Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

DARIO A. CARCEDO (substituted by his wife PRISCILLA DELA CRUZ-CARCEDO),
Petitioner,

- versus -

MAINE MARINE PHILIPPINES, INC. and/or MISUGA KAJUN CO., LTD., and/or MA. CORAZON GEUSE-SONGCUYA,
Respondents.

G.R. No. 203804

Present:

CARPIO, *J.,* Chairperson,
DEL CASTILLO,
PEREZ,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:
15 APR 2015

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DECISION

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] dated 29 June 2012 and Resolution[3] dated 5 October 2012 of the Court of Appeals in CA-G.R. SP No. 120706, nullifying the Decision[4] dated 8 March 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 01-000007-11 (OFW), and reinstating the Decision[5] dated 30 November 2010 of the Labor Arbiter in NLRC NCR-OFW [M]-00-09-13527-09.

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* Designated acting member per Special Order No. 1977 dated 15 April 2015.

1 Under Rule 45 of the Revised Rules of Civil Procedure.

2 *Rollo*, pp. 36-52. Penned by Associate Justice Amy C. Lazaro-Javier, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Sesinando E. Villon concurring.

3 Id. at 53.

4 CA *rollo*, pp. 52-60.

5 Id. at 62-70.

The Facts

On 6 August 2008, Dario A. Carcedo (Carcedo) was hired by respondent Maine Marine Philippines, Inc. for its foreign principal Misuga Kajun Co., Ltd. (collectively, respondents). He was engaged as Chief Officer on board M/V Speedwell under contract for nine months,[6] with a basic monthly salary of US$1,350.00.

Carcedo underwent the Pre-Employment Medical Examination on 8 August 2008, where he was declared fit for work. He boarded the vessel on 10 August 2008.

In November 2008, Carcedo's foot was wounded because of his safety shoes. Upon examination, the ship doctor gave him antibiotics and allowed him to resume work.[7] His foot's condition worsened when he slid down the deck and bumped his right foot. In January 2009, he felt pain in the back of his swollen leg and developed fever and headache.

On 19 January 2009, he was treated at the Yoshino Hospital in Japan. The doctor diagnosed Carcedo with an open fracture of the right major toe bone with a suspicion of sepsis.[8]

Carcedo was repatriated on 20 January 2009. He was immediately referred to the company-designated physician, Dr. Nicomedez Cruz of the Manila Doctors Hospital, for medical treatment. In Dr. Cruz's report dated 26 January 2009,[9] he stated:

> The patient underwent debridement of the wound of the right big toe today at Manila Doctors Hospital. Operative findings showed infected open wound in the medial aspect of the right big toe. There is foul smelling purulent discharge. Vascularity of the toe is compromised with beginning gangrene formation. He tolerated the procedure well. Fasting blood sugar is elevated at 14 (normal value = 4.2-6.1). He was referred to our endocrinologist for co-management.
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> Diagnosis:
> Infected wound with gangrene, right big toe
> S/P Debridement
> Diabetes mellitus[10]

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6 In accordance with the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), with an overriding IBF JSU/AMOSUP-IMMAJ Collective Bargaining Agreement (CBA).
7 CA *rollo*, p. 119.
8 Id. at 120.
9 Id. at 122.
10 Id.

Carcedo also underwent disarticulation of the right big toe on 26 January 2009.[11] He was discharged from the hospital on 12 February 2009.[12]

On 24 March 2009, Dr. Cruz recommended "an impediment disability grading of 8% *Loss of first toe (big toe) and some of its metatarsal bone*."[13]

Due to infection of the amputated stump, Carcedo was again admitted to the hospital on 20 April 2009 for intravenous antibiotics.[14] While confined in the hospital, Carcedo underwent sequestrectomy of the right first metatarsal bone.[15] He also underwent curettage and serial debridements of the wound.[16] On 27 May 2009, Carcedo's right first metatarsal bone was removed. He was discharged on 6 June 2009, with the following report from Dr. Cruz:[17]

> The patient was discharged today from the hospital. The wound of the right foot is still open with good granulation tissues. There is a minimal suppuration and serous discharge. He is advised to continue daily wound care.[18]

On his follow-up consultation on 15 June 2009, Dr. Cruz noted that:

> There is x x x good granulation tissue on the stump of amputated right big toe. The wound is open but with slight yellowish discharge. Cleaning and dressing were done. He was advised to continue his medications.[19]

On 21 October 2009, Carcedo filed a complaint[20] for total and permanent disability benefits in the amount of US$148,500.00, sickness allowance and other consequential damages.

Meanwhile, Carcedo consulted orthopedic surgeon, Dr. Alan Leonardo R. Raymundo, who amputated Carcedo's second toe on 30 November 2009. Dr. Raymundo's Medical Report[21] dated 16 March 2010 reads:

> The patient saw me last October 29 and was advised that his condition was still in the healing process. However, in November 30 of the same year, the patient again developed chills and was admitted at the UP-PGH where he underwent an amputation of the 2nd ray of the left foot and was diagnosed with chronic osteomyelitis with a non-healing wound in the said area. On follow-up today, the wound has already completely healed and closed well with no draining sinus noted. He now has absence

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11 Id. at 186.
12 Id. at 123.
13 Id. at 124.
14 Id. at 186.
15 Performed on 21 April 2009, id. at 187.
16 Id. at 178, 187-188.
17 Id. at 179.
18 Id.
19 Id. at 180.
20 Id. at 74-75.
21 Id. at 184.

of the first and second toe which is prompting him to walk on the lateral aspect of his left foot with a cane. He still has some pain on weight bearing but the wound is already completely healed.

RECOMMENDATION:

I told him that with his present condition right now, he is not fit to return to his previous work duties as a chief mate on board.[22]

The Court of Appeals summarized the positions of the parties, thus:

In his position paper, Carcedo averred: (1) his injury was work-related because he sustained the wound from his safety shoes at work, hence, his injury was compensable under Section 20(B) of the POEA Standard Employment Contract; (2) his disability was total and permanent; the injury on his leg was so severe that despite medication, there was no certainty that his former physical condition would get restored and he could resume his customary work; he walked with difficulty and not without a cane; his Orthopedic Surgeon, Dr. Alan Leonardo R. Raymundo recommended, viz: "x x x with his present condition right now, he is not fit to return to his previous work duties as a chief mate on board"; (3) he suffered severe depression and anxiety, for which, he was entitled to moral and exemplary damages, and attorney's fees; his employer's refusal to pay his disability benefits showed evident bad faith; and, he was denied a better medical treatment because he had to make do with what his depleted resources could afford.

Maine posited: there were valid reasons to deny Carcedo's claims, viz: (1) they were bound by the provisions on disability compensation under the POEA Standard Employment Contract and CBA; the disability compensation schedule under the IBF-JSU/AMOSUP IMMAJ CBA Schedule of Disability and Impediment (Annex 3 of the CBA), provided:

Degree of Disability	Rate of Compensation
	Senior Officers
%	US$
100	148,500
75	111,375
60	89,100
50	74,250
40	59,400
30	44,550
20	29,700
10	14,850

the CBA further stated:

[22] Id.

> 28.4 The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than ten percent (10%) disability, to be *pro rata*;
>
> since Carcedo's injury fell under 'Loss of 1st toe (big toe) and some of its metatarsal bone,[']his rate of compensation was equivalent to 8% computed, as follows:
>
> US$148,500 x 0.08 = US$11,880.00
>
> (2) the disability assessment of the company-designated physician who attended to the seafarer throughout his illness and who had authority to assess his medical condition, should be given utmost credence, instead of a doctor who had only examined the seafarer later; (3) it had not acted in bad faith and had dealt fairly with Carcedo; it complied with its duties under the POEA contract; it paid for all of Carcedo's medical bills and even offered to pay disability benefit of US$11,880.00; and Carcedo was, thus, not entitled to attorney's fees and exemplary damages.[23]

In Respondents' Reply to Complainant's Position Paper,[24] they submitted the opinions of more doctors to refute Carcedo's claim that he was unfit for sea duty.

The Ruling of the Labor Arbiter

On 30 November 2010, Labor Arbiter Patricio Libo-on denied Carcedo's claim for full disability and awarded him only partial disability in the amount of US$11,800.00 in accordance with the contract between the parties. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the complaint for the payment of full disability is dismissed and respondent is ordered to pay the complainant partial disability in the amount of US$11,800.00.
>
> SO ORDERED.[25]

The Labor Arbiter held that the contract between the parties is the law between them. Hence, the partial and permanent disability assessment made by the company-designated physician in accordance with the CBA prevails over the inability of Carcedo to return to his usual work.

The Ruling of the NLRC

On appeal, the NLRC reversed the Labor Arbiter's decision and

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[23] *Rollo*, pp. 38-40.
[24] CA *rollo*, pp. 218-247.
[25] Id. at 70.

awarded Carcedo full disability benefits and attorney's fees. The dispositive portion of the NLRC Decision dated 8 March 2011 reads:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The decision appealed from is REVERSED and SET ASIDE, and a new one issued ordering MAINE MARINE PHILIPPINES, INC., to pay DARIO A. CARCEDO, or his surviving spouse, PRISCILLA V. DELA CRUZ-CARCEDO, the amount of ONE HUNDRED FORTY EIGHT THOUSAND FIVE HUNDRED US DOLLARS ($148,500.00), plus attorney's fees not exceeding US$14,850.00.
>
> SO ORDERED.[26]

The NLRC gave credence to the findings of Dr. Raymundo, and held that Carcedo's death was confirmation of his unfitness to do work as a seaman.[27] The NLRC applied the definition of permanent disability enunciated by the Court in the case of *Crystal Shipping Inc. v. Natividad*,[28] which was "the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."[29]

In its Resolution dated 27 May 2011,[30] the NLRC denied respondents' motion for reconsideration for lack of merit. Hence, herein respondents filed a Petition for Certiorari[31] before the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals upheld the 8% disability grading made by the company-designated physician in accordance with the CBA. However, the Court of Appeals also declared Carcedo to be suffering from total and permanent disability because (1) he was unable to perform his job for more than 120 days; and (2) the declarations by the company-designated physician that Carcedo was fit for sea duty were made more than 400 days from repatriation. The dispositive portion of the Court of Appeals' Decision dated 29 June 2012 reads:

> ACCORDINGLY, the Decision dated March 8, 2011 is NULLIFIED and the Labor Arbiter's Decision dated November 30, 2010, REINSTATED.
>
> SO ORDERED.[32]

Hence, this petition.

The Issues

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[26] Id. at 59.
[27] Id. at 56.
[28] 510 Phil. 332 (2005).
[29] Id. at 340, also quoted in the NLRC Decision dated 8 March 2011. CA *rollo*, p. 58.
[30] CA *rollo*, pp. 71-73.
[31] Id. at 3-50.
[32] *Rollo*, p. 52.

Carcedo assigned the following errors:

I

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN NOT AWARDING TOTAL AND PERMANENT DISABILITY BENEFITS TO THE PETITIONER IN ACCORDANCE WITH THE COLLECTIVE BARGAINING AGREEMENT.

II

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN DISMISSING PETITIONER'S CLAIMS FOR DAMAGES AND ATTORNEY'S FEES.[33]

The Court's Ruling

We grant the petition in part.

Entitlement to Disability Benefits

A contract is the law between the parties, which in this case are the CBA and the POEA-SEC. The CBA contains the following pertinent medical and disability provisions:

Article 25: Medical

x x x x

25.3 A seafarer repatriated to their port of engagement, unfit as a result of sickness or injury, shall be entitled to medical attention (including hospitalization) at the Company's expense:

x x x x

(b) in the case of injury, for so long as medical attention is required or until a medical determination in accordance with clause 28.2 concerning permanent disability.

x x x x

Article 28: Disability

28.1. A seafarer who suffers permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while traveling to or from the ship, and whose ability to do work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.

28.2. The disability suffered by the seafarer shall be determined by a

[33] Id. at 15-16.

> doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> 28.3 The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than ten percent (10%) disability, to be pro rata.
>
> 28.4. A seafarer whose disability, in accordance with 28.2 above is assessed at fifty percent (50%) or more under the attached APPENDIX 3 shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to one hundred percent (100%) compensation. Furthermore, any seafarer assessed at less than fifty percent (50%) disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to one hundred percent (100%) compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 28.2 above.[34]

Based on the above-quoted provisions of the CBA, there are three instances when a seafarer may be entitled to 100% disability compensation. These are: (1) when the seafarer is declared to have suffered 100% disability; (2) when the seafarer is assessed with disability of at least 50%; and (3) when the seafarer, while assessed at below 50% disability, is certified as permanently unfit for sea service.

According to the CBA, both the disability assessment and the certification as permanently unfit for sea service are to be given by the company-designated physician. These can be overruled by a third doctor jointly appointed by the company and the union, in the event that the seafarer's personal physician disagrees with the evaluations of the company-designated physician. Section 20(B)(3) of the POEA-SEC provides a similar mechanism for determining the disability assessment.[35]

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[34] CA *rollo*, pp. 168-169.

[35] Section 20(B)(3) of the POEA-SEC reads:

> x x x x
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company designated physician within three working days upon his return except when he is physically incapacitated to do so. In which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third**

However, it is not only the contract between the parties that governs the determination of the disability compensation due the seafarer. The Court has ruled that the provisions on disability of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code are applicable to the case of seafarers. In *Remigio v. NLRC*,[36] the Court held:

> The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Section 29 of the 1996 POEA SEC itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."
>
> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC***,** seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[37]

The pertinent Labor Code provision is found in Article 192(c)(1), Chapter VI, Title II, Book IV:

> Art. 192. Permanent and total disability.
>
> x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided for in the Rules**[.] (Emphasis supplied)

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doctor's decision shall be final and binding. (Emphasis supplied)

[36] 521 Phil. 330 (2006).

[37] Id. at 346-347.

The corresponding provision in the AREC is Section 2(b) of Rule VII which reads:

> SECTION 2. Disability. x x x
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, **except as otherwise provided for in Rule X of these Rules**. (Emphasis supplied)

The above rule pertains to Section 2, Rule X of the AREC:

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

These provisions, in conjunction with Section 20(B)(3) of the POEA-SEC, were interpreted in the case of *Vergara v. Hammonia Maritime Services, Inc.*[38] thus:

> 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.[39] (Emphasis supplied)

Hence, a partial and permanent disability could, by legal contemplation, become total and permanent. The Court in *Kestrel Shipping Co., Inc. v. Munar*[40] 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

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[38] 588 Phil. 895 (2008).
[39] Id. at 912.
[40] G.R. No. 198501, 30 January 2013, 689 SCRA 795.

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.**[41] (Emphasis supplied)

Assessment of Disability Grading

We cannot agree with the Court of Appeals and the Labor Arbiter that the 24 March 2009 disability assessment made by Dr. Cruz was definitive. To our mind, the said disability assessment was an interim one because Carcedo continued to require medical treatments even after 24 March 2009. He was confined in the hospital from 20 April 2009 to 6 June 2009, where he underwent serial debridements, curettage, sequestrectomy and even amputation of the right first metatarsal bone. He was certainly still under total disability, albeit temporary at that time.

His discharge from the hospital was 137 days from repatriation. Following the Court's rulings in *Vergara* and *Kestrel*, since Carcedo required further medical treatments beyond the 120 day period, his total and temporary disability was extended. The company-designated physician then had until 240 days from repatriation to give the final assessment.

During the follow-up consultation on 15 June 2009, Dr. Cruz noted that Carcedo's wound was still open and that he was to continue his medications.[42] Carcedo's injury required tending. This was 146 days from

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[41] Id. at 809-810.
[42] CA *rollo*. p. 180.

repatriation, and Dr. Cruz still had nearly 100 days within which to give Carcedo's final disability assessment, yet he gave none.

Indeed, the schedule of disabilities in the CBA, if there is one, or the POEA-SEC, should be the primary basis for the determination of a seafarer's degree of disability. However, the POEA-SEC and the CBA cannot be read in isolation from the Labor Code and the AREC. Otherwise, the disability rating of the seafarer will be completely at the mercy of the company-designated physician, without redress, should the latter fail or refuse to give one.

Here, the company-designated physician failed to give a definitive impediment rating of Carcedo's disability beyond the extended temporary disability period, after the 120-day period but less than 240 days. By operation of law, therefore, Carcedo's total and temporary disability lapsed into a total and permanent disability.[43]

Even assuming that Dr. Cruz's 24 March 2009 disability rating were definitive, Carcedo would still have a cause of action for total and permanent disability compensation. Dr. Cruz's declaration of 8% impediment rating was made 63 days from repatriation, within the 120-day period. However, beyond this period, Carcedo was still incapacitated to perform his usual sea duties as he was still undergoing medical treatments and was confined in the hospital. In *C.F. Sharp Crew Management, Inc. v. Taok*,[44] the Court held:

> Based on this Court's pronouncements in *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3)

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[43] *Libang v. Indochina Ship Management, Inc.*, G.R. No. 189863, 17 September 2014.

[44] G.R. No. 193679, 18 July 2012, 677 SCRA 296.

> of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and **(h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.**[45] (Emphasis supplied)

Certification of Fitness for Sea Service

Neither was there a certification from the company-designated physician as to Carcedo's fitness for sea service.

Dr. Cruz's 24 March 2009 report on the disability grading of Carcedo did not include a certification that he was already fit for sea duty. And even if it had, it would be belied by his subsequent reports on, and the fact of, the continuation of medical treatments and hospitalization of Carcedo after the issuance of the 24 March 2009 report. However, in Respondents' Reply to Complainant's Position Paper, they wrote:

> x x x x
>
> b. Medical Director and PEME doctor Dr. Fe Bacungan clearly opined that complainant's amputated right big toe will not in any way interfere with his current position as Chief Officer on board.
>
> c. Another PEME doctor Dr. Pascualito Gutay likewise opined that complainant's current condition will not render him unfit for further sea duties as Chief Officer onboard.
>
> x x x x[46]

The Court of Appeals considered the opinions of Dr. Bacungan and Dr. Gutay as fit for sea duty declarations of respondents' designated physicians. We disagree. These opinions are not the certifications of fitness for sea duty contemplated by the CBA and the POEA-SEC. First, Dr. Bacungan and Dr. Gutay were not the company-designated physicians assigned to the care of Carcedo. Second, they were given in response to a hypothetical inquiry by respondents' counsel.[47] Third, neither doctor

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[45] Id. at 314-315.

[46] CA *rollo*, p. 221.

[47] On 29 March 2010, Dr. Bacungan wrote:

> "This has reference to your inquiry regarding a 51 year chief officer who suffered from gangrenous right big toe after an accident that requred surgery, partial amputation of the right big toe, which is already healed according to the attending doctor. In my medical opinion the partially amputated right big toe will not interfere with his position and job as chief officer." (Id. at 335)

On 7 April 2010, Dr. Gutay wrote:

> "Absence of big toe is not a disqualifier for sea service as it does not necessarily affect functional capacity of the lower extremity or functional capacity of the feet. Likewise, it does not put an individual

examined Carcedo in coming up with their opinions.

As discussed above, the determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law. Hence, we also disagree with the NLRC's giving credence to the declaration of Dr. Raymundo that Carcedo was unfit to work as a seaman.

Carcedo consulted Dr. Raymundo more than nine months since repatriation, and four months since he last consulted the company-designated physician. During the latter period, Carcedo could have developed any number of conditions that may or may not be related to the injury suffered while on board the ship. Notably, Dr. Raymundo's medical report does not specify what "condition" of Carcedo was "still in the healing process."[48]

In addition, Dr. Raymundo was only consulted after Carcedo was treated by the company-designated physician. Dr. Raymundo did not have a chance to observe Carcedo from the time of his repatriation, and was not able to monitor his condition throughout the treatments.

Besides, Dr. Raymundo's disability assessment includes a second ray amputation which he performed on Carcedo. This, and the amputation of the first toe and its metatarsal bone performed by the company-designated physician, formed the basis of Dr. Raymundo's unfit for sea duty declaration. In contrast, the injury diagnosed by the doctor at the Yoshino Hospital in Japan and the initial findings of Dr. Cruz immediately upon repatriation only pertain to the first toe. Apart from the vague mention of a condition that was still in the healing process, there was no indication that the second ray amputation was a consequence of the injury sustained while on board.

Nevertheless, Carcedo's disability is deemed total and permanent due to the lack of a final disability assessment and of a certification of fitness for sea service from Dr. Cruz.

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in any additional risk for injury or disable him from performing safety sensitive functions.

Further, there is no medical fitness standards for sailors that make absence of big toe a disqualifier for sea service." (Id. at 336)

On 29 April 2010, Dr. Bacungan again wrote:

"This has reference to your inquiry regarding the case of Dario Carcedo, who underwent amputation of the first and second toe of the left foot.

According to our Orthopedic Surgeon, Dr. Albert Dy, the above patient can still assume his work as seaman provided the nature of his job is supervisory." (Id. at 334)

[48] Id. at 184.

Disability Compensation Due

Based on the foregoing discussion, we hold that Carcedo is entitled to full disability compensation. As a senior officer at the time he was injured, at 100% degree of disability, Carcedo is entitled to US$148,500.00.[49]

Moral and Exemplary Damages and Attorney's Fees

The Labor Arbiter found no basis to award damages and attorney's fees. The NLRC likewise did not award damages but awarded attorney's fees. The Court of Appeals did not award moral and exemplary damages but deleted the award of attorney's fees.

We find no ground to disturb the following findings of the Court of Appeals:

> As for attorney's fees, the same may be awarded if petitioner acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim.
>
> Here [respondents] did not act in bad faith because they in fact paid all expenses relative to Carcedo's treatment and hospitalization. They even offered to pay disability benefits, albeit, Carcedo refused it because he wanted Grade 1, no less. Too, the assailed decision did not explain the basis for the award of attorney's fees.[50]

Indeed, the NLRC only included the award of attorney's fees in the dispositive portion of the Decision dated 8 March 2011 without a discussion as to the basis therefor.

A Final Note

In *Philippine Hammonia Ship Agency v. Dumadag*,[51] the Court lamented:

> The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision 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.[52]

In this case, the third-doctor-referral provision did not find application because of the lack of a definitive disability assessment by the company-designated physician. However, the respondents believed, nay, insisted, that

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[49] CA *rollo*, p. 125. The table of Degree of Disability and Rate of Compensation is also quoted above.
[50] *Rollo*, p. 50.
[51] G.R. No. 194362, 26 June 2013, 700 SCRA 53.
[52] Id. at 67.

the 24 March 2009 disability rating of 8% was the final assessment of their designated physician. When Carcedo submitted the contrary findings of his personal physician, respondents presented the opinions of five more doctors, in rebuttal, just to say that Carcedo could have been declared fit for sea duty if he were to re-apply for the same position of chief mate.

At that point in time, the parties were yet before the Labor Arbiter, who could have facilitated the election of the third doctor. We would like to remind ship owners, manning companies and seafarers of their respective obligations as regards the third doctor provision. In *INC Shipmanagement, Incorporated v. Rosales*, we held:

> 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.[53]

WHEREFORE, the petition is **GRANTED** in part. We **REVERSE** the Court of Appeals' Decision dated 29 June 2012 and Resolution dated 5

[53] G.R. No. 195832, 1 October 2014; quoting *Bahia Shipping Services, Inc. v. Constantino*, G.R. No. 180343, 9 July 2014.

October 2012 in CA-G.R. SP No. 120706. We **REINSTATE** with **MODIFICATION** the Decision dated 8 March 2011 of the National Labor Relations Commission in NLRC LAC Case No. 01-000007-11 (OFW).

We order Maine Marine Philippines, Inc. to pay Dario A. Carcedo, or his surviving spouse, Priscilla Dela Cruz-Carcedo, the amount of US$148,500.00 only, without attorney's fees. The award shall be paid in Philippine pesos, computed at the exchange rate prevailing at the time of payment.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice