Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAUNLAD TRANS INC., CARNIVAL CRUISE LINES and/or AMADO CASTRO, Petitioners,	**G.R. No. 222699**
	Present:
	VELASCO, JR., *J.*, *Chairperson*, BERSAMIN, JARDELEZA, TIJAM, and REYES, JR., *JJ.*
- versus -	
GABRIEL ISIDRO, Respondent.	Promulgated:
	July 24, 2017

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DECISION

TIJAM, *J.*:

Through this petition for review[1] under Rule 45, petitioners seek to nullify the Decision[2] dated October 15, 2015 and Resolution[3] dated January 22, 2016 of the Court of Appeals (CA)[4], in CA-G.R. SP No. 122148 which affirmed the ruling of the National Labor Relations Commission (NLRC) finding petitioners liable to pay permanent and total disability benefits in the amount of US$60,000 and 10% attorney's fees in favor of the respondent.

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[1] *Rollo*, pp. 27-43.
[2] Id. at 52-61.
[3] Id. at 63-64.
[4] Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino.

The Factual Antecedents

Petitioner Maunlad Trans Inc., (MTI), for and in behalf of its foreign principal, Carnival Cruise Lines, hired respondent Gabriel Isidro as bartender with a basic salary of US$350, exclusive of overtime and other benefits, for a period of six (6) months. On July 27, 2009, respondent boarded the vessel "M/S Miracle".[5]

Sometime in November 2009, respondent figured in an accident while lifting heavy food provisions. When his right knee became swollen and he experienced pain, respondent reported his situation to the ship's physician for medical examination. On November 20, 2009, respondent's condition was diagnosed as "*Right Knee Synovitis, Meniscal, Chondromalacia*". He was given medication and was advised by the physician that he can continue working. He was then referred to the South Miami Hospital for further medication; however, the medication administered to him proved ineffective at improving his condition. Thus, on December 14, 2009, he was referred to the Jackson North Medical Center where he underwent a series of examinations and treatment. After his treatment, respondent went back to work. However, respondent began experiencing skin rashes on his right leg which later on spread to his left lower extremity, and to both his upper extremity and trunk by the last week of January 2010.[6] These skin eruptions were diagnosed by the ship's physician as "*psoriasis*".[7] Respondent was given medications and was advised to get dermatologic consultation upon completion of his contract.[8]

Consequently, on February 12, 2010, he was ordered repatriated to the Philippines. Respondent arrived on February 16, 2010.[9]

Three days after his repatriation or on February 19, 2010, respondent was admitted as an out-patient at the Metropolitan Medical Center (MMC) and was attended to by the company-designated doctor, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon). On his initial evaluation on February 22, 2010, respondent's knee *synovitis* was not mentioned in his past medical history.[10] Respondent was instead referred to a dermatologist who opined that respondent has "*psoriaris vulgaris*" based on clinical history and physical examination. As such, respondent was given medications and was advised to come back on March 1, 2010 for re-evaluation.[11]

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[5] Id. at 53.
[6] Id. at 67.
[7] Id. at 53.
[8] Id. at 67.
[9] Id.
[10] Id.
[11] Id. at 68.

During his follow-up examination, respondent's *psoriatic* lesions on both lower extremities were noted to still be *erythematous*.[12] He was advised to continue his medications and to come back on April 7, 2010.[13] Still, there was no mention that respondent complained of a knee injury.

On April 16, 2010, respondent was referred to a cardiologist for evaluation of his blood pressure elevations.[14] The test results, however, showed to be normal. On April 21, 2010, respondent was again seen by a dermatologist who reviewed the histopath result of his skin biopsy.[15] Because the characteristic change in the *psoriaris* cannot be appreciated, the dermatologist recommended a temporary discontinuation of his medication and a repeat of his biopsy.[16] Respondent was advised to come back on May 4, 2010 for a repeat of laboratory tests and re-evaluation.[17] Again, during these examinations, there was no mention that respondent complained of his knee injury.

On June 28, 2010, respondent was reported to have been cleared cardiac-wise and the *psoriatic* lesions on both legs have decreased in size and redness. He was advised to continue applying topical cream on his legs.[18] In a follow-up report on July 20, 2010, or 121 days from his initial examination on February 19, 2010, less *erythema*[19] was noted on respondent's *psoriatic* lesions on his right leg. Nevertheless, respondent was advised to continue with his oral and topical medications.

While he was still undergoing medical treatment by the company-designated doctor, respondent sought the opinion of a private doctor, Dr. Manuel J. Jacinto (Dr. Jacinto) of the Sta. Teresita General Hospital. Dr. Jacinto assessed him to be suffering from *"psoriasis, chondromalacia*[20] *(medial femoral condy/tibial plateaus) right, grade II injury medial collateral ligament right knee, sprain, medial head of gastrocnemus with hemarthrosus."*[21] Respondent was advised to undergo Magnetic Resonance Imaging (MRI) and surgery. Dr. Jacinto also found respondent unfit to go back to work. For these reasons, respondent filed a complaint in July 2010 before the Labor Arbiter for full disability benefits.[22]

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[12] Id. at 69.
[13] Id.
[14] Id. at 71.
[15] Id.
[16] Id. at 72.
[17] Id.
[18] Id. at 73.
[19] Erythema (from the Greek erythros, meaning red) is a superficial skin disease characterized by abnormal redness, but without swelling or fever; Webster Comprehensive Dictionary-Encyclopedic Edition, Volume One, p. 432.
[20] Chondromalacia, or damage to the cartilage, is the formation of early arthritis; http://drrobertlaprademd.com/patellofemoral-chondromalacia/; last accessed: July 20, 2017.
[21] *Rollo*, p. 15.
[22] Id.

Because respondent claimed full disability benefits by reason of his knee injury and *psoriasis*, petitioners allegedly offered to conduct a laboratory examination on the respondent to verify his knee injury but the latter did not accede.[23]

Despite the filing of his complaint, it appears that respondent continued his medical treatment by the company-designated doctor. In fact, on August 5, 2010, respondent was observed to have only small areas of reddish *psoriatic* lesions on both legs and that most of his previous lesions were almost resolved. He was advised to continue with his oral and topical medications.[24]

On October 11, 2010, or 226 days after the initial referral to the company-designated doctor on February 19, 2010, the attending dermatologist, Dr. Mary Belly Gan-Chao, issued a disability grading of *"Grade 12 for slight residual or disorder"*.[25]

The Labor Arbiter (LA) issued his Decision dated January 27, 2011, finding respondent to be entitled to compensation equivalent to Grade 12 disability grading, or in the amount of US$5,225 and 10% attorney's fees. The LA thus disposed:

> **WHEREFORE**, premises considered, judgment is rendered ordering respondents in solidum to pay complainant the total sum of U.S. $5,225.00 or its peso equivalent at the time of payment, representing his disability benefits and, plus, 10% of the total award as attorney's fees.
>
> All other claims are dismissed.
>
> **SO ORDERED**.[26]

Consequently, respondent appealed to the NLRC which, in a Decision dated June 21, 2011, granted the appeal and modified the LA's award by granting full disability compensation benefits, as follows:

> **WHEREFORE**, premises considered, the appeal is GRANTED. The Decision appealed from is MODIFIED to grant full disability compensation benefits.
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> Respondents are ordered to pay complainant the amount of US$60,000.00 and attorney's fees in the amount of US$6,000.00.
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> **SO ORDERED**.[27]

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[23] Id. at 35.
[24] *Rollo*, p. 75.
[25] Id. at 76.
[26] Id, p. 15.
[27] Id. at 16.

Upon denial of petitioners' motion for reconsideration, the case was elevated to the CA on *certiorari*. Petitioners argued that the alleged knee injury suffered by respondent was neither the cause of his repatriation nor was it examined by the company-designated physician. Petitioners contended that respondent never complained of said knee injury prior to the filing of his labor complaint.[28] In any case, petitioners argue that respondent is only entitled to a compensation equivalent to Grade 12 disability grading as certified to by the company-designated physician.[29]

The Ruling of the CA

The CA denied the petition for *certiorari*. Contrary to the petitioners' assertions, the CA held that respondent's knee injury was made known to petitioners, as respondent was in fact treated for such ailment while on board the vessel. The CA further noted that the company-designated physician, Dr. Cruz-Balbon, was cognizant of respondent's knee injury since the latter noted the existing skin rashes on his right leg that spread to his lower and upper extremities and on his trunk.[30]

Nevertheless, the CA held that it is not the injury *per se* which should be compensated but the respondent's incapacity to work. The CA held that respondent is permanently and totally disabled because his impairment or loss of earning capacity exceeded the maximum of 240 days. In so ruling, the CA disregarded the issuance of a disability grading by the company-designated physician on the 223rd day (reckoned from the initial evaluation on February 22, 2010) for having been haphazardly issued without the benefit of a thorough physical examination.

Petitioners' motion for reconsideration was similarly denied by the CA. Hence, it resorted to the instant petition.

The Ruling of the Court

As a rule, the Court does not conduct a re-examination of the facts and evidence on record as the function to do so properly belongs to the NLRC and the CA; that the Court is not a trier of facts applies with greater force in labor cases as questions of fact are for the labor tribunals to resolve.[31] Further, the scope of this Court's judicial review under Rule 45 is confined only to errors of law and does not extend to questions of fact.[32]

Be that as it may, one of the recognized exceptions to the application of the above rule is when the findings of the LA are in conflict with those of

[28] Id.
[29] Id.
[30] Id. at 17.
[31] *Nahas v. Olarte*, 734 Phil. 569, 580 (2014).
[32] *Famanila v. Court of Appeals*, 531 Phil. 470, 476 (2006).

the NLRC and the CA, as in the instant case. As such, the Court is compelled to examine the evidence on record to determine if, indeed, respondent is entitled to full and permanent disability benefits. This question, We resolve in the negative and, instead, We find that respondent in this case is entitled only to partial disability compensation equivalent to Grade 12 as certified to by the company-designated physician.

Respondent failed to discharge his burden of proving entitlement to full and permanent disability benefits for his alleged knee injury

In a case of claims for disability benefits, the *onus probandi* falls on the seafarer as claimant to establish his claim with the right quantum of evidence; and as such, it cannot rest on mere speculations, presumptions or conjectures.[33] Awards of compensation depend on the presentation of evidence to prove a positive proposition. The quantum of proof required is substantial evidence.[34]

Given this standard, petitioners cannot be held liable for the alleged knee injury suffered by respondent. While the facts, as found by the CA and the NLRC, point to the existence of a knee injury which respondent suffered in November 2009, during the term of his employment contract and while on board the vessel, such knee injury was not the ailment complained of by respondent upon repatriation to the Philippines and is, likewise, not the illness for which he was given medical treatment. In fact, upon termination of his six-month contract, respondent was advised to consult a dermatologist for his skin eruptions which he started experiencing in December 2009 and which worsened by the last week of January 2010.

That respondent did not complain of, and was not treated for, the alleged knee injury is evident from the medical reports submitted by the company-designated physician detailing the progress of respondent's skin condition. The CA's observations that petitioners knew of respondent's knee injury and that the company-designated physician, Dr. Cruz-Balbon, was cognizant of the same are off-tangent as it may very well happen that the swelling of respondent's knee had been resolved, hence, the absence of further medical complaint from respondent. Also, the certification issued by Dr. Cruz-Balbon referred to by the CA does not at all pertain to respondent's alleged knee injury but solely on respondent's skin condition which was diagnosed to be *psoriasis vulgaris*.

The only instance when respondent's alleged knee injury again surfaced after repatriation was when respondent consulted his doctor of

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[33] *Gabunas, Sr. v. Scanmar Maritime Services Inc.*, 653 Phil. 457, 466 (2010).

[34] *Spouses Ponciano Aya-ay, Sr. and Clemencia Aya-ay v. Arpaphil Shipping Corp. and Magna Marine, Inc.*, G.R. No. 155359, 31 January 2006, 481 SCRA 282.

choice, Dr. Jacinto. But even then, We cannot lend credence to the certification issued by Dr. Jacinto in the manner and faith accorded thereto by the CA. For one, Dr. Jacinto examined respondent only once and only after four months have passed from his repatriation. For another, despite the alleged recommendation that respondent undergo an MRI and surgery, the record does not show that said procedures were ever conducted on respondent. At the very least, the results of said MRI, if one had been taken, should have been shown to establish the existence of the alleged unresolved knee injury, but none appears to have been submitted. Neither was there any evidence of medical examinations or tests submitted that would support Dr. Jacinto's conclusion that respondent is unfit for sea duty, in whatever capacity as a seaman if respondent claims entitlement to permanent and total disabilty benefits.

Respondent is entitled to a disability grading of 12 as certified to by the company-designated physician for his *psoriasis*

The above observations inescapably lead the Court to favor the medical findings of the company-designated physician that respondent's disability is equivalent to Grade 12. Here, the findings of the company-designated doctor, together with a dermatologist, presumably an expert in skin conditions, who periodically treated respondent for months and monitored his condition, deserve greater evidentiary weight than the single medical report of respondent's doctor of choice. Indeed, "the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability."[35]

Despite the foregoing, the CA treated respondent's ailment as one rendering him permanently and totally disabled because the disability grading of the company-designated physician was released only on the 223rd day upon repatriation. Such reasoning is an unjustified departure from the application of the 120-day and the maximum 240-day rule found in the implementing rules of the Labor Code, as amended,[36] and as explained in the

[35] *Dalusong v. Eagle Clarc, Shipping, Inc., Norfred Offshore AS, and/or Capt. Leopoldo T. Arcillar, and Court of Appeals,* 742 Phil. 377, 378 (2014), citing *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) and/or DOHLE (10M) Limited, v. Cabanban,* 715 Phil. 454, 476 (2013).

[36] Article 192(3)(1), Chapter VI, Title II, Book IV of the Labor Code, as amended, which provides:

ART. 192. Permanent and total disability.

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(3) The following disabilities shall be deemed total and permanent:

(1) Temporary total disabilitylasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

xxxx

Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, reads:

seminal case of *Vergara v. Hammonia Maritime Services, Inc., et. al.,*[37] as follows:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is *on temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[38] (citations omitted)

Since Vergara was promulgated in 2008 and the complaint *a quo* was filed by respondent in 2010, the maximum 240-day rule applies if the extension is due to the fact that the seaman required further medical attention.[39]

In this case, respondent's medical treatment lasted more than 120 days but less than 240 days, after which the company-designated doctor gave respondent a final disability grading of Grade 12 under the POEA schedule of disabilities. Clearly, before the maximum 240-day medical treatment period expired, respondent was issued a final disability Grade 12 which is merely permanent and partial disability, since under Section 32 of the POEA-SEC, only those classified under Grade 1 are considered permanent and total disability. Also, We do not agree with the CA's observation that

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SECTION 2. Disability. x x x

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

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Rule X of the Implementing Rules of Title II, Book IV of the Labor Code which provides:

SECTION 2. Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paidlonger 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 bythe degree of actual loss or impairment of physical or mental functions as determined by the System.

[37] 588 Phil. 895 (2008).

[38] Id. at 912.

[39] *Montierro v. Rickmers Marine Agency Phils., Inc.,* 750 Phil. 937, 945 (2015).

said disability grading was haphazardly issued. As noted, the disability grading was issued well-within the maximum period allowed and only after a period and thorough examination of the respondent. Given this, the summary disregard by the CA of the grading issued by the company-designated physician within the maximum 240-day period is obviously not in accord with the law and jurisprudence.

Finally, We find merit in the petitioners' contention that respondent is not entitled to attorney's fees in the absence of bad faith on petitioners' part. All along, petitioners offered the compensation equivalent to a disability grading of 12 under the POEA-SEC and it was respondent who unjustifiably refused to accept the same. Lacking bad faith on petitioners' part, the award of attorney's fee is unwarranted.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 15, 2015 and Resolution dated January 22, 2016 of the Court of Appeals in CA-G.R. SP No. 122148 which affirmed the ruling of the National Labor Relations Commission finding petitioners liable to pay permanent and total disability benefits in the amount of US$60,000 and 10% attorney's fee in favor of respondent Gabriel Isidro are **REVERSED** and **SET ASIDE**.

Petitioners Maunlad Trans Inc., and Carnival Cruise Lines are ordered to jointly and severally pay respondent Gabriel Isidro the amount of US$5,225 or its equivalent amount in Philippine currency at the time of payment, representing permanent and partial disability benefits.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ANDRES B. REYES, JR.
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, Third Division

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

CERTIFIED TRUE COPY
[illegible] V. LAPITAN
Clerk of Court
Division
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