

THIRD DIVISION

[**G.R. No. 231748, July 08, 2020**]

RICHARD LAWRENCE DAZ TOLIONGCO, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, ANGLO-EASTERN CREW MANAGEMENT PHILIPPINES, INC., ANGLO-EASTERN (ANTWERP) NV, GREGORIO B. SIALSA, ALL CORPORATE OFFICERS AND DIRECTORS AND M/V MINERAL WATER, RESPONDENTS,

DECISION

LEONEN, J.:

This case involves a seafarer who was sexually harassed during the course of his employment on board the M/V Mineral Water. After the incident, petitioner Richard Lawrence Daz Toliongco (Toliongco) opted for voluntary repatriation. He failed to comply with the three-day reportorial requirement. However, a week after his repatriation, he filed a complaint before the Overseas Workers Welfare Administration.^[1] Several months later, he filed a complaint "for constructive dismissal, sexual harassment and maltreatment with prayer for the payment of disability benefits, damages and attorney's fees"^[2] claiming that he is rendered permanently and totally disabled due to his post-traumatic stress disorder caused by his unfortunate experience onboard the vessel.

For this Court's resolution is a Petition for Review on Certiorari with Motion to Allow Petitioner to Litigate as an Indigent or a Pauper Litigant assailing the Decision^[3] and Resolution^[4] of the Court of Appeals, Manila in CA-G.R. SP. No. 143146.

On October 30, 2013, respondent Anglo-Eastern Crew Management Philippines (Anglo-Eastern Crew), Inc. employed Toliongco as a Messman on behalf of its foreign principal, Anglo Eastern (ANTWERP), NV.^[5] Toliongco's employment contract provided:

That the seafarer shall be employed on board under the following terms and conditions:

- | | |
|---------------------------|--|
| 1.1 Duration of Contract | 7 MONTHS |
| 1.2 Position | Position: Messman |
| 1.3 Basic Monthly Salary: | US\$604.00 |
| 1.4 Hours of Work: | 44 hrs/wk |
| 1.5 Overtime: | US\$ 450.00 OT after
103 hrs/mo. US\$ |

	4.36/hr
1.6 Vacation Leave with Pay:	US\$91.00
Comp leave holidays-	US\$34.91
1.7 Point of Hire:	MANILA, PHILIPPINES
1.8 Collective Bargaining Agreement, if any:	Belgium

The herein terms and conditions in accordance with Governing Board Resolution No.09 and Memorandum Circular No. 10, series of 2010, shall be strictly and faithfully observed.^[6]

On February 23, 2014, Toliongco was deployed aboard the vessel M/V Mineral Water.^[7]

On the night of June 27, 2014, Toliongco claimed he was cleaning the galley of the ship when he felt the urge to relieve himself. He was on his way to the water closet when he met Chief Officer Korolenko Oleksiy (CO Oleksiy). Toliongco asked CO Oleksiy "if he wanted his dinner served right away,"^[8] to which CO Oleksiy replied "Ok, Ok, Thank you."^[9]

Toliongco served dinner to CO Oleksiy and continued to clean the galley. When he returned, Toliongco noticed that CO Oleskiy had not eaten his fruits. Toliongco handed CO Oleksiy the uneaten fruits but he was instructed to follow CO Oleksiy to his room. When both of them had entered the room, CO Oleksiy "removed all of his clothes and lay on his bed."^[10] Toliongco was about to leave but CO Oleksiy called out to him, and as Toliongco approached, "the CO suddenly grabbed his left arm."^[11]

According to Toliongco, CO Oleksiy "demanded that [Toliongco] masturbate and suck his manhood."^[12] He claimed CO Oleksiy "repeatedly forced [Toliongco's] hand unto [CO Oleksiy's] penis."^[13] However, Toliongco resisted and left CO Oleksiy's room.^[14]

Toliongco then went to the smoking room where he saw Able Seaman Desiderio Paner (Paner). He told Paner what happened and requested that Paner accompany him while cleaning the galley.^[15]

Toliongco was about to finish cleaning the galley when Paner told him that CO Oleksiy was waiting for him in the ship's office.^[16] Toliongco "asked Paner to accompany him"^[17] but the latter suggested that he should "just run or shout if the situation became precarious."^[18] Paner also promised "to follow [Toliongco] if he did not come back soon."^[19]

Toliongco "was made to enter the cabin first."^[20] Upon entering, he averred that CO Oleksiy locked the door, grabbed and embraced him, then dragged him to the bed.^[21] Toliongco resisted and managed to escape. After this, he told Paner^[22] as well as Chief Cook Edenjarlou Eseo (Eseo) what happened "and requested permission to call his

parents."^[23]

The following day, Toliongco filed a Complaint for "Physical Abuse and Sexual Abuse under Alcohol Intake"^[24] against Oleksiy before the Captain. Paner and Eseo corroborated the complaint through their written testimonies.^[25] All these incidents were entered in the Deck Log Book.^[26]

Toliongco claimed that when CO Oleksiy learned about the complaint, he threatened to kill him. Out of fear, Toliongco requested for a reliever. On July 12, 2014, he was repatriated to the Philippines.^[27]

Toliongco averred that "[u]pon arrival, he was examined by the company physicians who found that he was sexually harassed and physically abused by CO Korolenko Oleksiy."^[28]

Months later or on November 24, 2014 Toliongco consulted Dr. Randy Delloso (Dr. Delloso), a clinical psychologist, who diagnosed him with Post Traumatic Stress Disorder (PTSD).^[29] The finding was based on the following:

- The patient directly experienced the threat of sexual violence and death;
- recurrent, intrusive, and distressing memories of the traumatic incident;
- persistent avoidance of the distressing memories;
- persistent anger;
- problem with concentration; and
- sleep disturbance ever since the said incident happened.^[30]

Dr. Delloso's diagnosis was verified by Dr. Li-Ann Lara-Orencia who also concluded that Toliongco cannot return to his job as a seafarer.^[31]

Due to his illness, Toliongco requested for compensation from Anglo-Eastern Crew. However, his request remained unheeded.^[32]

On March 2, 2015, Toliongco filed a labor complaint "for constructive dismissal, sexual harassment and maltreatment with prayer for the payment of disability benefits, damages and attorney's fees" against Anglo-Eastern Crew, ANTWERP and Gregorio Sialsa.^[33] He also prayed for "payment of the unexpired portion of his contract. . . and legal interest."^[34] Toliongco claimed that he suffered from PTSD because he was sexually harassed.^[35] Allegedly, "his illness [was] analogous to the traumatic head injuries under Section 32 of the POEA Standard Employment Contract (POEA-SEC)" which reads:

6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work.^[36]

He asserted that he suffered an occupational disease while employed aboard the vessel and is now "totally and permanently disabled" due to his "mental instability."^[37] Thus,

he was hindered from returning to his previous job as a seafarer.^[38]

Meanwhile, respondent Anglo-Eastern claimed that Toliongco was not illegally dismissed as he was actually the one who asked for the early termination of his employment contract.^[39] They also insisted that Toliongco cannot claim disability benefits because:

(1) he was not repatriated on a medical ground; (2) he did not comply with the mandatory requirement for post-employment medical examination within three days from his arrival; and (3) there is no declaration from the company-designated physician as to his fitness for sea duty.^[40]

While the Labor Arbiter found that Toliongco was constructively dismissed and forced to repatriate himself due to "the hostile environment brought about by. . . [the] filing of the complaint,"^[41] it concluded that Toliongco cannot claim disability benefits because he failed to report within three (3) days from his arrival and the medical evidence he submitted was not enough to guarantee his claim.^[42]

There are no compelling reasons to accord the exceptional clause 'physically incapacitated to do so' a liberal reading. Hence, since complainant's failure to observe his reportorial duty is by reason of alleged mental or psychological condition, it cannot be equated with physical incapacity. Moreover, complainant offered no explanation as to why he did not notify his manning agent by some other means. For these two reasons, his disability compensation — assuming he was entitled thereto — is deemed forfeited.^[43]

Nevertheless, the Labor Arbiter directed respondents to pay Toliongco "moral damages for the mental torture that he endured and exemplary damages to dissuade such incident from further occurring."^[44] Attorney's fees were also awarded as Toliongco was constrained to avail the services of a lawyer:^[45]

Regardless, complainant was certainly wronged. His resistance to the repeated demands of his CO to masturbate him and suck his penis led to his complaint. In turn, his complaint was met with violent reaction by his superior. It will not escape the attention of this Office that his allegation that he was threatened with death was never really contested by the respondents. In short, his work environment became a hostile, offensive and intimidating environment because he resisted his superior's demand for sexual favor. What was done to him was clear sexual harassment.^[46]

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, evidence and law considered, judgment is hereby rendered holding the respondents liable for the constructive dismissal of the complainant. Accordingly, they are hereby **ORDERED** to solidarily pay the latter as follows:

Salaries for the unexpired	54,
portion of the contract Php	384.16

Moral Damages	Php 20,000.00
Exemplary Damages	Php 10,000.00
Attorney's Fees	Php 5, 438.41

SO ORDERED [47]

On appeal, the National Labor Relations Commission affirmed the Labor Arbiter's ruling with modification. [48]

It agreed that Toliongco cannot be given any disability benefit even if he was constructively dismissed. [49] It found that:

While complainant submitted the medical reports of his self-appointed doctors, the same failed to show the causal connection between the nature of his employment as the vessel's messman and his PTSD, or that the risk of contracting his illness was increased by his working conditions. Not even his own doctors made a finding or declaration that his illness is work-related/aggravated or that he is permanently incapacitated to perform his job as messman as a result of his having been molested and threatened by his own superior officer. There is likewise no disability grading issued by his own physicians. [50]

However, it deleted the awards for moral and exemplary damages and instead granted financial assistance "as a measure of social and compassionate justice." [51] The dispositive portion of its decision provided:

WHEREFORE, premises considered, the assailed Decision is **AFFIRMED** with modification. Respondents are hereby ordered to solidarity pay complainant his salary for the unexpired portion of his contract computed as follows:

1) Unexpired portion (in USD)

$$\begin{array}{l} 7/13/14-9/22/14 \\ \$604.00 \times 2.30 = \$1,389.20 \end{array}$$

They are likewise ordered to give financial assistance in the amount Php 30,000.00 plus 10% attorney's fees of the total amount awarded.

The award[s] for moral and exemplary damages are hereby deleted for lack of merit.

SO ORDERED. [52]

On September 30, 2015, the National Labor Relations Commission denied Toliongco's Motion for Reconsideration for lack of merit. [53]

This prompted Toliongco to file a Petition for Certiorari under Rule 65 before the Court of Appeals claiming that the National Labor Relations Commission committed grave abuse of discretion in issuing the assailed decision. He insisted that his PTSD was a work-related illness incurred while aboard the vessel. Citing the Revised Pre-Employment Medical Exam Standards for Seafarers, he claimed that his mental state "permanently and totally incapacitated him" from doing his job. For this reason, he should be entitled to disability benefits, moral and exemplary damages.^[54]

The Court of Appeals dismissed Toliongco's petition for lack of merit and ruled that the "NLRC did not exercise its power in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility."^[55]

According to the Court of Appeals, Toliongco's disability benefits cannot be granted because he failed to conform with the "mandatory 3-day medical examination deadline" under Section 20(B)(3) of the POEA-SEC.^[56] Similarly, he also failed to give a written notice within three (3) days from his arrival to inform the respondents of his inability to report to their office.^[57]

It also held that Toliongco failed to prove, through substantial evidence, the correlation between his illness and his work.^[58] It ruled that a seafarer suffering from a mental disease will only be remunerated when "it was due to a traumatic injury to the head, which is clearly absent in this case."^[59]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the petition filed by petitioner/complainant is **DENIED.** The Decision dated 28 August 2015 and 30 September 2015 that were issued by the National Labor Relations Commission (NLRC) are **AFFIRMED.**

SO ORDERED.^[60]

On March 17, 2017, the Court of Appeals denied Toliongco's Motion for Reconsideration.^[61]

Hence, this Petition for Review.^[62]

On June 7, 2017, this Court allowed petitioner to litigate as an indigent litigant and required respondents to file their comment.^[63] Respondents filed their Comment on July 14, 2017.^[64]

On August 3, 2017, Petitioner filed a Reply with Motion to Admit^[65] which this Court granted in its October 2, 2017 Resolution.^[66]

Petitioner argues that he suffers from Post-Traumatic Stress Disorder or PTSD as a consequence of the incident that happened onboard the M/V Mineral Water.^[67] He claims that this condition made it physically impossible for him to comply with the 3-

day reportorial requirement.^[68]

Petitioner also insists that the PTSD was work related as it resulted from the sexual harassment he experienced while working as a Messman. He claims "the sexual harassments that occurred that night of 27 June 2014, not once, but twice, and the threats to his life took a severe toll on [his] mental health and sanity."^[69] Hence, it cannot be denied that "he was disabled in the course of employment."^[70]

To support his arguments, petitioner cites the online medical journal of the National Institute of Mental Health:

When in danger, it's natural to feel afraid. This fear triggers many split-second changes in the body to prepare to defend against the danger or to avoid it. This 'fight-or-flight' response is a healthy reaction meant to protect a person from harm. But in post-traumatic stress disorder (PTSD), this reaction is changed or damaged. People who have PTSD may feel stressed or frightened even when they're no longer in danger. PTSD develops after a terrifying ordeal that involved physical harm or the threat of physical harm. The person who develops PTSD may have been the one who was harmed, the harm may have happened to a loved one, or the person may have witnessed a harmful event that happened to loved ones or strangers.^[71]

He also cites Mayo Clinic:

Post-traumatic stress disorder symptoms may start within three months of a traumatic event, but sometimes symptoms may not appear until years after the event. These symptoms cause significant problems in social or work situations and in relationships.^[72]

Petitioner reiterates that because of the state of his mental health, he "can no longer return to his former work as seafarer."^[73] Therefore, he is entitled to permanent and total disability benefits.^[74]

On the other hand, respondents counter that petitioner actually opted for voluntary repatriation because he wanted to take care of his mother, who was scheduled for surgery.^[75]

According to respondents, petitioner was neither repatriated for medical reasons nor did he develop any illness while onboard M/V Mineral Water. They claim that petitioner did not even request for any post-employment medical examination upon repatriation or comply with the 3-day reportorial requirement.^[76]

Respondents highlight that petitioner's medical certificates were issued five (5) months after he was repatriated. They claim that petitioner also did not present "any receipts of hospitalization, medicines, laboratories or doctor's professional fees or consultation fees" from the time he was repatriated until the date of his consultation with Dr. Dellosa.^[77]

Finally, respondents argue that petitioner is not entitled to salary for the unexpired portion of his contract because his repatriation was voluntary.^[78]

In his Reply,^[79] petitioner rebuts that his voluntary repatriation was due to the events that happened onboard the vessel.^[80] While he admits that he was not able to comply with the 3-day mandatory reportorial requirement, he points out that "mental incapacity itself makes it impossible for the seafarer to report to the respondent manning agency."^[81]

Petitioner states that his illness is of a peculiar nature which warrants the application of the exception to the 3-day mandatory reportorial requirement. Further, he claims that his illness "completely and thoroughly incapacitated him soon after thus preventing him from ever taking up work again as a mariner[.]"^[82] He posits that his post-traumatic stress disorder is work-related as it was caused by the sexual harassment he experienced at the hands of his Chief Officer.^[83]

Petitioner cites Department of Health (DOH) Administrative Order 2007-0025 or the Revised Pre-Employment Medical Examination (PEME) Standards for Seafarers which includes a list of mental disorders that may render a seafarer "permanently unsuitable for seafaring duties."^[84]

Based on the parties' arguments, the main issue in this case is whether or not the Court of Appeals erred in ruling that the National Labor Relations Commission did not commit grave abuse of discretion in denying Toliongco's claim to disability benefits and damages. Subsumed under this are the issues of (.1) whether or not the 3-day rule on post-employment medical examination is mandatory; (2) whether or not Toliongco's post-traumatic stress disorder is work-related or work-aggravated; and (3) whether or not Toliongco is entitled to damages.

The petition is partly granted. The Court of Appeals erred in ruling that Toliongco is not entitled to damages.

While the Constitution provides for "full protection to labor,"^[85] employers have the right to determine whether a seafarer's illness or injury is work-related or work-aggravated. This is one of the reasons behind the 3-day reportorial requirement.

The 2010 POEA Standard Employment Contract^[86] defines "work-related illness" and "work-related injury" as:

Definition of Terms:

16. Work-Related Illness — any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied.

17. Work-Related Injury - injury arising out of and in the course of employment.

The discharge and return home of a seafarer—for reasons such as end of contract, early termination of contract, or illness—is called repatriation. Upon repatriation, "the seafarer shall report to the manning agency within 72 hours upon arrival at point of hire."^[87] The 3-day reportorial requirement is reiterated under Section 20 (A) (3) of the 2010 POEA Standard Employment Contract:

Section 20. Compensation and Benefits

A. Compensation and Benefits for Injury or Illness

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

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

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

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied).

De Andres v. Diamond H Marine Services & Shipping Agency, Inc., et al.^[88] summarized the 3-day reportorial requirement and its exceptions under the POEA Standard Employment Contract:

To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.^[89]

Ebuenga v. Southfield Agencies^[90] explained the rationale for the 3-day reportorial requirement:

The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease. . . was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

...

Moreover, the post-employment medical examination within 3 days from . . . arrival is required in order to ascertain [the seafarer's] physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.^[91]

This Court also stated in *Ebuenga* that post-employment medical examination "is a reciprocal obligation where the seafarer is obliged to submit to an examination within three (3) working days from his or her arrival, and the employer is correspondingly obliged to conduct a meaningful and timely examination of the seafarer."^[92]

However, some illnesses may take more than three (3) days before its symptoms manifest. There are also illnesses that are asymptomatic. Thus, the application of the 3-day reportorial requirement must also be viewed on a case-to-case basis, depending on the type of illness or disease.

For instance, petitioner's alleged illness involves mental health. Mental health disorders are not normally detected in laboratory tests that we are accustomed to such as blood extraction. The diagnosis of mental health disorders usually involve an interview with a psychiatrist and the conduct of tests like the Rorschach, Thematic Apperception Test, and Minnesota Multiphasic Personality Inventory.^[93]

Petitioner cited the DOH Order No. 2007-0025 (DOH AO No. 2007-0025).^[94] One of

the related documents to DOH AO No. 2007-0025 is entitled "Medical Standards in the Conduct of PEME for Seafarers."^[95] A portion of the Medical Standards provides:

E. MENTAL DISORDERS

There shall be no manifestation of any anxiety, depressive, psychotic, personality and psychological disorders identified and observed during the conduct of PEME and psychological testing. Appropriate psychologist's or psychiatrist's evaluation shall be sought to determine if condition renders a seafarer permanently unsuitable for seafaring duties.

- •Active alcohol or drug dependence as evidenced by diagnostic test result/s and confirmatory drug test result including physical finding or identified related behavioral disorder.
- Acute Psychoses, whether organic, schizophrenic or any other listed in the International Classification of Diseases
- Dementia/Senility
- Depression, active requiring medication
- History of documented mental disorder (psychosis)
- Identified "phobias" which will not fit into the job requirement
- Observation of Acute Manifestation of a Psychiatric Disorder that indicates a need for psychiatric evaluation
Personality Disorder
- Psychoneurosis, Major Depression or Mania.^[96]

However, since DOH AO No. 2007-0025 refers to the pre-employment medical examination, it presupposes that the examination is done prior to embarkation.

For post-employment medical examination, we look at the POEA Standard Employment Contract. Mental disorders are listed under Section 32 of the POEA Standard Employment Contract, with the specification that the mental disorder resulted from traumatic head injuries:

Section 32. Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illness Contracted.

HEAD

Traumatic head injuries that result to:

1. Aperture unfilled with bone not over three (3) inches without brain injury Gr. 9
2. Unfilled with bone over three (3) inches without brain injury Gr. 3
3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity Gr. 1
4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities Gr. 10
5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities Gr. 10
6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render

worker permanently unable to perform any work Gr. 1

7. Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance Gr. 6
8. Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant Gr. 10
9. Incurable imbecility Gr. 1

The use of the phrase "traumatic head injury" and a reading of the entire portion of Sec. 32 referring to head injuries imply that the seafarer suffered from an adverse event that caused physical harm to the skull or other parts of the head. It also implies that only medical findings, not including psychological trauma, are cognizable as work-related.

Petitioner did not suffer any traumatic head injury, but his alleged illness, post-traumatic stress disorder, is a kind of mental disorder. For other illnesses not listed under Section 32, Section 32-A applies.

Section 32-A provides:

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.

There is no doubt that sexual harassment occurred on board the M/V Mineral Water, and that petitioner was a victim of it. The question now is whether petitioner was able to prove that his PTSD, as diagnosed by his physicians of choice, is work-related or work-aggravated.

II

Mental disorders are generally defined as:

[A] syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (e.g., political, religious, or sexual) and conflicts

that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.^[97]

Statistical Manual of Mental Disorders and "[occurs] when the person has experienced an event that is outside the range of usual human experience, that would be markedly distressing to almost anyone; e.g., serious threat to one's life or physical integrity, etc."^[98] The current diagnostic features of post-traumatic stress disorder are stated in the Diagnostic and Statistical Manual of Disorders:

Diagnostic Features

The essential feature of posttraumatic stress disorder (PTSD) is the development of characteristic symptoms **following exposure to one or more traumatic events. Emotional reactions to the traumatic event** (e.g., fear, helplessness, horror) are no longer a part of Criterion A. The clinical presentation of PTSD varies. In some individuals, fear-based re-experiencing, emotional, and behavioral symptoms may predominate. In others, anhedonic or dysphoric mood states and negative cognitions may be most distressing. In some other individuals, arousal and reactive-externalizing symptoms are prominent, while in others, dissociative symptoms predominate. Finally, some individuals exhibit combinations of these symptom patterns.

The directly experienced traumatic events in Criterion A include, but are not limited to, exposure to war as a combatant or civilian, threatened or actual physical assault (e.g., physical attack, robbery, mugging, childhood physical abuse), **threatened or actual sexual violence (e.g., forced sexual penetration, alcohol/drug-facilitated sexual penetration, abusive sexual contact, noncontact sexual abuse, sexual trafficking)**, being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war, natural or human-made disasters, and severe motor vehicle accidents." (Emphasis supplied).

A unique circumstance in this case is that the alleged illness is not caused by the duties and responsibilities of a Messman, but is due to the seafarer's work environment. Petitioner was harassed twice in one night. Though he managed to escape in both instances, there was no way for him to avoid CO Oleksiy. The only way he could protect himself from further sexual advances or unwanted sexual contact was to request for repatriation.

In cases like these, it is possible that the seafarer's fear is heightened because there is no way to escape from the environment where sexual harassment occurred. Being out at sea, the seafarer has to wait for the ship to dock at the nearest port before the seafarer can disembark and be repatriated. Thus, from the time the incident of sexual harassment occurred until the time the seafarer is able to disembark, it is probable that the seafarer is covered by fear. In addition, the sexual predator, knowing there is no room for the victim to escape, is capable of continuously committing such acts of sexual harassment. The unique condition of working on board a ship empowers the

harassment. The unique condition of working on board a ship empowers the sexual predator and leaves the victim feeling helpless because they are in the same enclosed space.

By no means can petitioner's repatriation be considered as voluntary, for he had been pushed against the wall with no other recourse. Hence, he is entitled to his salary for the unexpired portion of his contract.

There are several cases decided by this Court involving seafarers who experienced unfortunate and harsh treatment while onboard a vessel.

In *Toquero v. Crossworld Marine Services*,^[100] this Court stated:

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

Between the ship owner/manager and the worker, the former is in a better position to ensure the discipline of its workers. Consequently, the law imposes liabilities on employers so that they are burdened with the costs of harm should they fail to take precautions. In economics, this is called internalization, which attributes the consequences and costs of an activity to the party who causes them.^[101] (Emphasis supplied)

Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.^[102] involved Cabuyoc, a Messman who "was found to be suffering from nervous breakdown and was declared unfit for work at sea."^[103] He was repatriated after two months and 11 days at sea and "filed a complaint before the Philippine Overseas Employment Administration for non-payment of overtime pay, hospitalization benefit and sickness allowance."^[104] Cabuyoc alleged that he received hostile treatment from the officers on board the ship. In ruling for Cabuyoc, this Court reasoned:

Here, petitioner's illness and disability were the direct results of the demands of his shipboard employment contract and the harsh and inhumane treatment of the officers on board the vessel "Olandia." For no justifiable reason, respondents refused to pay their contractual obligations in bad faith. Further, it cannot be gainsaid that petitioner's disability is not only physical but mental as well because of the severe depression, mental torture, anguish, embarrassment, anger, sleepless nights and anxiety that befell him. To protect his rights and interest, petitioner was constrained to institute his complaint below and hire the services of an attorney.^[105]

The present case is unique because the illness involved is a mental health disorder. We should consider the reality that even if petitioner was physically capable of complying

with the three-day reportorial requirement, his mental faculties might have hindered him from doing so, because of the possible trauma inflicted on him caused by the two incidents of sexual harassment at the hands of the chief officer.

A review of the records of this case shows that petitioner was unable to comply with the 3-day reportorial requirement but filed a complaint one week after repatriation. We note the findings of the National Labor Relations Commission on this matter:

Complainant's belated explanation in his Memorandum in Appeal that his mental state could not even cognize the imperative nature of the requirement fails to persuade [u]s. ***If he is indeed suffering from a debilitating mental incapacity as to deprive him of reason and logic to consult the company designated physician or at least notify his manning agent by some other means, then how come he had the wisdom of filing a complaint with the OWWA a week after he signed off from the vessel?*** How come that in his own Position Paper, he stated in no. 51 thereof that "in 12 July 2014, the complainant was repatriated to the Philippines and the company physicians examined him after his arrival." This statement strongly indicates that he knew he had to be examined after his arrival yet he was not able to produce any medical report of the company physician and instead submitted, very belatedly at that, the medical reports of his self-appointed doctors which, with due respect to the doctors, were wanting in many aspects.^[106] (Emphasis supplied).

Perhaps petitioner's mind might have been so confused that he could not fully grasp whatever was happening around him. He might have lost his sense of time because of the trauma, thus rendering him unable to comply with the three-day reportorial requirement. It is also possible that he found it too traumatic to report to his agency upon repatriation.

To support his claim for disability benefits, petitioner presented a psychiatric report^[107] and a medical certificate.^[108] These documents only prove that he was diagnosed with PTSD, prescribed to take medication, and recommended for psychotherapy sessions.^[109] However, there was no disability grading.

The medical certificate states that "[a]t this point in time he cannot return to his work as a seafarer." This statement is not sufficient for this court to conclude that petitioner is permanently and totally disabled to work as a seafarer. It does not instruct us how petitioner's PTSD is work-related or work-aggravated. It also does not tell us whether petitioner underwent psychotherapy sessions, as recommended by his physicians. Assuming that petitioner underwent psychotherapy sessions and took his prescribed medication, no evidence was presented showing how he responded to treatment.

Phil. Transmarine Carriers, Inc. et al. v. Nazam^[110] involved a Nazam, a Bosun who requested for voluntary repatriation based on personal reasons. Shortly after he was repatriated, he filed a complaint for "payment of disability benefits, sickness allowance, damages, and attorney's fees" because the humiliation, verbal, and mental abuse he experienced onboard caused "to suffer hypertension and depression."^[111] The Labor

Arbiter ruled in favor of Nazam.^[112] However, the National Labor Relations Commission reversed the Labor Arbiter's decision.^[113] The Court of Appeals reinstated the Labor Arbiter's decision."^[114] In reinstating the National Labor Relations Commission's decision which dismissed the complaint, this Court reasoned:

Respondent's claim of having reported to petitioner Transmarine's office within three days from his arrival in the Philippines remains just that. As duly observed by the NLRC, respondent merely consulted a private practitioner more than one month after his arrival - three weeks after he had already filed his complaint for disability benefits; and he already filed his complaint for disability benefits; and he secured a medical certification that he was unfit for sea duty from another private physician only on March, 2005 or six months after his arrival.

... Aside from a "To whom it may concern" handwritten letter of respondent attached to his Position Paper filed before the arbiter detailing the alleged instances of verbal abuse, which letter bears the alleged signatures of some of respondent's colleagues, respondent failed to proffer concrete proof that, if indeed he was subjected to abuse, it directly resulted in his depression."^[115]

Several months had passed before petitioner sought medical opinion, but we should not blame him for belatedly seeking medical help. Perhaps his dire financial condition is one factor. We note that he filed this Petition as a pauper-litigant⁶ and he has not found any suitable employment after repatriation.¹¹⁷ It might also have taken him some time to accept that he needed medical help. He knew well enough that he was wronged and immediately filed a complaint before the Overseas Worker's Welfare Administration, but perhaps, at that point, he had no manifest symptoms of any mental health issues yet.

As found by the Labor Arbiter:

A week after sign-off, complainant filed a complaint with the Overseas Worker's Welfare Administration (OWWA) claiming that he was sexually abused on board. Respondents denied his accusation and the case was dismissed.

Sometime around mid-December 2014, complainant filed another complaint against respondents with the National Conciliation & Mediation Board (NCMB) claiming disability as he said he consulted a doctor and he was suffering from post-traumatic stress disorder. No formal case was filed before the NCMB.^[118]

Lest this Court be misunderstood, We recognize that it takes time for victims of sexual harassment to come forward. Perhaps more so if the victim is a male, due to factors such as "fear that he will be considered to have provoked the assault in some way, stigma, a sense of loss of masculinity, either through being penetrated or not having fought hard enough to prevent the attack (or both), . . . and fear of being perceived as homosexual."^[119]

It is established that petitioner suffered some form of injury, but the pieces of evidence he submitted are not sufficient to convince this Court that he has been rendered permanently and totally disabled. Thus, this Court is precluded from awarding disability benefits, not because of his non-compliance with the 3-day reportorial requirement, but because there is barely any evidence to support the claim for disability benefits.

In a separate opinion in *Garcia v. Drilon*,^[120] the existence of violence against men and the underreporting of such incidents was recognized. It was discussed that:

Social and cultural expectations on masculinity and male dominance urge men to keep quiet about being a victim, adding to the unique experience of male victims of domestic abuse. This leads to latent depression among boys and men. In a sense, patriarchy while privileging men, also victimizes them.

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.

In this light, it may be said that violence in the context of intimate relationships should not be seen and encrusted as a gender issue, rather it is a power issue. Thus, when laws are not gender-neutral, male victims of domestic violence may also suffer from double victimization first by their abusers and second by the judicial system. Incidentally, focusing on women as the victims entrenches some level of heteronormativity. It is blind to the possibility that, whatever moral positions are taken by those who are dominant, in reality intimate relationships can also happen between men.

^[121]

To restate, sexual harassment can happen to anyone and everyone. Our society has often depicted women as being the weaker sex, and the only victims of sexual harassment. It is high-time that this notion is corrected. To consider women as the weaker sex is discriminatory. To think that only women can be victims of sexual harassment is discriminatory against men who have suffered the same plight; men who have been victimized by sexual predators.

III

Both the Labor Arbiter¹²² and the National Labor Relations Commission¹²³ found that petitioner was sexually harassed. Respondents also did not refute this. In view of the sexual harassment suffered by petitioner at the hands of CO Oleksiy, he is entitled to moral damages, exemplary damages, and attorney's fees.

The provisions of the POEA Standard Employment Contract strikes a balance between the interests of the employer and the seafarer. It provides for "the process for recovery of compensation as a result of occupational hazards suffered by the seafarer."^[124]

The structure of the POEA Standard Employment Contract theorizes that a seafarer will file for claims based on contractual obligations.^[125] However, this should not be the case. To afford full protection to labor, our seafarers should not be limited to what is provided by contract.

The separate opinion in *InterOrient Maritime Enterprises, Inc. v. Creer III*^[126] recognized that:

[S]ubstantive law still allows recovery of damages for injuries suffered by the seafarer as a result of a tortious violation on the part of the employer. This may be on the basis of the provisions of the Civil Code as well as special laws. These special laws may relate, among others, to environmental regulations and requirements to ensure the reduction of risks to occupational hazards both for the seafarer and the public in general. In such cases, the process for recovery should not be constrained by contract.^[127]

This Court made a similar pronouncement in *Monana v. MEC Global Shipmanagement and Manning Corp.*^[128] that "seafarers who suffer from occupational hazards are not necessarily constrained to contractual breach as cause of action in claiming compensation. Our laws allow seafarers, in a proper case, to seek damages based on tortious violations by their employers by invoking Civil Code provisions, and even special laws such as environmental regulations requiring employers to ensure the reduction of risks to occupational hazards."^[129]

The existence and due execution of the POEA Standard Employment Contract does not mean that seafarers waive their rights to file claims on the basis of substantive law.

In this case, Toliongco argues that he is entitled to moral damages because of "respondents' withholding of full disability benefits with no justifiable reason and their whimsical and blatant refusal to honor their contractual obligation of disability compensation to the petitioner."^[130]

On this matter, this Court reinstates the Labor Arbiter's award of moral damages but increases the amount to PI 00,000.00. The award of moral damages is based not on the grounds stated by petitioner but because this court cannot turn a blind eye to the sexual harassment that he had to endure while onboard the M/V Mineral Water. Certainly, a wrongful act was committed against him.

We also reinstate and increase the award of exemplary damages to P50,000.00 in view of the award of moral damages. In addition, the award of exemplary damages should serve as a warning to shipping companies and manning agencies that it is their obligation to ensure safe working conditions for our seafarers.

As petitioner was forced to litigate in order to receive compensation for the unexpired portion of his contract and compensation for what he suffered at the hands of CO Oleksiy, attorney's fees are also awarded.

We must change the notion that injuries refer to only the physical kind. Injuries can

come in many forms—physical, emotional, or psychological. It is high-time that we recognize sexual harassment on board vessels as a risk faced by our seafarers. We also cannot disregard the possibility that Toliongco felt shame over what had happened. Victims of sexual abuse usually take time before reporting to the proper authorities. Perhaps, more so if they are male as society has made it hard for male victims of sexual harassment to come out and report. At its core, sexual harassment is not an issue of gender but an issue of power and it may take time to find solutions.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. Respondents are liable to pay petitioner following: (1) US\$ 1,389.20 for the unexpired portion of the contract (US\$ 604.00 basic monthly salary x 2.30 months); (2) Moral damages amounting to PI00,000.00; (3) Exemplary damages amounting to P5 0,000.00; and (4) Attorney's fees amounting to 10% of the total monetary award. All these shall earn legal interest at the rate of six percent (6%) from the finality of this Decision until fully paid.^[131]

SO ORDERED.

Leonen, J., (Chairperson), Gesmundo, Carandang, Zalameda, and Gaerlan JJ., concur.*

January 5, 2021

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **July 8, 2020** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 5, 2021 at 1:40 p.m.

Very truly yours,

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:

(Sgd.) RUMAR D. PASION
Deputy Division Clerk of Court

* On wellness leave.

^[1] Rollo, p. 100-101.

[2] Id. at 41, CA Decision.

[3] Id. at 38-49. The January 13, 2017 Decision in CA-G.R. SP No. 143146 was penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Fifteenth Division, Court of Appeals, Manila.

[4] Id. at 51-52. The March 17, 2017 Resolution in CA-G.R. SP No. 143146 was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Former Fifteenth Division, Court of Appeals, Manila.

[5] Id. at 39.

[6] Id. at 136.

[7] Id. at 40

[8] Id. at 75.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id. at 76.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[35] Id. at 41.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] Id.

[41] Id. at 41-42.

[42] Id. at 42.

[43] Id. at 87.

[44] Id. at 42.

[45] 15 CA Decision, p. 41 Id. at 42.

[46] Id. at 88.

[47] Id. at 42.

[48] Id. at 93-104.

[49] Id. at 103-104.

[50] Id. at 99.

[51] Id.

[52] Id. at 103-104.

[53] Id. at 106-107.

[51] Id. at 43.

[55] Id. at 48.

[56] Id. at 44.

[57] Id.

[58] Id. at 46.

[59] Id. at 47.

[60] Id. a 48.

[61] Id. at 51-52.

[62] Id. at 2-36.

[63] Id. at 149-150.

[64] Id. at 151-158.

[65] Id. at 159-172.

[66] Id. at 174.

[67] Id. at 10.

[68] Id. at 16.

[69] Id. at 19.

[70] Id.

[71] Id. at 19-20.

[72] Id. at 20.

[73] Id. at 23.

[74] Id. at 25.

[75] Id. at 154.

[76] Id.

[77] Id. at 155.

[78] Id.

[79] Id at 159-172.

[80] Id. at 160.

[81] Id.

[82] Id. at 161.

[83] Id. at 163.

[84] Id. at 169.

[85] CONST., art. XIII, sec. 3.

[80] POEA Memorandum Circular No. 010-10.

[87] POEA Memorandum Circular No. 010-10, sec. 19 (H).

[85] 813 Phil 746 (2017) [Per J. Mendoza, Second Division]

[86] Id. at 763.

[87] 828 Phil. 122 (2018) [Per J. Leonen, Third Division].

[92] Id. *citing Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1 (2012) [Per J. Brion, Second Division].

[93] H. KENNETH WALKER, W. DALLAS HALL, AND J. WILLIS HURST, *CLINICAL METHODS: THE HISTORY, PHYSICAL, AND LABORATORY EXAMINATIONS* (3rd ed., 1990), available at (last accessed on July 1, 2020).

[94] *Rollo*, p. 169.

[95] Available at (last accessed on July 2, 2020).

[91] Id. at 136 *citing Manota v. Avantgarde Shipping Corporation*, 715 Phil 54, 64-65 (2013) [Per J. Peralta, Third Division].

[96] Id. at 11.

[97] DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 20 (5th ed.).

[98] R. Moscarello, *Post traumatic Stress Disorder After Sexual Assault: Its Psychodynamics and Treatment*. *Journal of the American Academy of Psychoanalysis*, 19(2) TI-IB JOURNAL OF THE AMERICAN ACADEMY OF PSYCHOANALYSIS 235 (1991).

[99] DIAGNOSTIC AND STATISTICAL MANUAL OF DISORDERS 274 (5* ed.).

[100] G.R. No. 213482, June 26, 2019 [Per J. Leonen, Third Division].

[101] Id.

[102] 537 Phil 897 (2006) [Per J. Garcia, Second Division].

[102] Id. at 901.

[104] Id.

[105] Id. at 916.

[106] *Rollo*, p. 100-101.

[107] Id. at 141-142. The Psychiatric Report was issued by the Life Change Recovery Center, The Randy Dellosa Wellness Center and signed by Dr. Randy Dellosa, a psychiatrist and clinical psychologist.

[108] Id. at 143. The Medical Certificate was issued by Dr. Li-Ann Lara-Orencia, MD.

[109] Id. at 141-143.

[110] 647 Phil 91 (2010) [Per J. Carpio Morales, Third Division]

[111] Id. at 93.

[112] Id. at 94.

[113] Id. at 95 (2010) [Per J. Carpio Morales, Third Division].

[114] Id.

[115] Id. at 96-98.

[116] *Rollo*, p. 31-32.

[117] *Id.* at 147.

[118] *Id.* at 79.

[119] Simon Veamals and Tomas Campbell, Male victims of male sexual assault: A review of psychological consequences and treatment, 16(3) SEXUAL AND RELATIONSHIP THERAPY 279, 285 (2001).

[120] 712 Phil 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[121] *Id.* at 171-172.

[122] *Rollo*, p. 74-91.

[123] *Id.* at 93-104.

[124] *Inlet-Orient Maritime Enterprises, Inc. v. Creer III*, 743 Phil 164, 188 (2014) [Per]. Del Castillo, Second Division], J. Leonen, concurring.

[125] *Id.*

[126] 743 Phil 164 (2014) [Per J. Del Castillo, Second Division].

[127] *Id.* at 188.

[128] 746 Phil 736 (2014) [Per J. Leonen, Second Division].

[129] *Monana v. MEC Global Shipmanagement and Manning Corporation, et at*, 746 Phil. 736. 756-757 (2014) [Per.I. Leonen, Second Division].

[130] *Rollo*, p. 28-29.

[131] *Nacar v. Gallery Frames*, 716 Phil. 806 (206) [Per J. Peralta, En Banc].



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