Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ISLAND OVERSEAS TRANSPORT CORPORATION/PINE CREST SHIPPING CORPORATION/ CAPT. EMMANUEL L. REGIO, *Petitioners,*	**G.R. No. 203115**
	Present:
- versus -	CARPIO, *Chairperson,* DEL CASTILLO, PEREZ,* MENDOZA, *and* LEONEN, *JJ.*
ARMANDO M. BEJA, *Respondent.*	Promulgated: 07 DEC 2015

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the March 28, 2012 Decision[2] and August 13, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 113550 affirming the October 26, 2009 Decision[4] and February 15, 2010 Resolution[5] of the National Labor Relations Commission (NLRC), which ordered petitioners Island Overseas Transport Corporation/Pine Crest Shipping Corporation/Capt. Emmanuel L. Regio (petitioners) to pay respondent Armando M. Beja (Beja) US$110,000.00 as permanent total disability benefits and 10% thereof as attorney's fees.

Antecedent Facts

On March 6, 2007, Beja entered into a Contract of Employment[6] with petitioner Island Overseas Transport Corp. for and on behalf of its foreign

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* Per Special Order No. 2301 dated December 1, 2015.

1 *Rollo*, pp. 4-45.

2 CA *rollo*, pp. 427-441; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Jose C. Reyes, Jr. and Agnes Reyes-Carpio.

3 Id. at 507-508.

4 NLRC Records pp. 301-313; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

5 Id. at 333-334; penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

6 Id. at 67.

principal, petitioner Pine Crest Shipping Corporation, for a period of nine months as Second Assistant Engineer for the vessel M/V Atsuta. Beja underwent the pre-employment medical examination, where he was declared fit for work. He boarded the vessel on March 14, 2007.

In November 2007, Beja experienced pain and swelling of his right knee, which he immediately reported to the Master of the vessel. On November 10, 2007, he was brought to a hospital in Italy and was diagnosed to have *Arthrosynovitis*. He underwent arthrocentesis of the right knee, was referred to an orthopedic surgeon and was advised to take a rest.[7] However, while in Spain, the pain in his right knee recurred and persisted. He was brought to a physician on November 19, 2007 and was advised to be medically repatriated.

Upon arrival in Manila on November 22, 2007, petitioners referred him to Nicomedes G. Cruz (NGC) Medical Clinic for evaluation. The Magnetic Resonance Imaging of his right knee showed *Chronic Tenosynovitis* with *Vertical Tear, Postero-Lateral Meniscus* and *Probable Tear Anterior Cruciate and Lateral Collateral Ligaments*.[8] Beja underwent physical therapy and was advised to undergo operation.[9] On April 23, 2008, Anterior Cruciate Ligament Reconstruction and Partial Menisectomy of the Medial Meniscus was done on his right knee at Medical Center Manila.[10] After the operation, petitioners sent him for rehabilitation at St. Luke's Medical Center under the supervision of Dr. Reynaldo R. Rey-Matias (Dr. Matias).

Meantime, while undergoing therapy, or on May 15, 2008, Beja filed a complaint[11] against petitioners for permanent total disability benefits, medical expenses, sickness allowance, moral and exemplary damages and attorney's fees. Beja alleged that his knee injury resulted from an accident he sustained on board the vessel when a drainage pipe fell on his knee. He claimed that from the time of his repatriation on November 22, 2007, his knee has not recovered which rendered him incapable of returning to his customary work as seafarer. This, according to him, clearly entitles him to permanent total disability benefits pursuant to AMOSUP-JSU Collective Bargaining Agreement (CBA) which provides:

> Article 28.1:
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> 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 travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent

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7 See Seaman's Medical Report dated November 10, 2007, id. at 41.
8 See MRI Diagnostic Center Inc. MRI Report dated December 21, 2007, id. at 43.
9 See NGC Medical Report dated February 29, 2008, id. at 71.
10 See Medical Center Manila Record of Operation dated April 23, 2008, id. at 44.
11 Id. at 1-3.

disability due to willful acts, shall in addition to sick pay, be entitled to compensation, according to the provisions of this Agreement.[12]

He claimed for compensation in the amount of US$137,500.00 in accordance with the degree of disability and rate of compensation indicated in the said CBA, to wit:

Disability

In the event a seafarer suffers permanent disability in accordance with the provisions of Article 28 of this Agreement, the scale of compensation provided for under Article 28.3 shall, unless more favourable benefits are negotiated, be:

x x x x

Effective from 1st January to 31st December, 2007

Degree of Disability	Rate of Compensation (US$)		
%	Ratings, AB & Below	Junior Officers & Ratings Above AB	Senior Officers (4)
100	82,500	110,000	137,500
75	61,900	82,500	103,150
60	49,500	66,000	82,500
50	41,250	55,000	68,750
40	33,000	44,000	55,000
30	24,750	33,000	41,250
20	16,500	22,000	27,500
10	8,250	11,000	13,750

Note: "Senior Officers" for the purpose of this clause means Master, Chief Officer, Chief Engineer and 1st Engineer.[13]

On May 26, 2008, the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz), issued an assessment of Beja's disability:

1. Prognosis – guarded.
2. Combined disability grading under the POEA schedule of disabilities:
   a. Grade 10 – stretching leg of the ligaments of a knee resulting in instability of the joint.
   b. Grade 13 – slight atrophy of calf muscles without apparent shortening or joint lesion or disturbance of weight-bearing line.[14]

After more than three months of therapy, Dr. Matias issued on August 28, 2008 a medical report[15] stating that Beja is still under pain as verified by the

[12] CA *rollo,* p. 14.
[13] NLRC Records, p. 49.
[14] Id. at 73.
[15] Id. at 46.

Visual Analog System which measures his pain at 6 out of 10 (10 being the highest measure of pain) and is having difficulty in his knee movements. Thereafter, on August 30, 2008, Beja consulted an orthopedic surgeon, Dr. Nicanor F. Escutin (Dr. Escutin), who examined and certified him to be unfit for sea duty in whatever capacity due to pain and difficulty of the use of his right knee despite the operation and therapy performed on him.[16]

Proceedings before the Labor Arbiter

During the preliminary conference, petitioners offered to pay Beja the amount of US$13,345.00, corresponding to the combined disability grading given by Dr. Cruz, which is disability Grade 10 (US$50,000 x 20.15%) and Grade 13 (US$50,000 x 6.72%) under the Schedule of Disability Allowances in the POEA Standard Employment Contract (POEA- SEC). Beja, however, rejected petitioners' offer and reiterated his claim for total disability benefits as strengthened by the certification of Dr. Escutin that he suffers from a permanent total disability, which he claimed, confirmed the findings of Dr. Matias.

Petitioners, however, insisted that the combined disability assessment given by Dr. Cruz, who for months continuously treated and monitored Beja's condition, prevails over that rendered by Dr. Escutin, who examined Beja only once and whose diagnosis was merely based on the medical reports and findings of the company-designated physicians. Petitioners further disclaimed Beja's entitlement to disability claim under the CBA as it expressly requires the parties to consult a third doctor whose opinion shall be binding on them. Since Beja failed to observe this procedure which is also mandated under the POEA-SEC, the finding of Dr. Cruz deserves utmost respect. Petitioners also asseverated that Beja already received his sickness allowance by presenting several vouchers.[17]

In a Decision[18] dated February 27, 2009, the Labor Arbiter awarded Beja maximum disability benefits under the CBA. The Labor Arbiter did not give credence to the assessment given by Dr. Cruz as it was issued after the lapse of 120 days which, by operation of law, transformed Beja's disability to total and permanent. Moreover, despite continued physical therapy, Beja's condition did not improve even beyond the 240-day maximum medical treatment period. The Labor Arbiter found doubtful Dr. Cruz's assessment considering that he was not the one who performed the operation on Beja's knee. The Labor Arbiter denied Beja's claim for sickness allowance since payment thereof was fully substantiated by evidence presented by petitioners. The dispositive portion of the Decision reads:

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[16] See Dr. Escutin's Disability Report Re: Beja, Armando M. dated August 30, 2008, id. at 47-48.
[17] Id. at 74-80.
[18] Id. at 135-141; penned by Labor Arbiter Madjayran H. Ajan.

> WHEREFORE, premises considered, judgment is hereby rendered against the above-named respondents ISLAND OVERSEAS TRANSPORT CORP. and/or PINE CREST SHIPPING CORP. and/or CAPT. EMMANUEL L. REGIO, who are hereby ordered to pay, jointly and severally, complainant's Permanent Total Disability benefits in the amount of US DOLLARS ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED (US$ 137,500.00), in Philippine currency at the prevailing rate of exchange at the time of payment, plus ten percent (10%) thereof as attorney's fees.
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> SO ORDERED.[19]

Proceedings before the National Labor Relations Commission

On appeal, petitioners attributed error in the Labor Arbiter in granting Beja the maximum disability benefits under the CBA. Petitioners argued that since Dr. Cruz made an assessment on May 26, 2008 or before the lapse of the maximum 240-day treatment period from the date of Beja's repatriation on November 22, 2007, there was no factual basis in ruling that Beja is entitled to full disability benefits. They cited *Vergara v. Hammonia Maritime Services, Inc.,*[20] where it was pronounced that only after the lapse of 240 days of continuous medical treatment without any assessment given by the company doctor that a medically repatriated seafarer could be adjudged as permanently and totally disabled. They also claimed that the CBA is inapplicable in Beja's case because Beja failed to comply with the procedure regarding the third doctor referral and more importantly, no proof was adduced to show that his medical condition resulted from an accident. Petitioners presented a certification[21] of the Master of vessel M/V Atsuta, Captain Henry M. Tejado, and a written declaration[22] of the vessel's Chief Engineer, Ramon B. Ortega, both confirming that Beja neither met an accident on board nor was injured during his stay in the vessel under their command. Finally, petitioners contended that assuming that the CBA applies, the award of US$137,500.00 is erroneous as Beja is not a Senior Officer. In fine, petitioners insisted that the disability assessment given by Dr. Cruz based on the POEA-SEC is binding and controlling.

Beja, however, disputed petitioners' belated and self-serving denial that an accident took place and insisted that his failure to resume his work as Second Engineer for more than 240 days resulted in his entitlement to the maximum disability benefit under the CBA, as correctly ruled by the Labor Arbiter.

In a Decision[23] dated October 26, 2009, the NLRC sustained the Labor Arbiter's finding that Beja is permanently and totally disabled. It found Dr. Cruz's

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19 Id. at 141.
20 588 Phil. 895 (2008).
21 NLRC Records, p. 299.
22 Id. at 300.
23 Id. at 301-313.

disability assessment premature and inaccurate considering that it was issued only a month after Beja's surgery when the latter was still under medical evaluation and treatment. On the other hand, it found Dr. Escutin's evaluation of Beja's condition more credible as it conforms to Dr. Matias' medical report which was rendered after four months of therapy following the operation. The NLRC likewise ruled that Beja is entitled to compensation under the CBA for an accident-sustained disability. It noted that his medical records reveal indications of tear and injury on his right knee that could have resulted from an accident on board. It, however, reduced the award from US$137,500.00 to US$110,000.00 as Beja was only a Second Engineer and not a Senior Officer, thus:

> WHEREFORE, premises considered, the Decision appealed from is hereby declared Modified to the extent only that complainant's permanent total disability award should be US Dollars 110,000.00 (US$110,000.00). All other dispositions are hereby Affirmed.
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> SO ORDERED.[24]

Petitioners' motion for reconsideration[25] was denied in the NLRC Resolution[26] dated February 15, 2010.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with Prayer for the Urgent Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[27] to enjoin the enforcement/ execution of the NLRC judgment. In a Resolution[28] dated June 23, 2010, the CA denied Petitioners' application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

On March 28, 2012, the CA rendered a Decision[29] denying the Petition for *Certiorari* and affirming the NLRC ruling. The CA similarly found that Beja's injury resulting from an accident while on board the vessel. It likewise found merit in Dr. Escutin's disability report declaring Beja unfit to work since his injury has prevented him from performing his customary work as Second Engineer for more than 240 days and thus entitles him to permanent total disability benefits in accordance with the CBA.

Petitioners sought reconsideration[30] of the CA Decision. In a CA

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[24] Id. at 313.
[25] Id. at 316-330.
[26] Id. at 333-334.
[27] CA *rollo,* pp. 3-35.
[28] Id. at 325-326.
[29] Id. at 427-441.
[30] Id. at 448-468.

Resolution[31] dated August 13, 2012, petitioners' motion was denied.

Issues

Hence, petitioners filed the present Petition for Review on *Certiorari* raising the following grounds:

> I. In awarding permanent total disability benefits in favor of the Respondent in utter disregard of extant case laws outlining the instances when and how a temporary total disability can be converted into a permanent total one.
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> II. In relying on the opinion of Respondent's chosen doctor to justify an award of disability compensation contrary to the clear edicts of the POEA Contract, the CBA and of the Supreme Court in jurisprudential precedents on the proper establishment and/or determination of a seafarer's entitlement to disability benefits.
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> III. In awarding benefits based on the compensation provided in the parties' CBA when the said agreement unequivocally confines compensation to injuries arising from accident, which is absolutely wanting in this case.
>
> IV. In sustaining the award of attorney's fees albeit [without] legal and factual substantiation.[32]

Petitioners assert that Beja cannot be automatically declared as permanently and totally disabled by the mere lapse of 120 days without any assessment or certification of fit to work being issued. Citing *Vergara,* they argue that the 120-day period may be extended up to the maximum of 240 days if the seafarer requires further medical attention. Since Dr. Cruz's assessment was issued within the 240-day medical treatment period, albeit beyond 120 days, this could serve as the basis for determining Beja's disability and the degree thereof. In short, Beja should have been declared as partially disabled with Grades 10 and 13 disability under the POEA-SEC, as assessed by Dr. Cruz.

Moreover, they posit that Beja's complaint was prematurely filed and lacked cause of action for total and permanent disability benefits. According to petitioners, the lack of a second opinion from Beja's chosen physician at the time of the filing of the complaint and a third-doctor opinion is fatal to Beja's cause, for without a binding third opinion, the assessment of the company-designated physician stands.

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[31] Id. at 507-508.

[32] *Rollo*, p. 433.

Further, they insist that Beja is not entitled to compensation under the parties' CBA which is only confined to injuries arising from accident.

Our Ruling

The Petition is partially meritorious.

The parties' CBA is inapplicable.

Beja based his claim for full disability benefits under the CBA, claiming that his disability resulted from an accident while in the employ of petitioners and that petitioners' belated denial cannot negate the applicability of the CBA provisions.

We are not convinced.

While, indeed, petitioners did not dispute, before the Labor Arbiter, the fact that Beja met an accident while performing his duties, they, however, disputed the same in their appeal with the NLRC by submitting the certifications of the Master of the vessel and Chief Engineer that no accident happened under their command. We have held that "rules of procedure and evidence should not be applied in a very rigid and technical sense in labor cases in order that technicalities would not stand in the way of equitably and completely resolving the rights and obligations of the parties."[33] The Court is, thus, not precluded to examine and admit this evidence, even if presented only on appeal before the NLRC, if only to dispense substantial justice.

We, however, note that Beja has not presented any proof of his allegation that he met an accident on board the vessel. There was no single evidence to show that Beja was injured due to an accident while doing his duties in the vessel. No accident report existed nor any medical report issued indicating that he met an accident while on board. Beja's claim was simply based on pure allegations. Yet, evidence was submitted by petitioners disputing Beja's allegation. The certifications by the Master of the vessel and Chief Engineer affirmed that Beja never met an accident on board nor was he injured while in the performance of his duties under their command. Beja did not dispute these certifications nor presented any contrary evidence. "It is an inflexible rule that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process."[34]

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[33] *Antiquina v. Magsaysay Maritime Corp.,* 664 Phil. 88, 100 (2011).

[34] *Gemina, Jr. v. Bankwise, Inc. (Thrift Bank),* G.R. No. 175365, October 23, 2013, 708 SCRA 403, 418-419.

The Court also takes notice of the fact that Beja's medical condition cannot be solely attributable to accidents. His injury could have possibly been caused by other factors such as chronic wear and tear[35] and aging.[36] Thus, the NLRC's conclusion that the tear and injury on Beja's knee was caused by an accident on board had no factual basis but was anchored merely on speculation. The Court cannot, however, rest its rulings on mere speculation and presumption.[37]

Thus, we find the CBA inapplicable; the determination of Beja's entitlement to disability benefits must, consequently, be governed by the POEA-SEC and relevant labor laws.

Beja is entitled to a total and permanent disability compensation of US$60,000.00 under the POEA-SEC.

Article 192(c)(1) of the Labor Code provides that:

> Art. 192. Permanent total disability. – 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;

The Rule referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employees Compensation (AREC) implementing Title II, Book IV of the Labor Code, which states:

> Sec. 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.

Section 20 B (3) of the POEA-SEC, meanwhile provides that:

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[35] http://www.ivysportsmed.com/en/knee-pain/knee-pain-potential-causes/meniscal-tear; last visited September 16, 2015.

[36] http://www.healthline.com/health/meniscus-tears#Cause2; last visited September 16, 2015.

[37] *Ison v. Crewserve, Inc.,* G.R. No. 173951, April 16, 2012, 669 SCRA 481, 498.

> 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.
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> 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.
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> 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.

In *Vergara,*[38] this Court has ruled that the aforequoted provisions should be read in harmony with each other, thus: (a) the 120 days provided under Section 20 B(3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or disability assessment and the seafarer is still unable to resume his regular seafaring duties.

Thus, although Section 32[39] of the POEA-SEC states that only those injuries or disabilities classified as Grade 1 are considered total and permanent, a partial and permanent disability could, by legal contemplation, become total and permanent.[40] The Court ruled in *Kestrel Shipping Co., Inc. v. Munar,*[41] *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

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[38] Supra note 20.

[39] Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

[40] *Carcedo v. Maine Marine Philippines, Inc.,* G.R. No. 203804, April 15, 2015.

[41] G.R. No. 198501, January 30, 2013, 689 SCRA 795.

> 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.
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> 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.[42]

Beja was repatriated on November 21, 2007. Roughly a month after his right knee operation or on May 26, 2008, Dr. Cruz rendered a Grade 10 and 13 partial disability grading of his medical condition. Thereafter, Beja's medical treatment, supervised by another company-referred doctor, Dr. Matias, continued. On August 28, 2008, Dr. Matias issued a medical report declaring that Beja has not yet fully recovered despite continued therapy. Hence, although he was given Grades 10 and 13 combined disability rating by Dr. Cruz, this assessment may only be considered as tentative because he still continued his physical therapy sessions, which even went beyond 240 days.

In *Sealanes Marine Services, Inc. v. Dela Torre,*[43] the seafarer was repatriated on August 4, 2010 and underwent rehabilitation until July 20, 2011, exceeding the 240 days allowed to declare him either fit to work or permanently disabled. A partial disability rating of Grade 11 was issued by the company-designated physician on March 10, 2011 but the Court deemed this assessment only an interim one because of De La Torre's continued physical therapy sessions. The Court then granted De La Torre the maximum disability compensation because despite his long treatment and rehabilitation, he was unable to go back to work as a seafarer. In applying the *Kestrel* ruling, the Court held that if the seafarer's illness or injury prevents him from engaging in gainful employment for more than 240 days, then he shall be deemed totally and permanently disabled. The Court ratiocinated that while the seafarer is partially injured or disabled, he must not be precluded from earning or doing the same work he had before his injury or disability or that which he is accustomed or trained to do.

In *Belchem Philippines, Inc. v. Zafra, Jr.*,[44] the Court stressed that partial disability exists only if a seafarer is found capable of resuming sea duties within the 120/240-day period. The premise is such that partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.

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[42] Id. at 809-810.
[43] G.R. No. 214132, February 18, 2015.
[44] G.R. No. 204845, June 15, 2015.

In this case, there was no assessment that Beja was found fit to resume sea duties before the end of the 240-day period. Also Beja's allegation that he has not been able to perform his usual activities has not been contradicted by petitioners or by contrary documentary evidence. In fact, in his medical report dated August 28, 2008, Dr. Matias opined that there was still difficulty in Beja's knee movements. Beja should, therefore, be deemed to be suffering permanent total disability.

It must also be stressed that Dr. Cruz did not even explain how he arrived at the partial permanent disability assessment of Beja. Dr. Cruz merely stated that Beja was suffering from impediment Grades 10 and 13 disability but without any justification for such conclusion. Petitioners' claim that Beja only suffered a partial disability has undoubtedly no basis on record.

Petitioners still argue that Beja's complaint is premature and as of its filing, no cause of action for total and permanent disability benefits had set in. They contend that despite the lapse of the 120-day period, Beja was still considered under a state of temporary total disability at the time he filed his complaint. In this regard, we quote the following pronouncements in *Kestrel*, which involved the same circumstances as in the case at bar:

> In this case, the following are undisputed: (a) when Munar filed a complaint for total and permanent disability benefits on April 17, 2007, 181 days had lapsed from the time he signed-off from M/V Southern Unity on October 18, 2006; (b) Dr. Chua issued a disability grading on May 3, 2007 or after the lapse of 197 days; and (c) Munar secured the opinion of Dr. Chiu on May 21, 2007; (d) no third doctor was consulted by the parties; and (e) Munar did not question the competence and skill of the company-designated physicians and their familiarity with his medical condition.
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> It may be argued that these provide sufficient grounds for the dismissal of Munar's complaint. Considering that the 240-day period had not yet lapsed when the NLRC was asked to intervene, Munar's complaint is premature and no cause of action for total and permanent disability benefits had set in. While beyond the 120-day period, Dr. Chua's medical report dated May 3, 2007 was issued within the 240-day period. Moreover, Munar did not contest Dr. Chua's findings using the procedure outlined under Section 20-B(3) of the POEA-SEC. For being Munar's attending physicians from the time he was repatriated and given their specialization in spine injuries, the findings of Dr. Periquet and Dr. Lim constitute sufficient bases for Dr. Chua's disability grading. As Munar did not allege, much less, prove the contrary, there exists no reason why Dr. Chiu's assessment should be preferred over that of Dr. Chua.
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> It must be noted, however, that when Munar filed his complaint, Dr. Chua had not yet determined the nature and extent of Munar's disability. Also, Munar was still undergoing physical therapy and his spine injury had not yet been fully addressed. Furthermore, when Munar filed a claim for total and permanent disability benefits, more than 120 days had gone by and the prevailing rule then was that enunciated by this Court in *Crystal Shipping, Inc. v. Natividad*

that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. Particularly:

> **Permanent disability is 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.** As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent.
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> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work or similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In 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.
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> x x x x
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> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. **It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability**. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work. x x x

Consequently, that after the expiration of the 120-day period, Dr. Chua had not yet made any declaration as to Munar's fitness to work and Munar had not yet fully recovered and was still incapacitated to work sufficed to entitle the latter to total and permanent disability benefits.

In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B(3) of the POEA-SEC. A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.

This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after

> the expiration of 120 days from the time he signed off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.
>
> Nonetheless, *Vergara* was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that Vergara should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.[45] (Emphasis in the original)

More importantly, in *Montierro v. Rickmers Marine Agency Phils., Inc.*[46] and *Eyana v. Philippine Transmarine Carriers, Inc.,*[47] the Court applied the ruling in *Kestrel,* that if the maritime compensation complaint was filed prior to October 6, 2008, the rule on the 120-day period, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*,[48] that is, the doctrine then prevailing before the promulgation of *Vergara* on October 6, 2008, stands; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies.

In the case at bar, Beja filed the complaint on May 15, 2008. Dr. Cruz issued his assessment only on May 26, 2008 or 187 days from Beja's repatriation on November 21, 2007. Therefore, due to Dr. Cruz's failure to issue a disability rating within the 120-day period, a conclusive presumption that Beja is totally and permanently disabled arose. Consequently, there was no need for Beja to secure an opinion from his own doctor or resort to a third doctor as prescribed under Section 20 B (3) of the POEA-SEC.

In sum, the CA is correct in affirming the NLRC's award of permanent total disability benefit to Beja. It, however, erred in pertaining to the parties' CBA in granting the award relative to the amount due. The Schedule of Disability Allowances under Section 32 of the POEA-SEC should instead apply. Under this section, Beja is entitled to US$60,000.00 (US$50,000.0 x 120%) corresponding to Grade 1 Disability assessment.

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[45] Supra note 41 at 815-818.
[46] G.R. No. 210634, January 14, 2015.
[47] G.R. No. 193468, January 28, 2015.
[48] 510 Phil. 332 (2005).

The award of attorney's fees is likewise justified in accordance with Article 2208 (2)[49] and (8)[50] of the Civil Code since Beja was compelled to litigate to satisfy his claims for disability benefits.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The March 28, 2012 Decision and August 13, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 113550 are **MODIFIED** in that petitioners, Island Overseas Transport Corp./Pine Crest Shipping Corp./Capt. Emmanuel L. Regio, are ordered to jointly and solidarily pay respondent Armando M. Beja total and permanent disability benefits in the amount of US$60,000.00 or its equivalent amount in Philippine currency at the time of payment, plus 10% thereof as attorney's fees.

SO ORDERED.

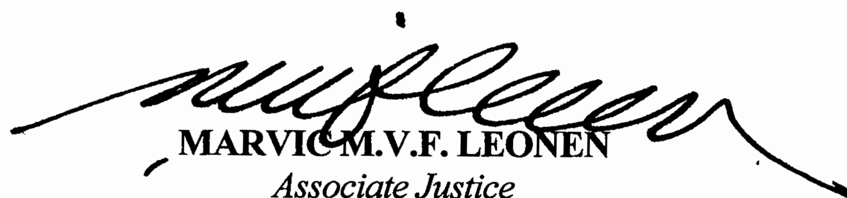
MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

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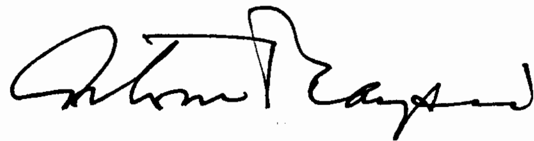
49 Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

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

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