FIRST DIVISION

[G.R. No. 227419, June 10, 2020]

HENRY ESPIRITU PASTRANA, PETITIONER, VS. BAHIA SHIPPING SERVICES, CARNIVAL CRUISE LINES, NORTH SEA MARINE SERVICES CORPORATION, V. SHIP LEISURE, INC., ELIZABETH MOYA AND FERDINAND ESPINO, RESPONDENTS.

DECISION

CAGUIOA, J:

Assailed in this Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court are the Decision[1] dated May 5, 2016 and Resolution[2] dated September 5, 2016 of the Court of Appeals, Eighth Division (CA), in CA-G.R. SP No. 136109.

Facts

Petitioner Henry Espiritu Pastrana (Pastrana) entered into a Contract of Employment dated September 6, 2012 with respondent Bahia Shipping Services (BSS) as an Environmental Team Leader on board the vessel Carnival Fascination.[3] He received a basic monthly salary of $1,000.00 exclusive of overtime pay and other benefits.[4]

Prior to his engagement, Pastrana underwent the required pre-employment medical examination and was declared fit to work.[5]

Sometime in November 2012, while on board the vessel, Pastrana lifted a red bin full of food waste to free up space for other bins.[6] However, he miscalculated the weight of the bin and dropped it midway.[7] After said incident, Pastrana experienced lower back pain which radiated to his right buttock.[8] He visited the infirmary where he was injected with steroid and advised to take pain relievers.[9] However, he became alarmed of his condition when the pain extended from his right buttock down to his right leg, and it became difficult for him to get up from a sitting position.[10]

On November 7, 2012, Pastrana went back to the infirmary to consult his worsening condition.[11] He was examined by Dr. Edward Dees who diagnosed him with *sciatiform pain/plantar fasciitis* and prescribed him medicines.[12] Despite the medication and physiotherapy, the pain persisted and even worsened.[13] Thus, on December 10, 2012, Pastrana was repatriated to the Philippines for medical treatment.[14]

Two days after his repatriation, on December 12, 2012, Pastrana reported to the company-designated physician, Dr. Robert Lim (Dr. Lim), and underwent magnetic resonance imaging (MRI) scan of his *lumbo sacral* spine.[15]

On December 18, 2012, Pastrana had his second consultation with Dr. Lim.[16] He was given medication and advised to undergo rehabilitation.[17] He underwent physical therapy sessions for almost four months, but this only resulted to minimal improvement.[18]

On April 2, 2013, Dr. Lim advised Pastrana that he is already fit to work.[19] Trusting the assessment of the company-designated physician and eager to resume sea duty, Pastrana signed the fit to work declaration.[20] However, the Medical Director of respondent Carnival Cruise Lines declared him unfit to return to his usual work on board the vessel after observing that he still has stiff trunk and painful gait.[21]

On April 11, 2013, the company-designated physician issued a final assessment which states as follows:

> "This is regarding the case of Environmental Team Leader Henry E. Pastrana who was initially seen here at Metropolitan Medical Center on December 12, 2012 and was diagnosed to have Herniated Disc, L4-L5, L5-S1.
>
> If patient is entitled to a disability, his suggested disability grading is Grade 11 - 1/3 loss of lifting power."[22]

In view of the foregoing medical assessment, respondents offered to pay Pastrana $7,000.00 as disability benefit corresponding to a Grade 11 disability rating.[23] Pastrana refused the offer and instead sought the opinion of his personal doctor, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who declared him "permanently unfit in any capacity to resume his duties as a Seaman."[24]

On the basis of the medical assessment of Dr. Magtira, Pastrana demanded total and permanent disability benefits from respondents, but his demand went unheeded.[25] Thus, Pastrana filed a Complaint dated May 7, 2013 for payment of total and permanent disability benefits, moral and exemplary damages, and attorney's fees, with the Labor Arbiter (LA).[26]

Ruling of the LA

In a Decision[27] dated November 25, 2013, the LA ruled in favor of Pastrana. The dispositive portion of the Decision reads as follows:

> **WHEREFORE**, responsive to the foregoing, judgment is hereby rendered declaring complainant's claim for disability benefits based on the permanent total disability compensation category meritorious. Accordingly, respondents are hereby ordered jointly and severally liable:
>
> 1) To pay complainant the amount of USD60,000.00, or its equivalent in Philippine Currency prevailing at the exchange rate at the time of payment, representing his payment and total disability benefits;
>
> 2) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.[28]

In so ruling, the LA disregarded the medical assessment and grading given by the company-designated physician. According to the LA, Pastrana is entitled to total and permanent disability benefits given that his condition "has rendered him unfit to continue working as a seafarer, which is his primary source of gainful employment."[29] The LA further held that there is no evidence showing that Pastrana had already resumed his sea duties, or was declared fit to work.[30] Thus, he is considered to be suffering from a Grade 1 Disability and entitled to permanent and total disability benefits.[31]

The LA also awarded Pastrana attorney's fees in an amount equivalent to 10% of the total judgment award for securing the services of a counsel to protect his rights and interests.[32]

Aggrieved, respondents filed a Memorandum of Appeal with the National Labor Relations Commission (NLRC).[33]

Ruling of the NLRC

The NLRC dismissed respondents' appeal and affirmed the LA's ruling in a Decision[34] dated April 8, 2014, *viz*.:

> **IN VIEW WHEREOF**, the respondents' appeal is **DISMISSED** for lack of merit. The Decision of the Labor Arbiter is hereby **AFFIRMED.**
>
> **SO ORDERED.**[35]

The NLRC held that Pastrana is deemed permanently and totally disabled considering that he could no longer return to his work as a seafarer on account of his medical condition.[36] After all, in disability compensation, it is the incapacity to work resulting in the impairment of one's earning capacity that is being compensated and not the injury.[37] In addition, while the diagnosis of the company-designated physician bears vital significance in claims for disability benefits, his assessment is not irrefutable and conclusive.[38] No less than the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) recognizes the right of seafarers to seek a second opinion from a physician of their choice.[39] Finally, the NLRC also applied the "120 day rule" which states that a seafarer who is unable to perform his job for 120 days is deemed permanently disabled.[40]

Respondents sought reconsideration of the NLRC Decision, but was denied in a Resolution[41] dated May 9, 2014. Thus, they filed a petition for *certiorari*[42] before the CA and prayed for the issuance of injunctive relief to enjoin the execution of the NLRC Decision.

Before the CA could act on respondents' application for injunctive relief, the NLRC issued a Writ of Execution dated September 24, 2014.[43] Thus, respondents moved for

the inclusion of restitution as part of the reliefs prayed for before the CA.[44]

Ruling of the CA

In a Decision[45] dated May 5, 2016, the CA granted respondents' petition for *certiorari*. The dispositive portion of the CA Decision reads as follows:

> **WHEREFORE,** premises considered, the Petition is **GRANTED**. The *Decision* dated 8 April 2014 and *Resolution* dated 9 May 2014 issued by the National Labor Relations Commission (NLRC) in NLRC Case No. LAC 02-000149-14 are hereby **SET ASIDE**. Private respondent is ordered to return to petitioners the amount of Two Million Nine Hundred Forty Three Thousand Six Hundred Pesos (Php2,943,600.00) less the equivalent of $7,465.00 in Philippine currency as of 16 October 2014, the date of receipt of payment by private respondent, as compensation for Grade 11 disability.
>
> **SO ORDERED.**[46]

The CA found grave abuse of discretion on the part of NLRC in issuing the assailed NLRC Decision and Resolution, and held that the conclusions of the NLRC are unsupported by substantial evidence and contrary to the provisions of the POEA-SEC.[47]

The CA found that Pastrana failed to observe the procedure outlined in Section 20(A)(3) of the POEA-SEC, which requires the referral to and appointment of a third doctor whose medical assessment shall be binding on both parties.[48] Thus, the complaint is dismissible for being premature, and the opinion of the company-designated physician becomes controlling.[49] The CA further noted that the company-designated physician timely issued a final disability grading on April 11, 2013, or 120 days from the date of the commencement of Pastrana's treatment. Based on the foregoing, the CA held that Pastrana 's disability is only partial, and that he is only entitled to disability benefits corresponding to Grade 11 disability rating in the amount of $7,465.00.[50]

Hence, this Petition.[51]

Pastrana invites the Court to revisit a piece of evidence — the April 11, 2013 medical assessment issued by the company-designated physician — which he claims was neither presented nor furnished to him at the time of the discontinuation of his treatment.[52] He contends that he was only verbally advised by the company-designated physician on April 2, 2013 that he is fit to return to his sea duties, and was later on offered disability benefits amounting to $7,000.00.[53] At any rate, Pastrana argues that the medical assessment dated April 11, 2013 is not valid and binding for it lacked any categorical statement as to his fitness to return to work, and it failed to comply with guidelines on the assessment of seafarers issued by the Department of Health and the International Labor Organization.[54] Thus, in effect, there is failure to issue a final medical assessment within the periods provided by law.[55] It also follows that he is under no obligation to comply with the conflict-resolution procedure under

Section 20(B)(3) of the POEA-SEC which mandates the referral of the matter to a third doctor.[56]

In their Comment,[57] respondents maintain that the company-designated physician timely issued a final medical assessment on April 11, 2013, and that it was misleading for Pastrana to claim otherwise.[58] Respondents also fault Pastrana for his failure to move for the referral of the conflicting medical assessments to a third doctor, which militates against Pastrana's claim.[59] Thus, the medical assessment issued by the company-designated physician shall prevail, and accordingly, Pastrana is only entitled to partial disability benefit amounting to $7,465.00.[60]

Petitioner reiterates his position in his Reply.[61]

Issues

The issue for resolution of the Court is whether the CA erred in reversing the NLRC, and in holding that Pastrana is only entitled to partial disability benefit.

The Court's Ruling

It is settled that a petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law.[62] As such, the Court will not review the factual findings of the lower tribunals, or re-examine the evidence already passed upon in the proceedings below. This is especially true when the findings of facts of the labor tribunals were affirmed by the CA.[63]

In this case, the labor tribunals and the CA consistently found that the company-designated physician issued a disability assessment on April 11, 2013, and this became the basis of the partial disability assessment that was offered by respondents to Pastrana. Thus, Pastrana cannot, for the first time and at this stage of the proceedings, assert that the April 11, 2013 disability assessment was not presented nor furnished to him prior to his filing of the complaint. The factual findings of the labor tribunals and the CA with respect to the issuance of said disability assessment shall remain undisturbed.

Nonetheless, the Court still finds merit in the Petition.

The seafarer's entitlement to disability benefits for work-related illness or injury is governed by the Labor Code, its implementing rules and regulation (IRR), the POEA-SEC, and prevailing jurisprudence.

In *Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*[64] (*Vergara*), the Court explained how the pertinent provisions in the Labor Code, its IRR, and the POEA-SEC operate, *viz.:*

> In this respect and in the context of the present case, Article 192 (c)(1) of the Labor Code provides that:
>
> > x x x The following disabilities shall be deemed **total and permanent:**

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

The rule referred to — Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code — states:

> Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days 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 anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20 (3) states:

> 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 permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[65]

In *Elburg Shipmanagement, Inc. v. Quiogue, Jr.*[66] (*Elburg*), the Court supplanted *Vergara* and outlined the rules with respect to the period within which the company-designated physician must issue a final and definitive disability assessment, *viz*.:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* shall govern:

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.[67]

While *Elburg* states that the 120 or 240-day periods shall be reckoned "from the time the seafarer reported to [the company-designated physician]," subsequent cases consistently counted said periods from the date of the seafarer's repatriation for medical treatment. This is true even in cases where the date of repatriation of the seafarer does not coincide with the date of his first consultation with the company-designated physician. This will be observed, for instance, in *Jebsens Maritime, Inc. v. Pasamba*[68] and *Teekay Shipping Philippines, Inc. v. Ramoga, Jr.*[69] This is consistent with Section 20(A)(3) which provides for the repatriation of the seafarer in case of work-related illness or injury, and the obligation of the employer to give the seafarer sickness allowance from the time he signed off until he is declared fit to work or the degree of his or her disability has been assessed, but not exceeding 120 days, *viz*.:

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:

x x x x

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.

Thus, *Elburg* should be read as requiring the company-designated physician to issue a final and definitive disability assessment within 120 or 240 days **from the date of the seafarer's repatriation**.

As held by the Court in *Vergara* and *Elburg*, the initial 120 days within which the company-designated physician must issue a final and definitive disability assessment may be extended for another 120 days. The extended period, however, may only be availed of by the company-designated physician under justifiable circumstances.

In *Marlow Navigation Philippines, Inc. v. Osias*,[70] the Court held that the seafarer's uncooperativeness with his medical treatment justified the extension of the period of the medical treatment and assessment to 240 days.

In *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura*,[71] the Court found that the extension of the initial 120-day period was justified by the seafarer's need for further treatment, as in fact, the seafarer underwent therapy and rehabilitation beyond the 120-day period. The need for further medical treatment also justified the application of the 240-day period in *Rickmers Marine Agency Phils., Inc. v. San Jose*[72] and *Magsaysay Maritime Corp. v. Simbajon*.[73]

The Court stressed, however, that to avail of the extended 240-day period, the company-designated physician must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond 120 days, but not to exceed 240 days.[74] The employer bears the burden of proving that the company-designated physician had a reasonable justification to invoke the 240-day period.[75] Thus, in *Hanseatic Shipping Philippines, Inc. v. Ballon*,[76] the Court did not

give credence to the employer's belated and unsubstantiated invocation of the 240-day period.

The duty of the company-designated physician to issue a final and definitive assessment of the seafarer's disability within the prescribed periods is imperative. His failure to do so will render his findings nugatory and transform the disability suffered by the seafarer to one that is permanent and total. As explained by the Court in *Pelagio v. Philippine Transmarine Carriers, Inc.*[77]:

> Otherwise stated, the company-designated physician is required to issue a ***final and definite assessment*** of the seafarer's disability rating within the aforesaid 120/240-day period; otherwise, the opinions of the company-designated and the independent physicians are ***rendered irrelevant*** because the seafarer is already conclusively presumed to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto.[78]

Similarly, in *Olidana v. Jebsens Maritime, Inc.*,[79] the Court declared as follows:

> x x x The Court in *Kestrel Shipping Co., Inc. v. Munar*, held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, *viz.:*
>
> > Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.
> >
> > Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition

> remains unresolved, the seafarer shall be deemed totally and permanently disabled.[80]

Applying the foregoing rules in the present case, the Court finds that Dr. Lim was unable to timely issue a final assessment of Pastrana's disability.

Pastrana was repatriated on December 10, 2012. He reported to Dr. Lim two days thereafter, or on December 12, 2012. After a series of treatment and consultations, Dr. Lim issued his final assessment of Pastrana's disability on April 11, 2013. At the time of its issuance, 122 days had already lapsed since Pastrana's repatriation. Clearly, the assessment dated April 11, 2013 was issued beyond the mandated 120-day period.

While this initial 120-day period may be extended to 240 days, the Court finds no sufficient justification to apply the extended period in this case. The records of the case are bereft of any indication that such extension was needed, or even intended, to provide Pastrana further medical treatment. On the contrary, it was found below that his treatment was discontinued and he was given a partial disability grading.

Dr. Lim was bound to issue a final disability assessment within 120 days from Pastrana's repatriation — but, he failed to do so. Such failure rendered his opinion on Pastrana's disability irrelevant. The law had already stepped in, and considered Pastrana permanently and totally disabled. He is, therefore, entitled to disability benefits corresponding to Grade 1 disability rating.

Pastrana is also entitled to attorney's fees equivalent to 10% of the total monetary awards following Article 2208 of the New Civil Code, which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Decision dated May 5, 2016 and Resolution dated September 5, 2016 of the Court of Appeals, Eighth Division in CA-G.R. SP No. 136109 are hereby **ANNULLED** and **SET ASIDE**. The Decision dated November 25, 2013 of the Labor Arbiter is hereby **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.,* concur.

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[1] *Rollo,* pp. 8-27. Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

[2] Id. at 29-31.

[3] Id. at 9.

[4] Id.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 9-10.

[16] Id. at 10.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id. at 10-11.

[23] Id. at 11.

[24] Id.

[25] Id.

[26] Id.

[27] Id. at 227-242.

[28] Id. at 241-242; emphasis in the original.

[29] Id. at 237.

[30] Id. at 241.

[31] Id.

[32] Id.

[33] Id. at 12.

[34] Id. at 331-342.

[35] Id. at 341; emphasis in the original.

[36] Id. at 338.

[37] Id.

[38] Id. at 340.

[39] Id.

[40] Id. at 340-341.

[41] Id. at 344-345.

[42] Id. at 346-404.

[43] Id. at 14.

[44] Id.

[45] Supra note 1.

[46] Id. at 26; emphasis supplied; citation omitted.

[47] Id. at 17.

[48] Id.

[49] Id. at 20.

[50] Id. at 25.

[51] Id. at 38-65.

[52] Id. at 50.

[53] Id. at 47-48.

[54] Id.

[55] Id.

[56] Id.

[57] Id. at 472-521.

[58] Id.

[59] Id.

[60] Id.

[61] Id. at 523-541.

[62] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).

[63] *Sarona v. NLRC*, 679 Phil. 394, 414 (2012).

[64] 588 Phil. 895 (2008).

[65] Id. at 911-912; underscoring and emphasis in the original; citations omitted.

[66] 765 Phil. 341 (2015).

[67] Id. at 362-363.

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

[69] G.R. No. 209582, January 19, 2018, 852 SCRA 158.

[70] 733 Phil. 428 (2015).

[71] G.R. No. 195878, January 10, 2018, 850 SCRA 256.

[72] G.R. No. 220949, July 23, 2018, 872 SCRA 557.

[73] 738 Phil. 824 (2014).

[74] *Talaroc v. Arpaphil Shipping Corp.*, 817 Phil. 598, 611-612 (2017).

[75] *Hanseatic Shipping Philippines, Inc. v. Ballon*, 769 Phil. 567, 588 (2015).

[76] Id.

[77] G.R. No. 231773, March 11, 2019.

[78] Id; emphasis in the original; citations omitted.

[79] 722 Phil. 234 (2015).

[80] Id. at 251.