inadmissible in evidence. Too, sans any proof that the angiogram showed abnormal findings and continuing illness, it cannot be said that he was guilty of concealment. At any rate, he was deemed fit for duty as a result of his PEME.

His illness is total and permanent. Although the company-designated physicians rated

him with Grade 12 disability, the same is not binding. He had the option of consulting a second physician of his choice. His chosen physician found him to be unfit for sea duties. In fact, as of October 24, 2013, he was still suffering from episodes of palpitation and skip beats. Also, his constant exposure to stress is a known risk factor of his illness. As he was cautioned not to expose himself to strenuous activities, hence, he could no longer resume his sea duties. From the time he was medically repatriated, he had not engaged in any occupation.

More, contrary to the Court of Appeals' ruling, referral to a third doctor is not mandatory. In any case, the process of choosing and appointing a third doctor rests on private respondents, not on him.

Private Respondents' Position[19]

Private respondents assert that petitioner's arguments are a mere rehash of the matters already resolved by the Court of Appeals. Petitioner willfully concealed the fact of his previous illness. When he was asked during his PEME whether he got hospitalized due to or whether he was aware of any medical problems like hypertension and heart disease, petitioner answered in the negative despite knowing full well that he had been diagnosed with this illness and had in fact undergone coronary angiogram. For this, he was even prescribed with certain medications which he took for one (1) year. It was only when he got medically repatriated on May 26, 2013 that he essentially admitted to the company-designated doctors his past diagnoses. Being a pre-existing condition, therefore, petitioner's illness is non-compensable.

Petitioner cannot also fault them for not securing copies of his past medical records. During the proceedings before the labor arbiter and the NLRC, they had repeatedly requested the labor tribunals to require petitioner's doctors to submit the latter's medical records. But the labor tribunals simply brushed aside their requests. In any case, the company-designated doctors had stated under oath what petitioner had told them regarding his past illness. Dr. Sy attested that petitioner showed her the result of his angiogram but did not give her a copy thereof. Jurisprudence teaches that notarized documents are accorded full faith and credence.

Petitioner cannot invoke the doctor-patient privileged communication rule. This rule applies only to civil cases and not to labor cases. Also, the privileged communication only pertains to those that would "*blacken the reputation of the patient*" which is not the case here.

Further, petitioner should have demanded referral to a third doctor instead of immediately filing the complaint below. As the Court of Appeals correctly held, referral to a third doctor is mandatory.

More important, petitioner was not totally and permanently disabled. As proved by two (2) Overseas Filipino Worker (OFW) Information from the POEA, petitioner was subsequently engaged by TDG Crew Management Inc. in December 2016 and by Seacrest Maritime Management Inc. in December 2017.[20]

Issues

1. Is petitioner guilty of material concealment of a previous medical condition?

2. Is referral to a third doctor mandatory?

3. Is petitioner entitled to total and permanent disability benefits?

Ruling

To begin with, being not a trier of facts, it is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that the factual findings of the Court of Appeals are conclusive and binding on this Court. The Court, nevertheless, may proceed to probe and resolve factual issues presented here because the findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC.[21]

The employment of seafarers is governed by the contracts they sign at the time of their engagement. So long as the stipulations in said contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[22]

Petitioner's employment is governed by the contract he executed with private respondents on March 19, 2013, the POEA-SEC, and the Collective Bargaining Agreement (CBA) between the parties.

First Issue
No material concealment

Private respondents deny petitioner's claim for disability benefits on ground of material concealment of his alleged pre-existing or previous diagnosis with hypertension and coronary artery disease.

Pursuant to the 2010 POEA-SEC, an illness shall be *considered as pre-existing* if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the advice of a medical doctor on treatment given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.[23] More, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.[24]

Here, none of these conditions obtains. Consider:

One. Although the company-designated doctors stated that petitioner supposedly

admitted to them that he was diagnosed with and treated for hypertension and coronary artery disease in 2010, petitioner had invariably denied it. Notably, private respondents themselves had not adduced evidence to prove that indeed, petitioner was already suffering from hypertension and coronary artery disease as far back as 2010.

Thus, without anything to substantiate petitioner's so-called previous diagnosis, there was nothing he could have concealed from private respondents.

Two. Petitioner passed the PEME prior to his boarding. He was declared fit to work by the company-designated doctors. Had petitioner been already suffering from hypertension and coronary artery disease, this would have been reflected in his physical examination. On this score, ***Philsynergy Maritime, Inc., et al. v. Columbano Pagunsan Gallano, Jr.***[25] is apropos:

> At any rate, it is well to note that had respondent been suffering from a pre-existing hypertension at the time of his PEME, **the same could have been easily detected by standard/routine tests conducted during the said examination, *i.e.*, blood pressure test, electrocardiogram, chest x-ray, and/or blood chemistry**. However, respondent's PEME showed normal blood pressure with no heart problem, which led the company-designated physician to declare him fit for sea duty. (Emphasis supplied)

Thus, petitioner cannot be said to have had any pre-existing illness prior to boarding.

Three. Assuming that petitioner was indeed previously diagnosed with hypertension and coronary artery disease, he still could not be guilty of material concealment. There was no proof that petitioner "*deliberately concealed*" his illness for a malicious purpose. It was not shown that petitioner had the "*intent to deceive*" and to "*profit from that deception*." Consequently, petitioner cannot be considered guilty of concealment as to disqualify him from claiming disability benefits.

Second and Third Issues
Referral to a third doctor is mandatory
Petitioner is only entitled to Grade 12 disability benefits

Upon his repatriation, petitioner was diagnosed to be suffering from hypertension and coronary artery disease. The company-designated doctors gave petitioner's illness a Grade 12 rating.[26] But Dr. Pascual, petitioner's chosen doctor, found petitioner to be suffering from Stage 2 Hypertension and Coronary Heart Disease for which the latter is found to be "*unfit to work as a seaman*."

The POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time petitioner was employed in 2013, sets the procedure for disability claims, to wit:

xxx xxx xxx

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

xxx xxx xxx

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 (e)mployer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

As mandated, upon repatriation, the seafarer concerned shall be examined and treated by the company-designated physician. If the seafarer disagrees with the final

assessment of the company-designated physician, the former may procure a second opinion from a physician of his or her choice. In case of a conflicting assessment, the parties may resort to a third doctor.

As stated, the company-designated doctors here gave petitioner a Grade 12 disability rating, while petitioner's chosen physician, Dr. Pascual, opined that petitioner was suffering from Stage 2 Hypertension and Coronary Heart Disease and concluded that he is "*unfit to work as a seaman*."[27]

There is no dispute that petitioner was not referred to a third doctor, which fact eventually became the core issue here. Petitioner insists that private respondents had the duty to refer him to a third doctor. He claimed private respondents did not, as the latter even ignored him.[28] Private respondents, on the other hand, maintained they were never informed that petitioner consulted another doctor, much less, the findings of that doctor. Believing they had complied with their obligations to petitioner, they were surprised to have received a notice of the case from the labor arbiter's office.[29]

In ***Dohle Philman Manning Agency, Inc. v. Doble***,[30] the Court held that referral to a third doctor is mandatory in disability claims. There, the Court ruled that should the seafarer fail to comply therewith, he or she would be in breach, as a consequence, of the POEA-SEC, and the assessment of the company designated physician shall be final and binding. ***INC Navigation Co. Philippines, Inc., et al. v. Rosales***[31] decreed that at this point, the matter of referral to a third doctor pursuant to the pertinent provision of the POEA-SEC is a settled ruling.

Further, petitioner cannot demand that private respondents initiate the referral to a third doctor.

For one, how could private respondents make the referral themselves when in the first place, petitioner had not even informed them or shown proof of such contrary assessment? ***Marlow Navigation Philippines, Inc., et al. v. Osias***[32] further enunciates:

> In *Carcedo*, the Court held that "[t]o definitively clarify how a conflict situation should be handled, **upon notification** that the seafarer disagrees with the company doctor's assessment based on the **duly and fully disclosed contrary assessment** from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. **Upon notification, the company carries the burden of initiating the process for the referral to a third doctor** commonly agreed between the parties." (Emphasis supplied)

Here, there was nothing on record showing that petitioner had furnished petitioner with a copy of Dr. Pascual's findings and conclusions. Nor was there anything to show that he informed them of such contrary medical conclusion. Clearly, petitioner did not "*fully disclose the contrary assessment*" to private respondents as mandated under the

POEA-SEC and jurisprudence.

If petitioner truly wanted to be referred to a third doctor, then he should have fully informed private respondents of Dr. Pascual's contrary findings and demanded that he be referred to a third doctor. Only after upon such full disclosure and demand to be referred to a third doctor does the employer's duty to activate the third doctor provision arise.

For another, in ***Generato M. Hernandez v. Magsaysay Maritime Corporation, et al.***[33] the Court clarified that the initiative for referral to a third doctor should come from the employee, *i.e.*, petitioner himself. *He must actively or expressly request for it.*

Nevertheless, while the Court of Appeals correctly ruled that referral to a third doctor is mandatory, it erred in altogether dismissing petitioner's claim for disability benefits.

On compensable diseases, the 2010 POEA-SEC states:

xxx xxx xxx

SECTION 32 - A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4. There was no notorious negligence on the part of the seafarer.

It further provides for the conditions before a cardiovascular disease may be deemed compensable, *viz*.:

11. Cardio-vascular events - to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work

b. the strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, **it is reasonable to claim a causal relationship**

d. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.

e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME. (Emphasis supplied)

The Court gives emphasis to paragraph (c) of the foregoing conditions.

Prior to assuming his duties as Master of "Genco Bay" on March 26, 2013, petitioner was declared fit to work after PEME with the company-designated doctors. Clearly, petitioner was asymptomatic before being subjected to strain at work. He only showed signs and symptoms of hypertension and heart ailment while already performing his work aboard "Genco Bay" on May 21, 2013 where he experienced dizziness, vomiting, chest pain, shortness of breath, and cold sweat. These symptoms persisted way beyond the time he was medically repatriated. In fact, according to the report made by the company-designated doctors themselves, as of October 24, 2013 or five (5) months after repatriation, petitioner was still suffering from episodes of palpitation and skip beats.[34] Considering that petitioner was asymptomatic prior to boarding and that his symptoms persisted, it is reasonable to claim a causal relationship between petitioner's illness and his work.

As vessel Master, petitioner was constantly exposed to strenuous work, such as commanding the ship in its transport of passengers and cargo, setting the course of the ship, inspecting the ship for safe and efficient operation, coordinating the activities of other crew members concerned for signaling devices, and calculating landfall sighting.[35] Private respondents have not disputed this. Such strenuous activities could have led to or at least aggravated petitioner's heart ailment, thus making it a compensable work-related illness.

Petitioner, however, is not entitled to permanent and total disability benefits but only to Grade 12 disability benefits as found by the company-designated doctors. This is because petitioner inexplicably failed to comply with the POEA-SEC's mandated procedure for referral to a third doctor.

This case is similar to ***Generato M. Hernandez v. Magsaysay Maritime Corporation, et al.***,[36] In that case, the NLRC, the Court of Appeals, and the Court invariably found that Hernandez was not guilty of material and fraudulent misrepresentation. But the Court only sustained the Grade 11 rating given him by the company-designated doctor, thus:

The rulings of the labor authorities are seriously flawed because they were rendered in total disregard of the POEA-SEC provision, which are deemed written in the contract of employment, on the prescribed procedure in the resolution of conflicting disability assessments of the company-designated physician and the seafarer's doctor. There is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law between the parties.

It bears to stress that there is no issue as to the compensability of petitioner's health condition since the parties do not dispute that it is work-related. What remains to be resolved is whether he is entitled to the payment of permanent total disability benefits or to that which corresponds to Disability Grade 11 of the POEA-SEC.

Under Section 20(A)(3) of the 2010 POEA-SEC, "*[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 provision refers to 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 as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it. In *INC Navigation Co. Philippines, Inc., et al. v. Rosales*, We opined:

> By so acting, **Rosales proceeded in a manner contrary to the terms of his contract with INC in challenging the company doctor's assessment; he failed to signify his intent to submit the disputed assessment to a third doctor and to wait for arrangements for the referral of the conflicting assessments of his disability to a third doctor.**
>
> Significantly, no explanation or reason was ever given for the omission to comply with this mandatory requirement; no indication whatsoever is on record that an earnest effort to secure compliance with the law was made; Rosales immediately filed his complaint with the LA. As we recently ruled in *Bahia Shipping Services, Inc., et al. v. Crisante C. Constantino*, when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision.
>
> To definitively clarify how a conflict situation should be handled, **upon notification that the seafarer disagrees with the**

company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties. In *Bahia*, we said:

> In the absence of any request from him (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.

In *Dumadag*, the **seafarer's non-compliance with the conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician**. Dumadag pursued his claim without observing the laid-out procedure. He consulted doctors of his choice regarding his disability after the company-designated physician issued a fit-to-work certification for him. According to the Court, there is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent total disability benefits on the strength of his chosen doctors' opinions, without referring the conflicting opinions to a third physician for final determination. The Court considered the filing of the complaint as a breach of Dumadag's contractual obligation and that the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated doctor stands. We have noted that the provision of the POEA-SEC is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

The pronouncement in Dumadag, which was subsequently relied upon in a string of cases, is consistent with Our earlier ruling in *Vergara v. Hammonia Maritime Services, Inc., et al.*, which held:

> 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. x x x
>
> Here, **the Court is bound by the Grade 11 disability grading and assessment by the company-designated physician** that was timely rendered within the 120-day period. Petitioner neither questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated doctor's competence. To reiterate what has already been settled, the referral to a third physician is mandatory and non-compliance with the procedure may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made.
>
> Petitioner's filing of his claim before the labor arbiter was premature. In view of the fact that he did not observe the relevant provisions of the POEA-SEC after he received a definitive disability assessment from the company-designated physician, the Court is left without a choice but to uphold the certification issued with respect thereto. **Failure to follow the procedure is fatal and renders conclusive the disability rating issued by the company-designated doctor.** (Emphasis supplied; citations omitted)

So must it be.

Another, it was the company-designated doctors who examined, treated, and monitored petitioner from the time he got repatriated. Dr. Pascual, on the other hand, only saw petitioner once, on April 1, 2014. He did not elaborate on how he came up with the conclusion that petitioner was unfit for sea duties. He did not even mention the specific physical examinations, if any, which were made on petitioner, how the latter responded thereto, and what petitioner's condition was before and after the supposed treatment. A reading of Dr. Pascual's report shows that he based his conclusion on the results of the examinations that the company-designated physicians conducted on petitioner upon his repatriation.

Still another, the company-designated physicians gave their disability rating as early as October 2013; petitioner, however, only consulted Dr. Pascual in April 2014, or six (6) months after the rating was issued by the company-designated physicians. A number of

things could have happened in a span of six (6) months. Petitioner did not allege that he maintained his medications or followed a diet in order to prevent recurrence or aggravation of his hypertension and coronary artery disease. On this point, ***Normilito R. Cagatin v. Magsaysay Maritime Corporation, et al.***[37] states:

> In contrast, petitioner presents the report of his own physician, Dr. Collantes, who examined him almost seven (7) months after he was declared "fit to work" by Dr. Cruz. The Court finds, however, that this **later report by petitioner's chosen doctor is not as reliable as that of the company-designated physician**.
>
> As respondents contend, **it is unknown what transpired** between January 15, 2002 (when petitioner was declared "fit to work" by the company-designated physician) and August 9, 2002 (when he was declared "unfit to work at sea" by his own physician). It was petitioner's duty as claimant to enlighten the labor tribunals as well as the courts as to what transpired in these seven (7) months. Not having performed this duty, the Court agrees with the Court of Appeals that this non-disclosure should be interpreted against petitioner. **The withholding of information as to what happened in the months between the time he was declared "fit to work" up to the time he was declared otherwise, or "unfit to work at sea," opens petitioner's claims to much speculation and conjecture, which makes the grant of his claims for disability benefits untenable.**
>
> **This lack of forthrightness on the part of petitioner impels this Court to favor the earlier report of the company-designated physician, Dr. Cruz, over that of petitioner's chosen physician,** Dr. Cruz, over that of petitioner's chosen physician, Dr. Collantes. There are other cogent reasons, however. *First*, it is obvious in the report of Dr. Collantes that **he only saw petitioner once**, or on August 6, 2002, while Dr. Cruz and his team examined and treated petitioner several times, for a period of five (5) months. *Second*, Dr. Collantes **did not perform any sort of diagnostic test or examination on petitioner**, unlike Dr. Cruz before him. It has been held **in cases of disability benefits claims that in the absence of adequate tests and reasonable findings to support the same, a doctor's assessment should not be taken at face value. Diagnostic tests and/or procedures as would adequately refute the normal results of those administered to the petitioner by the company-designated physicians are necessary for his claims to be sustained**. (Emphasis supplied; citations omitted)

Montierro v. Rickmers Marine Agency Phils., Inc.[38] decreed:

> Further, a juxtaposition of the two conflicting assessments reveals that the certification of Montierro's doctor of choice pales in comparison with that of the company-designated physician. Fitting is the following discussion of the CA:

xxx xxx xxx

> **Having extensive personal knowledge of the seafarer's actual medical condition, and having closely, meticulously and regularly monitored and treated his injury for an extended period, the company-designated physician is certainly in a better position to give a more accurate evaluation of Montierro's health condition. The disability grading given by him should therefore be given more weight** than the assessment of Montierro's physician of choice. (Emphasis supplied)

In fine, as between the company-designated physicians who have all the medical records of petitioner for the duration of his treatment and as against the latter's chosen physician who merely examined him for a day as an outpatient, the former's finding must prevail.[39]

Lastly, there was absolutely no conclusive proof that petitioner's hypertension and coronary artery disease actually prevented him from working again as a seaman. In fact, as private respondents manifested[40] and as proved by the POEA's OFW Information,[41] TDG Crew Management Inc., for and on behalf of Dalex Shipping Company S/A, employed petitioner on board its vessel on a three (3)-month contract. This was processed on December 21, 2016. Another POEA OFW Information[42] shows that on December 1, 2017, Seacrest Maritime Management Inc., for and on behalf of Sea Vision Shipping Inc., hired petitioner as Master of its vessel on a six (6)-month contract. These clearly show that petitioner is still able to perform his usual work, notwithstanding Dr. Pascual's assessment that he was supposedly already totally and permanently disabled for sea duties.

ACCORDINGLY, the petition is **PARTLY GRANTED** and the Decision dated February 29, 2016 and Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 140690 are **AFFIRMED with MODIFICATION**. Private Respondents Anglo-Eastern Crew Management Phils., Inc. and Anglo-Eastern Crew Mgt. (Asia) Ltd. are ordered to **PAY** petitioner Victorino G. Ranoa the following:

1. The amount in US dollars or its Philippine Peso equivalent at the time of payment for Grade 12 disability rating in accordance with the Collective Bargaining Agreement;

2. Ten percent (10%) of the total monetary award as attorney's fees; and

3. Interest of these amounts at the rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.[43]

SO ORDERED.

Peralta, C. J., (Chairperson-First Division), J. Reyes, Jr., and *Inting*,* *JJ.*, concur.

Caguioa, J., on official leave.

---

* Additional member per Special Order No. 2726 dated October 25, 2019.

[1] *Rollo*, pp. 9-29.

[2] Penned by now retired Associate Justice Florito S. Macalino and concurred in by Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Zenaida T. Galapate-Laguilles, *rollo*, pp. 72-86.

[3] Sometimes spelled as "Rañoa."

[4] *Rollo*, p. 73.

[5] *Id.*

[6] *Id.* at 73 and 101.

[7] *Id.* at 56-57.

[8] *Id.* at 74.

[9] *Id.* at 12, 57 and 74.

[10] *Id.* at 13.

[11] *Id.* at 40-41.

[12] *Id.* at 36-53.

[13] *Id.* at 53.

[14] Penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioner Pablo C. Espiritu, Jr., *id.* at 55-67.

[15] *Id.* at 66-67.

[16] *Id.* at 69-70.

[17] *Id.* at 72-86.

[18] See Petition for Review on Certiorari dated September 9, 2016, *id.* at 9-29.

[19] See Comment dated November 25, 2016, *Id.* at 93-124; and Memorandum of

Arguments dated June 21, 2018, *id.* at 188-235.

[20] See Urgent Manifestation dated January 19, 2018, *id.* at 181-183.

[21] See *Status Maritime Corporation, et al. v. Sps. Margarito B. Delalamon and Priscila A. Delalamon*, 740 Phil. 175, 189 (2014).

[22] See *C.F. Sharp Crew Management, Inc., et al. v. Legal Heirs of the Late Godofredo Repiso*, 780 Phil 645, 665-666 (2016).

[23] *Philsynergy Maritime, Inc., et al. v. Columbano Pagunsan Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

[24] *Antonio B. Manansala v. Marlow Navigation Phils., Inc., et al.*, G.R. No. 208314 August 23, 2017 837 SCRA 492, 508.

[25] Supra note 23.

[26] *Rollo*, pp. 229-235.

[27] *Id.* at 74.

[28] *Id.* at 13.

[29] *Id.* at 96.

[30] G.R. No. 223730, October 4, 2017, 842 SCRA 204, 217.

[31] 744 Phil. 774, 787 (2014).

[32] 773 Phil. 428, 446 (2015); also see *Dario A. Carcedo v. Maine Marine Philippines, Inc., et al.*, 758 Phil. 166, 189-190 (2015).

[33] G.R. No. 226103, January 24, 2018.

[34] *Rollo*, p. 19.

[35] *Id.* at 73.

[36] Supra note 33.

[37] 761 Phil. 64, 81-82 (2015).

[38] 750 Phil. 937, 947-948 (2015).

[39] See *Nonay v. Bahia Shipping Services, Inc., et al.*, 781 Phil. 197, 229 (2016).

[40] *Rollo*, pp. 181-183.

[41] *Id.* at 184.

[42] *Id.* at 185.

[43] *Jessie C. Esteva v. Wilhelmsen Smith Bell Manning, Inc., et al.*, G.R. No. 225899, July 10, 2019.
