Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JEBSENS[*] MARITIME, INC., SEA CHEFS LTD.,[**] and ENRIQUE M. ABOITIZ, Petitioners,	**G.R. No. 218871**
	Present:
	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, and CAGUIOA, *JJ.*
- versus -	
FLORVIN G. RAPIZ, Respondent.	Promulgated:
	JAN 11 2017

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 20, 2015 and the Resolution[3] dated June 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 130442, which affirmed the Decision[4] dated January 25, 2013 and the Resolution[5] dated May 22, 2013 of the Office of the Panel of Voluntary Arbitrators (VA) of the National Conciliation and Mediation Board (NCMB) in AC-305-NCMB-NCR-78-01-08-12 and, accordingly, ordered petitioners Jebsens Maritime, Inc., Sea Chefs Ltd. (Sea Chefs), and Mr. Enrique Aboitiz (Aboitiz; collectively, petitioners) to jointly and severally pay respondent Florvin G. Rapiz (respondent) permanent and total disability benefits in the amount of

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[*] "JEBSEN" in the petition before the Court (see *rollo*, p. 15).

[**] "SEA CHEFS CRUISES LTD" in the Contract of Employment (see id. at 128).

1 Id. at 15-54.

2 Id. at 56-63. Penned by Associate Justice Socorro B. Inting with Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla concurring.

3 Id. at 66-67.

4 CA *rollo*, pp. 39-55. Signed by Chairman AVA Jesus S. Silo and Members AVA Allan S. Montano and AVA Froilan A. Bagabaldo.

5 Id. at 56-57.

US$60,000.00 plus attorney's fees in the amount of US$6,000.00 or their peso equivalent at the time of payment.

The Facts

On March 16, 2011, Jebsens, on behalf of its foreign principal, Sea Chefs, engaged the services of respondent to work on board the M/V Mercury as a buffet cook for a period of nine (9) months with a basic monthly salary of US$501.00.[6] On March 30, 2011, respondent boarded the said vessel. Sometime in September 2011, respondent experienced excruciating pain and swelling on his right wrist/forearm while lifting a heavy load of meat. A consultation with the ship doctor revealed that respondent was suffering from severe "*Tendovaginitis DeQuevain*"[7] which caused his medical repatriation since it was not possible for him to work without using his right forearm.[8]

On October 14, 2011,[9] respondent was repatriated to the Philippines and underwent consultation, medication, and therapy with the company-designated physician. After a lengthy treatment, the company-designated physician issued a 7th and Final Summary Medical Report[10] and a Disability Grading[11] both dated January 24, 2012, diagnosing respondent with "*Flexor Carpi Radialis Tendinitis, Right; Sprain, Right thumb; Extensor Carpi Ulnaris Tendinitis, Right*," and classifying his condition as a "Grade 11" disability pursuant to the disability grading provided for in the 2010 Philippine Overseas Employment Association-Standard Employment Contract (POEA-SEC). Dissatisfied, respondent consulted an independent physician, who classified his condition as a Grade 10 disability.[12] Thereafter, respondent requested petitioners to pay him total and permanent disability benefits, which the latter did not heed, thus, constraining the former to file a Notice to Arbitrate before the NCMB. As the parties failed to amicably settle the case, the parties submitted the same to the VA for adjudication.[13]

Respondent argued, *inter alia*, that while both the company-designated and independent physicians gave him disability ratings of Grade 11 and 10, respectively, he is nevertheless entitled to permanent and total disability benefits as he was unable to work as a cook for a period of 120

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6 See Contract of Employment; *rollo*, p. 128.

7 "De Quervain's Tenosynovitis" in the Initial Medical Report dated October 18, 2011 (see id. at 131) and 7th and Final Summary Medical Report dated January 24, 2012 (see id. at 142). "De Quervain tendinitis," medically defined as "[a] tendon is thick, bendable tissue that connects muscle to bone. Two tendons run from the back of your thumb down the side of your wrist. [It] is caused when these tendons are swollen and irritated." See <https://medlineplus.gov/ency/patientinstructions/000537.htm> and <https://www.ncbi.nlm.nih.gov/pinc/articles/PMC2568250/pdf/jnma00166-0036.pdf> (visited January 9, 2017).

8 *Rollo*, p. 57.

9 In the various medical reports, respondent's date of repatriation was on October 13, 2011 (see id. at 131-143).

10 Id. at 142-143.

11 CA *rollo*, p. 88.

12 See Medical Evaluation Report dated March 13, 2012; *rollo*, pp. 145-146.

13 Id. at 57.

days from his medical repatriation.[14] On the other hand, petitioners maintained that respondent is only entitled to Grade 11 disability benefits pursuant to the classification made by the company-designated physician.[15]

The VA Ruling

In a Decision[16] dated January 25, 2013, the VA ruled in respondent's favor and, accordingly, ordered petitioners to pay him permanent and total disability benefits in the amount of US$60,000.00 plus attorney's fees in the amount of US$6,000.00 or their peso equivalent at the time of payment.[17]

The VA found that respondent is entitled to permanent and total disability benefits, considering that: (*a*) he suffered his disability on his right hand while working at petitioners' vessel; (*b*) he can no longer pursue his work on board the vessel as a cook due to the recurrent nature of his disability; and (*c*) such disability persisted beyond 120 days after his medical repatriation.[18] The VA also found respondent to be entitled to attorney's fees as he was forced to litigate to protect his rights and interest.[19]

Petitioners filed a motion for reconsideration,[20] but the same was denied in a Resolution[21] dated May 22, 2013. Aggrieved, they appealed to the CA *via* a petition for review.[22]

The CA Ruling

In a Decision[23] dated January 20, 2015, the CA affirmed the VA ruling. Similar to the VA's findings, the CA held that: (*a*) respondent's disability should be considered permanent and total because he was unable to continue his work as a seaman for more than 120 days from his medical repatriation on October 11, 2011; and (*b*) he is entitled to attorney's fees as he was forced to litigate and incur expenses to protect his rights and interests.[24]

Petitioners moved for reconsideration,[25] which was, however, denied in a Resolution[26] dated June 5, 2015; hence, this petition.

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14 See Position Paper dated October 29, 2012; CA *rollo*, pp. 91-101.
15 See Position Paper dated October 30, 2012; id. at 58-81.
16 Id. at 39-55.
17 Id. at 54-55.
18 See id. at 51-53.
19 Id. at 54.
20 Not attached to the records of this case.
21 CA *rollo*, pp. 56-57.
22 Id. at 3-29.
23 *Rollo*, pp. 56-63.
24 See id. at 59-62.
25 See motion for reconsideration dated February 16, 2015; CA *rollo*, pp. 364-387.
26 *Rollo*, pp. 66-67.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly held that respondent is entitled to permanent and total disability benefits.

The Court's Ruling

The petition is meritorious.

In this case, the VA and the CA's award of permanent and total disability benefits in respondent's favor was heavily anchored on his failure to obtain any gainful employment for more than 120 days after his medical repatriation. However, in *Ace Navigation Company v. Garcia*,[27] the Court explained that the company-designated physician is given an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability, *viz.*:

> 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 [(SEC)] 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.**
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> As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.** In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work.[28] (Emphases and underscoring in the original)

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[27] G.R. No. 207804, June 17, 2015, 759 SCRA 274.

[28] Id. at 283, citing *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912-913 (2008).

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[29] the Court further clarified that for the company-designated physician to avail of the extended 240-day period, he must first perform some significant act to justify an extension (*e.g.*, that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be conclusively presumed to be permanent and total.[30] Accordingly, the Court laid down the following guidelines that shall govern seafarers' claims for permanent and total disability benefits:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
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> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
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> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
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> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[31]

Here, records reveal that on **October 14, 2011**, respondent was medically repatriated for what was initially diagnosed by the ship doctor as "*Tendovaginitis DeQuevain.*" As early as **January 24, 2012**, or just **102 days from repatriation**, the company-designated physician had already given his final assessment on respondent when he diagnosed the latter with "*Flexor Carpi Radialis Tendinitis, Right; Sprain, Right thumb; Extensor Carpi Ulnaris Tendinitis, Right*" and gave a final disability rating of "Grade 11" pursuant to the disability grading provided in the 2010 POEA-SEC.[32] In view of the final disability rating made by the company-designated physician classifying respondent's disability as merely **permanent and partial**[33] – which was not refuted by the independent physician except that respondent's condition was classified as a Grade 10 disability – it is plain error to award permanent and total disability benefits to respondent.

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29 G.R. No. 211882, July 29, 2015, 764 SCRA 431.
30 See id. at 453.
31 Id. at 453-454.
32 See *rollo*, pp. 142-143 and CA *rollo*, p. 88.
33 Section 32 of the 2010 POEA-SEC provides that only disabilities classified as Grade 1 shall be deemed as permanent and total.

Moreover, it bears noting that as per respondent's contract[34] with Jebsens, his employment is covered by the 2010 POEA-SEC. It is well-settled that the POEA-SEC is the law between the parties and, as such, its provisions bind both of them.[35] Under Section 20 (A) (6) of the 2010 POEA-SEC, the determination of the proper disability benefits to be given to a seafarer shall depend on the grading system provided by Section 32 of the said contract, regardless of the actual number of days that the seafarer underwent treatment:

> SECTION 20. COMPENSATION AND BENEFITS
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> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
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> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness[,] the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
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> **The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.** (Emphasis and underscoring supplied)

In this case, respondent's disability was already determined as only permanent and partial, in view of its classification as Grade 11 by the company-designated physician and Grade 10 by the independent physician. As such, the award of US$60,000.00 representing Grade 1 (*i.e.*, permanent and total disability) benefits in favor of respondent clearly has no basis and, consequently, must be struck down.

Be that as it may, it remains undisputed that respondent suffered an injury while on board the M/V Mercury, a work-related disability that is clearly compensable as it is a permanent and partial disability, as classified by both the company-designated and independent physicians. As already adverted to, there is a slight discrepancy with the classifications of the aforesaid physicians, as the former rated respondent's disability as Grade 11, while the latter's rating was Grade 10. In this regard, the Court rules that the findings of the company-designated physician should prevail, considering

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[34] See *rollo*, p. 128.

[35] *Magsaysay Maritime Corporation v. Simbajon*, G.R. No. 203472, July 9, 2014, 729 SCRA 631, 645, citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53, 65.

that he examined, diagnosed, and treated respondent from his repatriation on October 14, 2011 until he was assessed with a Grade 11 disability rating on January 24, 2012; whereas the independent physician only examined him sparingly on March 13, 2012. In *Formerly INC Shipmanagement Incorporated (now INC Navigation Co. Philippines, Inc.) v. Rosales*,[36] the Court held that under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.[37] In view of the foregoing, respondent is therefore entitled to permanent and partial disability benefits corresponding to a Grade 11 rating in the amount of US$7,465.00 or its peso equivalent at the time of payment,[38] which shall then earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.[39]

Finally, the Court finds that the award of attorney's fees lacks legal basis and, perforce, should be deleted.[40]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 20, 2015 and the Resolution dated June 5, 2015 of the Court of Appeals in CA-G.R. SP No. 130442 are hereby **MODIFIED**, ordering petitioners Jebsens Maritime, Inc., Sea Chefs Ltd., and Enrique M. Aboitiz to jointly and severally pay respondent Florvin G. Rapiz permanent and partial disability benefits corresponding to a Grade 11 disability under the 2010 POEA-SEC in the amount of US$7,465.00 or its peso equivalent at the time of payment, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

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36 G.R. No. 195832, October 1, 2014, 737 SCRA 438.

37 Id. at 453.

38 Under Section 32 of the 2010 POEA-SEC, a seafarer who suffers a Grade 11 disability is entitled to US$50,000.00 multiplied by 14.93%, or a total of US$7,465.00.

39 See *Nacar v. Gallery Frames*, 716 Phil. 267, 278-283 (2013).

40 "Anent the issue on attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause." (*Spouses Vergara v. Sonkin*, G.R. No. 193659, June 15, 2015, 757 SCRA 442, 456-457; citations omitted)

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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