Republic of the Philippines
SUPREME COURT
Manila

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 10 2017

THIRD DIVISION

REYNALDO Y. SUNIT,
Petitioner,

- versus -

OSM MARITIME SERVICES, INC., DOF OSM MARITIME SERVICES A/S, and CAPT. ADONIS B. DONATO,
Respondents.

G.R. No. 223035

Present:

VELASCO, JR., *J.*, Chairperson,
BERSAMIN,
REYES,*
JARDELEZA,
CAGUIOA,**

Promulgated:

February 27, 2017

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DECISION

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the June 10, 2015 Decision[1] and February 10, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 138268, which reversed and set aside the August 29, 2014 Decision of the National Labor Relations Commission (NLRC).

Factual Antecedents

On June 18, 2012, respondent OSM Maritime Services, Inc. (OSM Maritime), the local agent of respondent DOF OSM Maritime Services A/S, hired petitioner Reynaldo Sunit (Sunit) to work onboard the vessel *Skandi Texel* as Able Body Seaman for three (3) months with a monthly salary of \$689. Deemed incorporated in the employment contract is the 2010 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC) and the NIS AMOSUP CBA.

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* On leave.

** Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

[1] *Rollo*, pp. 15-25. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio.

[2] Id. at 27-28.

During his employment, petitioner fell from the vessel's tank approximately 4.5 meters high and suffered a broken right femur. He was immediately brought to a hospital in the Netherlands for treatment and was eventually repatriated due to medical reason. Upon his arrival in Manila on October 6, 2012, he immediately underwent a post-employment medical examination and treatment for his injury at the Metropolitan Medical Center, wherein the company-designated physician diagnosed him to be suffering from a "Fractured, Right Femur; S/P Intramedullary Nailing, Right Femur."

On January 13, 2013, after 92 days of treatment, the company-designated doctor issued a Medical Report[3] giving petitioner an interim disability Grade of 10.[4] Said medical report reads:

> MEDICAL REPORT:
>
> Patient's range of motion of the right hip has improved although patient still ambulates with a pair of axillary crutches.
>
> Pain is at 1-2/10 at the right hip.
>
> Based on his present condition, his closest interim assessment is Grade 10 – irregular union of fracture in a thigh.

Dissatisfied with the company doctor's January 13, 2013 medical report, petitioner sought the opinion of another doctor, Dr. Venancio P. Garduce (Dr. Garduce),[5] who recommended a disability grade of three (3) in his Medical Report dated February 6, 2013.

After further medical treatment, petitioner was assessed with a final disability grade of 10 by the company physician of respondent OSM Maritime, Dr. William Chuasuan, Jr. (Dr. Chuasuan), on February 15, 2013.[6]

Respondents offered petitioner disability benefit of $30,225 in accordance with the disability Grade 10 that the company-designated doctor issued. Petitioner, however, refused the offer and filed a claim for a disability benefit of USD$150,000.00 based on the POEA-SEC and NIS AMOSUP CBA.[7]

During the pendency of the case with the Labor Arbiter (LA), the parties agreed to consult Dr. Lyndon L. Bathan (Dr. Bathan) for a third opinion. Dr. Bathan issued a Medical Certificate recommending a Grade 9 disability pursuant to the Schedule of Disabilities and Impediments under the POEA-SEC. In addition, Dr. Bathan stated therein that petitioner is "not yet fit to work." Dr. Bathan's certificate states:

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[3] Id. at 176.
[4] Id. at 16.
[5] Id.
[6] Id. at 177.
[7] Id.

This is to certify that SUNIT, REYNALDO consulted the undersigned on 17 Feb. 2014 at Faculty Medical Arts Building, PGH Compound, Taft Ave., Manila.

He was diagnosed to have:

FEMORAL FRACTURE S/P INTRAMEDULLARY NAILING (2012); S/P BONE GRAFTING

Patient is Gr. 9 according to POEA Schedule of disability. Patient is not yet fit to work and should undergo rehabilitation.[8]

Ruling of the LA

Pursuant to the Grade 9 disability issued by Dr. Bathan, the LA awarded petitioner disability benefit in the amount of $13,060. The dispositive portion of its Decision[9] dated April 28, 2014 reads:

> WHEREFORE, respondents OSM Maritime Services, Inc., DOF OSM Maritime Services A/S, [are] hereby ordered to pay in solidum complaint's disability benefit in the amount of US$13,060.00 or its Philippine Peso equivalent at the time of payment.
>
> SO ORDERED.

Aggrieved, petitioner appealed to the NLRC.

Ruling of the NLRC

On August 29, 2014, the NLRC rendered a Decision modifying the LA's findings and awarded petitioner permanent and total disability benefit in the amount of $150,000. The NLRC reasoned that petitioner is considered as totally and permanently disabled since Dr. Bathan, the third doctor, issued the Grade 9 disability recommendation after the lapse of the 240-day period required for the determination of a seafarer's fitness to work or degree of disability under the POEA-SEC. The NLRC disposed of the case in this wise:

> WHEREFORE, premises considered, the complainant's appeal is hereby GRANTED.
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> Accordingly, the Decision dated 28 April 2014 of Labor Arbiter Michelle P. Pagtalunan is hereby REVERSED and SET ASIDE ordering respondents, jointly and severally, to pay complainant Reynaldo Y. Sunit, the amount of ONE HUNDRED FIFTY THOUSAND US DOLLARS ($150,000.00) representing permanent total disability benefits plus ten percent (10%) thereof as attorney's fees.
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> All other claims are DISMISSED for lack of merit.

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[8] Id. at 97.
[9] Id. at 90-92.

SO ORDERED.

Respondents moved for reconsideration of the decision, but the NLRC denied the same in its Resolution dated October 22, 2014.

Respondents questioned the NLRC's decision in a petition for certiorari before the CA.

Ruling of the CA

The CA granted the respondents' petition and reinstated the LA's ruling in its Decision dated June 10, 2015, the dispositive portion of which reads:

> WHEREFORE, the instant *Petition for Certiorari* is GRANTED. The August 29, 2014 *Decision* and the October 22, 2014 *Resolution* of public respondent National Labor Relations Commission are REVERSED and SET ASIDE. The April 28, 2014 Decision of the Labor Arbiter is REINSTATED.
>
> SO ORDERED.

In reversing the NLRC, the appellate court held that the 240-day period for assessing the degree of disability only applies to the company-designated doctor, and not to the third doctor. It is only upon the company-designated doctor's failure to render a final assessment of petitioner's condition within 240 days from repatriation that he will be considered permanently and totally disabled and, hence, entitled to maximum disability benefit. In petitioner's case, the company-designated doctor was able to make a determination of his disability within the 240-day period; hence, he is not considered as totally and permanently disabled despite the opinion of the third doctor having been rendered after the lapse of 240 days from repatriation.

The CA further added that the extent of disability, whether total or partial, is determined, not by the number of days that petitioner could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages. Thus, the mere fact that petitioner was incapacitated to work for a period exceeding 120 days does not automatically entitle him to total and permanent disability benefits. Concomitantly, the CA stressed that the recommendation of Dr. Bathan of Grade 9 disability and his determination that the latter's disability is partial and not total are binding on the parties.

Petitioner moved for the reconsideration of the adverted decision, but the CA denied the same in its Resolution dated February 10, 2016.

Hence, this petition.

Issues

Petitioner anchors his plea for the reversal of the assailed Decision on the following issues:

I.

WHETHER OR NOT THE CA COMMITTED SERIOUS ERROR OF LAW IN AWARDING A PARTIAL DISABILITY OF GRADE 9 TO PETITIONER; AND

II.

WHETHER OR NOT THE CA ERRED IN DISMISSING PETITIONERS' CLAIMS FOR DAMAGES AND ATTORNEY'S FEES DESPITE RESPONDENTS' COMMISSION OF BAD FAITH IN THE PERFORMANCE OF THEIR OBLIGATIONS.

The primordial question to be resolved is whether petitioner is entitled to permanent and total disability benefits.

The parties do not dispute that petitioner's injury was work-related and that he is entitled to disability compensation. The disagreement, however, lies on the degree of disability and amount of benefits that petitioner is entitled.

Petitioner bases his entitlement to total and permanent disability benefits on the failure of the company-designated doctor to arrive at a definitive assessment of his disability. Petitioner particularly assails Dr. Chuasuan's assessment of Grade 10 disability since he still required further medical rehabilitation, as affirmed by Dr. Bathan, the third doctor.

In addition, petitioner points at the inconsistency between the Grade 9 disability issued by Dr. Bathan in his certification and the latter's remark therein that petitioner was still "not fit to work and should undergo further rehabilitation." As noted by the NLRC, petitioner's condition prevented him from acquiring gainful employment for 499 days reckoned from the time he arrived on October 6, 2012 until Dr. Bathan examined him on February 17, 2014.[10] Petitioner alleges that he could no longer resume sea service without risk to himself and to others due to the limited physical exertion brought about by his injury, and is permanently unfit for further sea duty.

In their Comment, respondents argue that the 240-day rule does not apply to the case since the company-designated doctor timely assessed petitioner; that the 240-day period only applies to the assessment of the company-designated doctor, and not to the third doctor's opinion. Even assuming that the 240 days limitation applies to the third doctor, the parties validly extended the period for assessment since it was at petitioner's

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[10] Id. at 45.

instance that a third doctor was appointed. By seeking this relief, respondents insist that petitioner agreed to whatever disability grading the third doctor will issue.

In addition, respondents maintain that petitioner's disability should be based on the Schedule of Disability under Section 32 of the 2010 POEA-SEC and should not be based on the number of days of treatment or the number of days in which sickness allowance is paid, citing Section 20 (A)(6) of the 2010 POEA-SEC. It is respondents' position that the amendments therein require the injury or illness to be compensated based solely on the Schedule of Disability Gradings in Section 32 of the Contract, and that the duration of treatment or payment of sickness allowance should be discounted when determining the applicable disability grading.

Moreover, respondents refuse to acknowledge that they are liable for 100% disability compensation under the CBA, arguing that the CBA does not contain a permanent unfitness clause, but merely mandates that the disability shall be based solely on the disability grading provided under Section 32 of the POEA-SEC, echoing Section 20(A)(6).

The Court's Ruling

The Court resolves to grant the petition.

Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in the same kind of 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 attainments could do.[11]

Under Article 192(c)(1) of the Labor Code, **disability that is both permanent and total disability** is defined as "temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules."[12] Similarly, Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation (AREC) provides:

> (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)

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[11] *Hanseatic Shipping Philippines Inc. v. Ballon*, G.R. No. 212764, September 9, 2015; *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015; *MaerskFilipinas Crewing, Inc. v. Mesina*, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 619, citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 273-274 (2011).

[12] Now Article 198 (c) (1) based on the renumbered Labor Code, per DOLE Department Advisory No. 01, Series of 2015.

The adverted Rule X of the AREC, which implements Book IV of the Labor Code, states in part:

> 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 anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (emphasis supplied)

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

> SECTION 20. COMPENSATION AND BENEFITS
>
> 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 <u>by the company-designated physician</u>**. x x x

The case of *Vergara v. Hammonia Maritime Services, Inc.*[13] harmonized the provisions of the Labor Code and the AREC with Section 20 (B)(3)[14] of the POEA-SEC (now Section 20 [A][3] of the 2010 POEA-SEC). Synthesizing the abovementioned provisions, *Vergara* clarifies that the 120-day period given to the employer to assess the disability of the seafarer may be extended to a maximum of 240 days:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary

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[13] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[14] B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

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 postemployment 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 doctor's decision shall be final and binding on both parties.

> 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.

The 120/240-day period in Article 192 (c)(1) and Rule X, Section 2 of the AREC only applies to the company-designated doctor

From the above-cited laws, it is the **company-designated** doctor who is given the responsibility to make a conclusive assessment on the degree of the seafarer's disability and his capacity to resume work **within 120/240 days**. The parties, however, are free to disregard the findings of the company doctor, as well as the chosen doctor of the seafarer, in case they cannot agree on the disability gradings issued and jointly seek the opinion of a third-party doctor pursuant to Section 20 (A)(3) of the 2010 POEA-SEC:

> SECTION 20. COMPENSATION AND BENEFITS
>
> 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. x x x
>
> > **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)

The above-quoted provision clearly does not state a specific period within which the **third doctor** must render his or her disability assessment. This is only reasonable since the parties may opt to resort to a third opinion even during the conciliation and mediation stage to abbreviate the proceedings, which usually transpire way beyond the 120/240 day period for medical treatment. The CA, thus, correctly held that the 240-day period for assessing the degree of disability only applies to the company-designated doctor, and not the third doctor.

The third doctor's assessment of the extent of disability must be definite and conclusive in order to be binding between the parties

Indeed, the employer and the seafarer are bound by the disability assessment of the third-party physician in the event that they choose to appoint one. Nonetheless, similar to what is required of the company-designated doctor, **the appointed third-party physician must likewise arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties**.

We point to our discussion in *Kestrel Shipping Co., Inc. v. Munar,*[15] underscoring that the assessment of the company-designated physician of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days must be **definite**, viz:

> Moreover, **the company-designated physician is expected to arrive at a <u>definite assessment of the seafarer's fitness to work or permanent disability</u> 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. (emphasis supplied)

Jurisprudence is replete with cases bearing similar pronouncements of this Court. In *Fil-Star Maritime Corporation v. Rosete*,[16] We concluded that the company-designated doctor's certification issued within the prescribed periods must be a definite assessment of the seafarer's fitness to work or disability:

> For the courts and labor tribunals, determining whether a seafarer's fitness to work despite suffering an alleged partial injury generally requires resort to the assessment and certification issued within the 120/240-day period by the company-designated physician. Through such certification, a seafarer's fitness to resume work or the degree of disability can be known, unless challenged by the seafarer through a second opinion secured by virtue of his right under the POEA-SEC. **Such certification, as held by this Court in numerous cases, must be a definite assessment of the seafarer's fitness to work or permanent disability**. As stated in Oriental Shipmanagement Co., Inc. v. Bastol, the company-designated doctor must declare the seaman fit to work or assess the degree of his permanent disability. Without which, the characterization of a seafarer's condition as permanent and total will ensue because the ability to return to one's accustomed work before the applicable periods elapse cannot be shown. (emphasis supplied)

In *Carcedo v. Maine Marine Phils., Inc.*,[17] We ruled that the company-designated physician's disability assessment was not definitive

[15] G.R. No. 198501, January 30, 2013, 689 SCRA 795.
[16] G.R. No. 192686, November 23, 2011.
[17] G.R. No. 203804, April 15, 2015.

since the seafarer continued to require medical treatments thereafter. Thus, because the doctor failed to issue a final assessment, the disability of the seafarer therein was declared to be permanent and total.

In *Fil-Pride Shipping Company, Inc. v. Balasta*,[18] We declared that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days pursuant to Article 192 (c)(l) of the Labor Code and Rule X, Section 2 of the AREC. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. Thus, We considered the failure of the company doctor to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the said period in holding that the seafarer was totally and permanently disabled.

A **final and definite disability assessment** is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

Due to the abovestated reasons, We see it fit to apply the same prerequisite to the appointed third doctor before the latter's disability assessment will be binding on the parties.

In the case at bench, despite the disability grading that Dr. Bathan issued, petitioner's medical condition remained unresolved. For emphasis, Dr. Bathan's certification is reproduced hereunder:

> This is to certify that SUNIT, REYNALDO consulted the undersigned on 17 Feb. 2014 at Faculty Medical Arts Building, PGH Compound, Taft Ave., Manila.
>
> x x x x
>
> **Patient is Gr. 9 according to POEA Schedule of disability. Patient is not yet fit to work and should undergo rehabilitation.**[19] (emphasis supplied)

The language of Dr. Bathan's assessment brooks no argument that no final and definitive assessment was made concerning petitioner's disability. If it were otherwise, Dr. Bathan would not have recommended that he undergo further rehabilitation. Dr. Bathan's assessment of petitioner's degree of disability, therefore, is still inconclusive and indefinite.

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[18] G.R. No. 193047, March 3, 2014.

[19] *Rollo*, p. 97.

Petitioner's disability is permanent and total despite the Grade 9 partial disability that Dr. Bathan issued since his incapacity to work lasted for more than 240 days from his repatriation

Petitioner was repatriated on October 6, 2012. After undergoing medical treatment, the company-designated doctor issued petitioner an interim Grade 10 disability on January 13, 2013. Petitioner was then issued with a final Grade 10 disability by the company-designated doctor on February 15, 2013.

Prior to the February 15, 2013 assessment, petitioner consulted the opinion of a second doctor, Dr. Garduce, who recommended a Grade 3 disability.

Both parties then consulted a third doctor to assess petitioner's degree of disability, who assessed petitioner with a Grade 9 partial disability on February 17, 2014, **499 days from his repatriation**. In addition to the partial disability grading, Dr. Bathan likewise assessed petitioner as **unfit to work** and **recommended him to undergo further rehabilitation**.

While We have ruled that Dr. Bathan is not bound to render his assessment within the 120/240 day period, and that the said period is inconsequential and has no application on the third doctor, petitioner's disability and incapacity to resume working clearly continued for more than 240 days. Applying Article 192 (c)(1) of the Labor Code, petitioner's disability should be considered permanent and total despite the Grade 9 disability grading.

This conclusion is in accordance with *Kestrel*,[20] wherein this Court underscored that if partial and permanent injuries or disabilities 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, <u>under legal contemplation</u>, totally and permanently disabled:

> 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

[20] Supra note 15.

> 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. (emphasis supplied)

In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met. A permanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[21]

To reiterate, the company doctor or the appointed third-party physician must arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties. Dr. Bathan, whose opinion should have bound the parties despite the lapse of the 120/240 day period, did not make such definite and conclusive assessment.

It was likewise proved that petitioner's disability persisted beyond the 240-day period and he was even declared unfit to work by the third doctor himself. As noted by the NLRC, petitioner failed to have gainful employment for 499 days reckoned from the time he arrived on October 6, 2012 until Dr. Bathan conducted his assessment[22] due to his injuries. Moreover, Dr. Bathan's inconclusive assessment and petitioner's prolonged disability only served to underscore that the company-designated doctor himself failed to render a definitive assessment of petitioner's disability.

As petitioner was actually unable to work even after the expiration of the 240-day period and there was no final and conclusive disability assessment made by the third doctor on his medical condition, it would be inconsistent to declare him as merely permanently and partially disabled. It should be stressed that a total disability does not require that the employee be completely disabled, or totally paralyzed.[23] **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**.[24]

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[21] *Belchem Philippines, Inc. v. Zafra, Jr.*, G.R. No. 204845, June 15, 2015, citing *Fil-Star Maritime Corporation v. Rosete* G.R. No. 192686, November 23, 2011.

[22] *Rollo*, p. 102.

[23] *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, G.R. No. 211882, July 29, 2015.

[24] *Eyana v. Philippine Transmarine Carriers, Inc., et. al.*, G.R. No. 193468, January 28, 2015.

In view of the foregoing circumstances, petitioner is considered permanently and totally disabled, and should be awarded the corresponding disability benefits.

At this juncture, it bears to recapitulate the procedural requisites under the rules and established jurisprudence where the parties opt to resort to the opinion of a third doctor:

First, according to the POEA-SEC[25] and as established by *Vergara*,[26] when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician.

Second, if the seafarer disagrees with the findings of the company doctor, then he has the right to engage the services of a doctor of his choice. If the second doctor appointed by the seafarer disagrees with the findings of the company doctor, and the company likewise disagrees with the findings of the second doctor, then a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on both of them.

It must be emphasized that the language of the POEA-SEC is clear in that **both the seafarer and the employer** must mutually agree to seek the opinion of a third doctor. In the event of disagreement on the services of the third doctor, the seafarer has the right to institute a complaint with the LA or NLRC.

Third, despite the binding effect of the third doctor's assessment, a dissatisfied party may institute a complaint with the LA to contest the same on the ground of evident partiality, corruption of the third doctor, fraud, other undue means,[27] lack of basis to support the assessment, or being contrary to law or settled jurisprudence.

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[25] 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. x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor <u>may be agreed jointly between the Employer and the seafarer</u>. The third doctor's decision shall be final and binding on both parties.

[26] G.R. No. 172933, October 6, 2008, 567 SCRA 629.

[27] Similar to the grounds for vacating an award under Republic Act. No. 876:

Section 24. *Grounds for vacating award.* - In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

(a) The award was procured by corruption, fraud, or other undue means; or

Petitioner is entitled to attorney's fees

Considering that petitioner was forced to litigate and incur expenses to protect his right and interest, petitioner is entitled to a reasonable amount of attorney's fees, pursuant to Article 2208(8).[28] The Court notes, however, that respondents have not shown to act in gross and evident bad faith in refusing to satisfy petitioner's demands, and even offered to pay him disability benefits, although in a reduced amount. Thus, the Court finds the award of attorney's fees in the amount of $1,000 as reasonable.[29]

WHEREFORE, premises considered, the petition is **GRANTED**. The June 10, 2015 Decision and February 10, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138268 are **REVERSED** and **SET ASIDE**. Respondents are ordered to jointly and severally pay petitioner Reynaldo Y. Sunit the amount of $150,000 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits, plus $1,000, or its equivalent in Philippine currency, as attorney's fees.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

(b) That there was evident partiality or corruption in the arbitrators or any of them; or

(c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and wilfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

x x x x

[28] 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

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

[29] *Iloreta v. Philippine Transmarine Carriers, Inc.*, G.R. No. 183908, December 4, 2009, 607 SCRA 796; *Eyana v. Philippine Transmarine Carriers, Inc., et. al.*, G.R. No. 193468, January 28, 2015; *Olaybal v. OSG Shipmanagement Manila, Inc. and OSG Shipmanagement [UK] Ltd.*, G.R. No. 211872, June 22, 2015.

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

(On Leave)
BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

PRESBITERO J. VELASCO, JR.
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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 10 2017