Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MELCHOR BARCENAS DEOCARIZA, Petitioner,	**G.R. No. 229955**
- versus -	Present:
FLEET MANAGEMENT SERVICES PHILIPPINES, INC., MODERN ASIA SHIPPING CORPORATION, A.B.F. GAVIOLA, JR., and MA. CORAZON CRUZ, Respondents.	CARPIO, *J.*, Chairperson, PERALTA PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*, Promulgated: 23 JUL 2018

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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 June 3, 2016 and the Resolution[3] dated February 9, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 135118 which affirmed the Decision[4] dated January 30, 2014 and the Resolution[5] dated February 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 01-000041-14, dismissing petitioner Melchor Barcenas Deocariza's (petitioner) complaint for total and permanent disability benefits.

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1 *Rollo*, pp. 26-56.

2 Id. at 11-19. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.

3 Id. at 21-24.

4 CA *rollo*, pp. 29-40. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr., concurring.

5 Id. at 42-43.

The Facts

Petitioner was initially hired in 2010 as Chief Officer by Fleet Management Services Philippines., Inc., for and in behalf of its principal, Modern Asia Shipping Corporation (collectively, respondents) on board the vessel, M.V. Morning Carina, a car and motor carrier ship.[6] On June 15, 2011, he was re-hired by respondents for the same position under a six (6)-month contract[7] with a basic monthly salary of US$1,350.00, exclusive of overtime pay and other benefits, and covered by a Collective Bargaining Agreement (CBA).[8] His duties[9] entailed, among others, the supervision in the loading and unloading of vehicles in the vessel.[10] After undergoing the required pre-employment medical examination (PEME), where the company-designated physician declared him fit for sea duty,[11] petitioner boarded the vessel on July 19, 2011.[12]

In the course of his employment, or on December 3, 2011, petitioner complained of bruises on both thighs, rashes on his neck, delayed healing of abrasion wound on his left forearm, fever, sore throat, and loss of appetite.[13] Thus, on December 18, 2011, he was brought to the Seacare[14] Maritime Medical Center Pte., Ltd. (Seacare Maritime) in Singapore, where he was noted to have "decreased hemoglobin, total white cell count and platelet count on complete blood count"[15] for which reason he was declared a "[h]igh-risk patient with mechanical heart valves."[16] Petitioner was thereafter confined at the Parkway East Hospital's Intensive Care Unit in Singapore with the following diagnosis: "[t]o Consider Autoimmune Disease, Hypoplastic Anemia, Viral induced Pantocytopenia and Acute Leukemia."[17] He was medically repatriated on December 26, 2011 and was, consequently, referred to a company-designated physician at the Metropolitan Medical Center (MMC) who diagnosed him to be suffering from "Aplastic Anemia."[18]

In the Medical Report[19] dated February 10, 2012, the company-designated physician explained that the cause of Aplastic Anemia is usually "idiopathic (unknown case)," and that the specialist opined that "exposure to benzene and its compound derivatives may predispose to development of

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6 *Rollo*, p. 101.
7 See Contract of Employment; CA *rollo*, p. 75.
8 See International Bargaining Forum All Japan Seamen's Union/ Associated Marine Officers' and Seamen's Union of the Philippines - International Mariners Management Association of Japan (IBF JSU/AMOSUP-IMMAJ CBA); id. at 79-104
9 See *rollo*, pp. 85-89.
10 Id. at 29.
11 See Medical Examination Records dated June 8, 2011; CA *rollo*, p.107.
12 Id. at 67.
13 Id. at 31 and 67.
14 "Seacara" in some parts of the records.
15 CA *rollo*, p. 108.
16 Id. at 110.
17 Id. at 108
18 See Medical Report dated January 6, 2012; id. at 111-112. See also id. at 31.
19 *Rollo*, p. 81.

such condition." Hence, the company-designated physician expressed that the work-relatedness of petitioner's illness would depend on his exposure to such factors.[20] However, on September 10, 2012, the company-designated physician informed respondents that after petitioner was seen on August 29, 2012, the latter no longer appeared at his next scheduled follow-up session on September 3, 2012.[21]

Meanwhile, claiming that his illness rendered him incapacitated to resume work as a seafarer for more than 240 days, petitioner filed a complaint[22] dated April 16, 2013 against respondents, together with their President, respondent A.B.F. Gaviola, and Treasurer/Director/Finance Manager, respondent Ma. Corazon D. Cruz, for the payment of total and permanent disability benefits in accordance with the CBA, in the amount of US$148,500.00,[23] moral and exemplary damages, and attorney's fees, before the NLRC, docketed as NLRC NCR Case No. (M)-04-05638-13.[24] In support thereof, petitioner presented among others, a letter[25] dated August 15, 2012 signed by Atty. German N. Pascua, Jr. (Atty. Pascua), National Vice President and Chief Legal Counsel of the Philippine Seafarers' Union-ALU-TUCP-ITF PSU-ITF, who pointed out that petitioner's illness is considered an occupational disease.

In their defense, respondents countered that petitioner was disqualified from claiming disability benefits as the latter knowingly concealed and failed to disclose during his PEME that he had "mechanical heart valves" or artificial heart valves that rendered him a "high-risk" worker, a vital information that would have been considered in hiring him.[26]

They added that the cause of his illness was not work-related, claiming that while the cars loaded in the vessel contained gasoline which is said to have benzene elements, the cars' engines were nonetheless always "OFF" during the voyage and turned "ON" only during the loading and unloading of the vehicles in the vessel; as such, petitioner could not have accumulated benzene elements in his body given that the vessel was equipped with many big exhaust fans that drive away the toxic fumes.[27] Lastly, they contended that since petitioner concealed his true health condition, his other money claims were without basis and thus, moved for the dismissal of the complaint.[28]

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20 Id.
21 See letter dated September 10, 2012; CA *rollo*, p. 114.
22 NLRC records, pp. 1-2; including dorsal portion.
23 "US$149,000.00" in the Complaint; id. at 1; dorsal portion.
24 See *rollo*, p. 13.
25 Id. at 37.
26 See CA *rollo*, pp. 70-71.
27 See id. at 71-72.
28 See id. at 75.

The LA's Ruling

In a Decision[29] dated November 20, 2013, the Labor Arbiter (LA) dismissed the complaint for failure of petitioner to establish that his illness was work-related. The LA ruled that it was improbable for petitioner to be poisoned by benzene, considering that the cars' engines were turned on during loading and unloading only, and that such short period of exposure could not have immediately caused petitioner's illness, adding too that petitioner was provided with safety gears to prevent infusion of benzene into his body.[30] In this regard, the LA held that the issue of concealment was immaterial since it was not relevant to petitioner's illness.[31]

Aggrieved, petitioner appealed[32] to the NLRC, docketed as NLRC LAC No. (OFW-M) 01-000041-14.

The NLRC's Ruling

In a Decision[33] dated January 30, 2014, the NLRC agreed with the findings of the LA that petitioner was not able to discharge the burden of proving that his non-listed illness was work-related, and that the same occurred during the term of his employment.[34] It likewise pointed out that petitioner fraudulently concealed his artificial heart that disqualified him from claiming disability benefits under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC)[35] and the CBA.[36]

Dissatisfied, petitioner moved for reconsideration[37] which was denied in a Resolution[38] dated February 28, 2014. Hence, the matter was elevated to the CA via a Petition for *Certiorari,*[39] docketed as CA-G.R. SP No. 135118. In his petition, petitioner attached a Medical Certificate[40] dated April 8, 2014 issued by his purported attending physician at MMC stating that he had never undergone any heart surgery and that he has no mechanical heart valve as reflected in his chest x-ray[41] and 2D echocardiogram.[42]

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29 Id. at 129-135. Penned by Labor Arbiter Eduardo J. Carpio.
30 See id. at 134-135.
31 Id. at 135.
32 See Notice of Appeal with Memorandum of Appeal dated December 19, 2013; id. at 136-149.
33 Id. at 29-40.
34 See id. at 34-35.
35 POEA Memorandum Circular No. 10, Series of 2010, entitled "AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS" dated October 26, 2010.
36 See CA *rollo*, p. 36.
37 See Complainant's Motion for Reconsideration dated February 14, 2014; NLRC records, pp. 232-237.
38 CA *rollo*, pp. 42-43.
39 Dated April 30, 2014. Id. at 3-25.
40 Id. at 52 and 326.
41 Id. at 327.
42 See results of the Two-Dimensional Echocardiography of petitioner; id. at 328-329.

The CA Ruling

In a Decision[43] dated June 3, 2016, the CA found no grave abuse of discretion on the part of the NLRC in sustaining the finding that petitioner is not entitled to disability benefits as the latter failed to prove by substantial evidence that his illness was work-related, and that he acquired the same during the term of his last employment contract.[44] It likewise agreed that petitioner was barred from claiming disability benefits under Section 20 (A) of the 2010 POEA-SEC, considering his failure to disclose his artificial heart during his PEME which constitutes misrepresentation or concealment.[45] Accordingly, the CA also denied petitioner's claim for moral and exemplary damages, as well as attorney's fees.[46]

Undaunted, petitioner moved for reconsideration[47] but the same was denied in a Resolution[48] dated February 9, 2017; hence, this petition.

The Issue Before the Court

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

The Court's Ruling

The petition is meritorious.

The general rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record.[49] Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[50] There are, however, recognized exceptions[51]

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43 *Rollo*, pp. 11-19.
44 See id. at16.
45 See id. at 17-18.
46 Id. at 18.
47 See motion for reconsideration dated June 29, 2016; CA *rollo*, pp. 303-317.
48 *Rollo*, pp. 21-24.
49 See *Leoncio v MST Marine Services' (Phils.), Inc.*, G.R. No. 230357, December 6, 2017.
50 *Maersk Filipinas Crewing, Inc. v. Ramos*, G.R. No. 184256, January 18, 2017, 814 SCRA 428, 442.
51 1) when the findings are grounded entirely on speculations, surmises, or conjectures; 2) when the inference made is manifestly mistaken, absurd, or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on misapprehension of facts; 5) when the findings of fact are conflicting; 6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) when the findings are contrary to that of the trial court; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are disputed by the respondent; 10) when the findings of fact are

to this general rule, such as the instant case, where the judgment is based on a misapprehension of facts and the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.[52]

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199[53] (formerly Articles 191 to 193) of the Labor Code[54] in relation to Section 2 (a), Rule X[55] of the Amended Rules on Employee Compensation.[56] By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' Collective Bargaining Agreement, if any, and the employment agreement

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premised on the supposed absence of evidence and contradicted by the evidence on record; or 11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (See *Manila Shipmanagement and Manning, Inc. v. Aninang*, G.R. No. 217135, January 31, 2018.)

52 *Great Southern Maritime Services Corp. v. Surigao*, 616 Phil. 758, 764 (2009).

53 **ART. 197. [191] Temporary Total Disability** – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: **the daily income benefit shall not be** less than Ten Pesos nor more than Ninety Pesos, nor **paid for a continuous period longer than one hundred twenty days**, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x

ART. 198. [192] Permanent Total Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: *Provided*, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x x x x

(c) the following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x

ART. 199. [193] Permanent Partial Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability.

x x x x (Emphases and underscoring supplied)

54 Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

55 Rule X
Temporary Total Disability

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

x x x x

56 (July 21, 1987).

between the seafarer and employer. In this case, petitioner executed his employment contract with respondents during the effectivity of the 2010 POEA-SEC; hence, its provisions are applicable and should govern their relations.[57]

I.

Pursuant to Section 20 (A) of the 2010 POEA-SEC, the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, Section 20 (E) thereof mandates the seafarer to disclose all his pre-existing illnesses or conditions in his PEME; failing in which shall disqualify him from receiving disability compensation, *viz.*:

> E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

In holding that petitioner was not entitled to disability benefits, the appellate court subscribed to the NLRC's finding of concealment, to wit:

> Complainant's **condition may have been brought about by his artificial heart** which he failed to disclose to the company doctor during the Pre-Employment Medical Examination (PEME). In the examination at the Seacare Maritime Medical Center in Singapore, complainant was noted with decreased hemoglobin, total white cell and platelet count or complete blood count. He was considered a high risk patient with Mechanical Heart Valve.[58] (Emphasis supplied)

The Court, however, finds the foregoing conclusion anchored on pure speculation. At the outset, it bears to point out that Section 20 (E) of the 2010 POEA-SEC speaks of an instance where an employer is absolved from liability when a seafarer suffers a work-related injury or illness on account of the latter's willful concealment or misrepresentation of a pre-existing condition or illness. Thus, the burden is on the employer to prove such concealment of a pre-existing illness or condition on the part of the seafarer to be discharged from any liability. In this regard, an illness shall be considered as pre-existing if prior to the processing of the POEA contract, **any** of the following conditions is present, namely: (*a*) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (*b*) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and **such cannot be diagnosed during the PEME**.[59]

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[57] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

[58] *Rollo*, p. 17.

[59] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, supra note 57. See also Item No. 11 (a) and (b), Definition of Terms, 2010 POEA-SEC.

Records show that aside from the company-designated physician's diagnosis of Aplastic Anemia,[60] a rare and serious condition wherein there is a reduction in the production of both red and white blood cells from the bone marrow in humans,[61] petitioner was also declared by a foreign doctor at Seacare Maritime in Singapore to have "mechanical heart valves."[62] While the company-designated physician confirmed petitioner's Aplastic Anemia in the 2nd Medical Report[63] dated January 6, 2012 after having undertaken a bone marrow aspiration biopsy, the said report failed to confirm the latter's mechanized heart valves. In fact, there is nothing in the records to support such declaration given that mechanized heart valves are implanted in patients with valvular heart disease.[64]

On the contrary, the Court finds the following pieces of evidence as substantial to support a conclusion that petitioner had no mechanical heart valves.

First, it is worthy to note that petitioner was initially hired by respondents in 2010 and re-hired anew on June 15, 2011. Among the procedures to be undertaken during his routine PEME were chest x-ray, a common type of exam that reveals, among others, the size and outline of a heart and blood vessels,[65] and 2D echogram, a test in which ultrasound technique is used to take excellent **images of the heart, paracardiac structures and the great vessels**.[66] Therefore, if indeed petitioner was implanted with a mechanical heart valve, it could have been easily detected by the respondents in the course thereof.

Second, Dr. Melissa Co Sia (Dr. Sia), a specialized cardiologist and petitioner's attending physician at MMC since December 2011 until June 2012 and April 2014, certified[67] that: (*a*) the latter never underwent any heart surgery; (*b*) his heart was in good condition; and (*c*) he did not have mechanical heart valves as evidenced by his x-ray[68] record in 2014 and 2D echocardiogram.[69] This declaration by Dr. Sia, although presented only before the CA, was not controverted by respondents. In fact, records show that petitioner, in his reply to respondents' position paper and reiterated in his motion for reconsideration before the NLRC, had already offered to submit himself for examination by an independent doctor to disprove

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60 CA *rollo*, p.112.

61 <https://www.mayoclinic.org/diseases-conditions/aplastic-anemia/symptoms-causes/syc-20355015> (visited July 5, 2018).

62 CA *rollo*, p.110.

63 Id. at 111-112.

64 See <https://www.sjm.com/en/patients/heart-valve-disease.> (visited July 5, 2018).

65 <https://www.mayoclinic.org/tests-procedures/chest-x-rays/about/pac-20393494> (visited July 6, 2018).

66 <http://www.nmmedical.com/2d-echocolour.html> (visited July 6, 2018).

67 CA *rollo*, pp. 52 and 326.

68 Id. at 327.

69 Id. at 328-329.

respondents' claim,[70] which the latter did not heed. Evidently, respondents' claim of concealment based on a bare declaration from a doctor in Singapore without any supporting document cannot stand.

Perforce, it was grave error on the part of the CA to sustain the finding of concealment on the part of petitioner absent substantial evidence to support the foregoing claim.

II.

Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions therein satisfied."[71]

In this case, petitioner was medically repatriated and diagnosed by the company-designated physician to be suffering from "Aplastic Anemia." In denying petitioner's disability claims, respondents argued that his illness was not a listed disease under Section 32-A of the 2010 POEA-SEC, adding too that the former was not able to present substantial evidence to prove the work-relation of the illness.

Contrary to the claim of respondents, petitioner's illness is an occupational disease listed under Sub-Item Number 7 of Section 32-A of the 2010 POEA-SEC, which provides:

> 7. Ionizing radiation disease, inflammation, ulceration or malignant disease of the skin or subcutaneous tissues of the bones or leukemia, or **anemia of the aplastic type due to x-rays, ionizing particle, radium or other radioactive substances**
>
> a. Acute radiation syndrome
> b. Chronic radiation syndrome
> c. Glass Blower's cataract (Emphasis supplied)

To be considered as work-related, Aplastic Anemia should be contracted under the condition that there should be exposure to x-rays, ionizing particles of radium or other radioactive substances or other forms of radiant energy. As pointed out by the company-designated physician, "exposure to benzene and its compound derivatives may predispose to development of such condition," and that work-relatedness will depend on exposure to any of the above-mentioned factors.[72] In finding that petitioner's illness was not work-related, the CA ruled in this wise:

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70 Id. at 118 and 172.

71 See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, supra note 57. See also Item No. 16, Definition of Terms, 2010 POEA-SEC.

72 *Rollo*, p. 81.

> Petitioner likewise failed to specify the nature of his work, the working conditions, the risks attendant to the nature of his work with which he was allegedly exposed to, as well as how and to what degree the nature of his work caused or contributed to his alleged medical condition. In the absence of substantial evidence, We cannot just presume that petitioner's job caused his illness or that it aggravated any pre-existing condition he might have had.[73]

However, as borne out by the records, it was not disputed that petitioner, as Chief Officer of M.V. Morning Carina, actively supervised the loading and unloading operations of cars/motor vehicles in every voyage that constantly exposed him to an atmosphere of cargoes with nearly 6,000 cars in just one voyage alone. Benzene, an important component of gasoline,[74] is emitted from the engines of these cars in the course of their loading and unloading. Since studies show that Benzene is highly volatile, and exposure occurs mostly through inhalation,[75] it cannot be denied that petitioner was constantly exposed to the hazards of benzene in the course of his employment. The use of safety gears in the performance of his duties, as advanced by respondents,[76] did not foreclose the possibility of petitioner's exposure to such harmful chemical, given that he was in fact diagnosed with Aplastic Anemia brought about by chronic exposure to benzene. Under the foregoing circumstances, it is evident that petitioner's illness is clearly work-related in accordance with the POEA-SEC.

In fine, having sufficiently established by substantial evidence the reasonable link between the nature of petitioner's work as Chief Officer and the illness contracted during his last employment with no showing that he was notoriously negligent in the exercise of his functions, the latter's ailment, as well as the resulting disability, is a compensable work-related illness under Section 32-A[77] of the 2010 POEA-SEC.

III.

Section 20 (A) of the 2010 POEA-SEC lays down the procedure to be followed in assessing the seafarer's disability in addition to specifying the employer's liabilities on account of such injury or illness, to wit:

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73 Id. at 17.

74 <https://www.dhs.wisconsin.gov/chemical/benzene.htm.> (visited July 6, 2018).

75 <http://www.who.int/ipcs/features/benzene.pdf.> (visited July 6, 2018).

76 NLRC records, p. 46.

77 SECTION 32-A. OCCUPATIONAL DISEASES

For an **occupational disease and the resulting disability or death to be compensable**, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

x x x x (Emphasis and underscoring supplied)

SEC. 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:

x x x x

2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

x x x x

When a seafarer suffers a work-related injury or illness in the course of employment, the latter's fitness or degree of disability shall be determined by the company-designated physician who is expected to arrive at a definite assessment within a period of 120 days from repatriation.[78] If the 120 days initial period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability

[78] *Sunit v OSM Maritime Services, Inc. DOF OSM Maritime Services A/S, and Capt. Adonis B. Donato*, G.R. No. 223035, February 27, 2017.

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.[79] Should the company-designated physician fail in this respect and the seafarer's medical condition remain unresolved, the seafarer shall be **conclusively presumed totally and permanently disabled**.[80]

In this case, records reveal that from the time petitioner was repatriated on December 26, 2011, a total of 247 days had lapsed when he last consulted with the company-designated physician on August 29, 2012. Concededly, said period have already exceeded the maximum 240-day extension as explained by this Court in a long line of cases,[81] without any definitive assessment of petitioner's disability. Hence, petitioner is conclusively presumed totally and permanently disabled.

However, petitioner is entitled to the payment of total and permanent disability benefits under the 2010 POEA-SEC and not under the CBA as he claimed, considering the lack of proof that he met an accident[82] and was injured while on board the vessel, or while traveling to or from the same. Thus, petitioner is entitled to US$60,000.00, which is the amount due for permanent total disability under Section 32 of the 2010 POEA-SEC.

The Court likewise finds petitioner entitled to attorney's fees in accordance with Article 2208 of the New Civil Code which grants the same in actions for indemnity under the workmen's compensation and employer's liability laws.[83] It is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest, as in this case. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."[84]

On the other hand, the Court finds no basis to award petitioner's claim for moral and exemplary damages absent a showing of ill-motive on the part of respondents in denying petitioner's claim.

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79 *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

80 See *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 738 (2013).

81 See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, supra note 57; *Talaroc v. Arpaphil Shipping Corporation*, G.R. No. 223731, August 30, 2017; and *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 361-362 (2015).

82 Accident is an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen (See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, id.; citing *C.F. Sharp Crew Management, Inc. v. Perez*, 752 Phil. 46, 57 [2015]).

83 See Article 2208 (8) of the CIVIL CODE.

84 See *Atienza v. Orophil Shipping International Co., Inc.*, G.R. No. 191049, August 7, 2017.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 3, 2016 and the Resolution dated February 9, 2017 of the Court of Appeals in CA-G.R. SP No. 135118 are hereby **REVERSED** and **SET ASIDE**. A new judgment is rendered **ORDERING** respondents Fleet Management Services Philippines, Inc., Modern Asia Shipping Corporation, A.B.F. Gaviola, Jr., and Ma. Corazon Cruz to jointly and severally pay petitioner Melchor Barcenas Deocariza the amount of US$60,000.00 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits in accordance with the 2010 Philippine Overseas Employment Administration-Standard Employment Contract, as well as ten percent (10%) thereof, as attorney's fees.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, As Amended)