

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

MARLOW NAVIGATION  
PHILS., INC., MARLOW  
NAVIGATION  
NETHERLANDS B.V., and  
CAPTAIN LEOPOLDO C.  
TENORIO,  
Petitioners,

G.R. No. 234346

Present:

BERSAMIN, C.J., Chairperson,  
PERLAS-BERNABE,  
JARDELEZA,  
GESMUNDO, and  
CARANDANG, JJ.

- versus -

PRIMO D. QUIJANO,  
Respondent.

Promulgated:

AUG 14 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated March 29, 2017 and the Resolution<sup>3</sup> dated September 15, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145056 which affirmed the Decision<sup>4</sup> dated January 27, 2016 of the National Conciliation and Mediation Board-NCR Office of the Panel of Voluntary Arbitrators ordering petitioners Marlow Navigation Phils., Inc., Marlow Navigation Netherlands, B.V., and Captain Leopoldo C. Tenorio (collectively; petitioners) to jointly and severally pay respondent Primo D. Quijano (Quijano) permanent and total disability benefits in the amount of US\$127,932.00 and 10% attorney's fees.

<sup>1</sup> *Rollo*, pp. 11-38.

<sup>2</sup> Id. at 46-56. Penned by Associate Justice Socorro B. Inting with Associate Justices Romeo F. Barza and Maria Filomena D. Singh, concurring.

<sup>3</sup> Id. at 58-59.

<sup>4</sup> Id. at 115-128. Signed by Chairman Norberto M. Alensuela, Sr. and Member Romeo C. Cruz, Jr. Member Leonardo B. Saulog issued a Dissenting Opinion.

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### The Facts

On July 11, 2013, Quijano was hired as Cook by petitioner Marlow Navigation Phils., Inc., for its principal Marlow Navigation Netherlands B.V., on board the vessel M/V Katharina Schepers, for a period of six (6) months.<sup>5</sup> After undergoing the required pre-employment medical examination where Quijano was declared fit for sea duty<sup>6</sup> by the company designated physician, the former boarded the vessel on August 18, 2013.<sup>7</sup>

On January 30, 2014, Quijano was signed off from the vessel purportedly due to completion of his employment contract. On February 3, 2014, he reported at petitioners' office and was paid the balance of his final wages for the period January 1 to 30, 2014,<sup>8</sup> and underwent interview for de-briefing<sup>9</sup> purposes. Thereafter, Quijano was hired anew for the same position, this time, under a 10-month Contract of Employment<sup>10</sup> dated March 5, 2014. However, his employment did not materialize due to his confinement at the East Avenue Medical Center (EAMC) on March 18, 2014, where his independent physician diagnosed him to be suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, right.<sup>11</sup>

Claiming that his illnesses were acquired during his last employment and that petitioners refused to grant his request for medical assistance when he reported on February 3, 2014, Quijano filed against the latter a complaint for disability benefits, sickness allowance, medical reimbursement, damages, and attorney's fees, pursuant to the IBF-AMOSUP IMEC/TCCC Collective Bargaining Agreement (CBA),<sup>12</sup> of which he was a member, before the National Conciliation and Mediation Board (NCMB), Office of the Panel of Voluntary Arbitrators (PVA), docketed as MVA-078-RCMB-NCR-070-04-07-2015.

Quijano alleged that due to hostile working conditions on board M/V Katharina Schepers, he experienced body weakness, easy fatigability, poor eye sight, and severe low back pain, which he reported to the Chief Officer and Captain.<sup>13</sup> He was relieved from his post with his contract cut short to 5 ½ months. Quijano added that upon repatriation, he attempted to report for post-employment medical examination and treatment but was unjustly refused, prompting him to seek medical attention at his own expense at the

<sup>5</sup> See *id.* at 47 and 115. See also Contract of Employment dated July 11, 2013, *id.* at 156.

<sup>6</sup> See *id.* at 116 and 162. See also Medical Certificate for Service at Sea, *id.* at 238.

<sup>7</sup> See *id.* at 162. See also OFW Info, *id.* at 177.

<sup>8</sup> See *id.* at 116. See also Final Wages Accounts, *id.* at 159.

<sup>9</sup> See *id.* at 157-158.

<sup>10</sup> *Id.* at 242.

<sup>11</sup> See *id.* at 117. See also Medical Certificate, *id.* at 247.

<sup>12</sup> *Id.* at 178-236.

<sup>13</sup> See Position Paper, *id.* at 163.

EAMC on February 3, 2014,<sup>14</sup> where he was diagnosed by his independent physician, Dr. Tito Garrido (Dr. Garrido), to have “T/C Liver Pathology with Possible Gallbladder Disease.”<sup>15</sup> On March 18, 2014, Quijano was brought again to EAMC due to fever and chills and confined thereat until April 16, 2014,<sup>16</sup> after undergoing ultrasound guided percutaneous liver abscess drain, among others.<sup>17</sup> Considering that his illnesses rendered him incapable of resuming work that resulted in his total and permanent disability, he filed the complaint.

For their part, petitioners denied Quijano’s claims contending that the latter disembarked due to expiration of his employment contract and that he was able to finish the same without any issue, accident or illness while on board the vessel.<sup>18</sup> They likewise denied that Quijano requested for medical assistance, contending that the latter did not disclose his alleged medical condition when he accomplished the de-briefing questionnaire<sup>19</sup> and even accepted payment of his remaining wages and benefits without complain. Lastly, they argued that Quijano did not present himself for a post-employment medical examination before the company-designated physician as mandated under the POEA-SEC, and hence, not entitled to claim disability benefits.<sup>20</sup>

### **PVA Ruling**

In a Decision<sup>21</sup> dated January 27, 2016, the PVA found Quijano entitled to total and permanent disability benefits, and accordingly, ordered petitioners to solidarily pay him US\$127,932.00 in accordance with the CBA, and 10% attorney’s fees.<sup>22</sup> The PVA gave more credence to Quijano’s claim that the latter was denied medical assistance, pointing out that his 6-month contract was pre-terminated without any reason, and that after his repatriation when he reported for post-employment medical examination, he was merely paid his remaining wage in the total amount of US\$3,297.46 and not referred to a company-designated physician.<sup>23</sup> Furthermore, it pointed out that since the company-designated physician failed to arrive at a definite assessment of Quijano’s fitness to work or degree of disability within the 120/240-day period, the latter’s disability was deemed total and permanent by operation of law.<sup>24</sup>

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<sup>14</sup> See *id.* at 48.

<sup>15</sup> See Medical Certificate, *id.* at 241.

<sup>16</sup> See *id.* at 163-164. See also Discharge Summary, *id.* at 245.

<sup>17</sup> *Id.* at 246.

<sup>18</sup> *Id.* at 49 and 120.

<sup>19</sup> See *id.* at 157.

<sup>20</sup> *Id.* at 130-131

<sup>21</sup> *Id.* at 115-128.

<sup>22</sup> *Id.* at 127-128.

<sup>23</sup> *Id.* at 121-122.

<sup>24</sup> *Id.* at 125.

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Undaunted, petitioners filed a petition for review<sup>25</sup> before the CA asserting that Quijano was not medically repatriated and that he failed to comply with the mandated post-employment medical examination in claiming disability benefits.

In the meantime, a writ of execution was issued constraining petitioners to deposit the judgment award of US\$127,932.00 plus 10% attorney's fees equivalent to ₱6,631,231.20 in favor of Quijano before the NCMB.<sup>26</sup>

### **The CA Ruling**

In a Decision<sup>27</sup> dated March 29, 2017, the CA agreed with the findings of the PVA that Quijano was entitled to total and permanent disability benefits, ruling that Quijano cannot be faulted in consulting an independent physician for his post-employment medical examination considering that petitioners abandoned him when they denied his request for medical assistance. It held that petitioners' failure to explain the pre-termination of respondent's contract supports the claim that he was medically repatriated, and that there was substantial evidence to show that Quijano was suffering from a work-related illness. Lastly, it ruled that since respondent's position as Cook was supervisory in nature, he was correctly classified as a junior officer and not a mere rating in determining his disability compensation under the CBA.

Petitioners' motion for reconsideration<sup>28</sup> was denied in a Resolution<sup>29</sup> dated September 15, 2017; hence, this petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the finding that Quijano is entitled to total and permanent disability benefits.

### **The Court's Ruling**

The petition is partly meritorious.

Entitlement to disability benefits by seamen on overseas work is a

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<sup>25</sup> With Very Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction; id. at 84-109.

<sup>26</sup> Id. at 83.

<sup>27</sup> Id. at 46-56.

<sup>28</sup> Id. at 60-78.

<sup>29</sup> Id. at 58-59.

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matter governed not only by medical findings but also by Philippine law and by the contract between the parties. Section 20 (A) of the 2010 POEA-SEC, which is deemed incorporated in every seafarer's contract of employment, provides for the procedure as to how the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered, to wit:

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:

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. (Emphases supplied)

The person who claims entitlement to the benefits provided by law must establish his or her right thereto by substantial evidence,<sup>30</sup> or such relevant evidence as a reasonable mind might accept as adequate to support

<sup>30</sup> See *Dizon v. Naess Shipping Philippines, Inc.*, 786 Phil. 90, 101 (2016).

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a conclusion.<sup>31</sup>

In this case, the PVA, as well as the CA, were consistent in holding that Quijano was able to substantially prove his entitlement to total and permanent disability benefits, considering that: (a) he was medically repatriated on January 30, 2014 and reported to petitioners' office within the mandated three (3)-day period for post-medical examination; (b) he was suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, which were deemed work-related illnesses being listed occupational diseases under the 2010 POEA-SEC; and (c) there was non-compliance by the company-designated physician of the required final and definite assessment within the 120/240-day treatment period resulting in the *ipso jure* grant to the seafarer of permanent and total disability benefits. Anent this last point, case law states:

Failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed period shall transform the latter's temporary total disability into one of total and permanent by operation of law  
x x x.

x x x x

Notably, during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no **definitive 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. x x x The consequence for non-compliance within the extended period of the required assessment is likewise the *ipso jure grant to the seafarer of permanent and total disability benefits, regardless of any justification*.<sup>32</sup> (Emphases and italics supplied)

That Quijano was not able to report for post-employment medical examination, and hence, disqualified from claiming disability benefits, is belied by the records which show that on February 3, 2014, or within the mandated three (3)-day period from repatriation, he reported to petitioners' office not primarily for de-briefing purposes but to actually request for medical assistance and treatment from the company-designated physician which, however, was rejected causing him to seek treatment from other doctors. In particular, Quijano claimed to have reported the following day after his repatriation, or on January 31, 2014, and on February 3, 2014 for

<sup>31</sup> See *id.* See also Section 5, Rule 133 of the Rules of Court.

<sup>32</sup> *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.

post-employment medical examination but was refused by petitioners at both instance.<sup>33</sup> For this reason, on February 3, 2014, Quijano proceeded to EAMC where he was seen by Dr. Garrido in view of his right upper quadrant pain (abdominal pain) that lasted for 2-3 days and was found with “positive right upper quadrant (abdomen) tenderness and fever.”<sup>34</sup> He was diagnosed with “T/C Liver Pathology with possible Gallbladder Disease” and was prescribed medication with a further advise to undergo ultrasound of the Hepatobiliary Tract including the pancreas.<sup>35</sup> Logically, Quijano’s resort to an independent physician to check on his condition on February 3, 2014 was most likely due to the company’s rejection of his plea for medical assistance and treatment. Besides, under the rules on evidence, as between Quijano’s claim that his request for medical examination and treatment was rejected and petitioners’ bare denial of the same, the former’s positive assertion is generally entitled to more weight.<sup>36</sup> In *Interorient Maritime Enterprises, Inc. v. Remo*,<sup>37</sup> the Court ruled that “the absence of a post-employment medical examination cannot be used to defeat respondent’s claim since the failure to subject the seafarer to this requirement was not due to the seafarer’s fault but to the inadvertence or deliberate refusal of [his employers].”<sup>38</sup>

In the same vein, it is untrue that Quijano was repatriated due to expiration of contract. A perusal of the records would show that Quijano’s Contract of Employment dated July 11, 2013 commenced only when he departed for M/V Katharina Schepers on August 18, 2013, in accordance with Section 2 (A)<sup>39</sup> of the 2010 POEA-SEC. Since Quijano’s contract of service was for a period of six (6) months, reckoned from his actual departure from the point of hire or until February 18, 2014, his sign-off from the vessel on January 30, 2014 was clearly short of the said contracted period. Accordingly, absent any justification for the contract’s pre-termination, the Court cannot give credence to petitioners’ claim that Quijano was repatriated due to expiration or completion of his employment contract.

With respect to the work-relatedness of Quijano’s diagnosed illnesses, his liver abscess, cholecystitis with cholelithiasis, and panophthalmitis, while not specifically listed as such under Section 32 of the 2010 POEA-SEC, these nonetheless fall under the categories “abdomen” and “eyes.” On the other hand, the fact that Quijano was also diagnosed as having diabetes mellitus is of no moment since the incidence of a listed occupational disease,

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<sup>33</sup> See *rollo*, p. 163.

<sup>34</sup> See *id.*

<sup>35</sup> See *id.* at 241.

<sup>36</sup> See *Paleracio v. Sealanes Marine Services, Inc.*, G.R. No. 229153, July 9, 2018.

<sup>37</sup> 636 Phil. 240 (2010).

<sup>38</sup> *Id.* at 250-251.

<sup>39</sup> Section 2. COMMENCEMENT/DURATION OF CONTRACT

A. The employment contract between the employer and the seafarer shall **commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire** and with a POEA approved contract. It shall be effective until the seafarer’s date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract. (Emphasis supplied)

whether or not associated with a non-listed ailment, is enough basis for compensation.<sup>40</sup> Besides, Section 20 (A) (4) thereof explicitly establishes a disputable presumption that a non-listed illness is work-related, and the burden rests upon the employer to overcome the statutory presumption, which petitioners failed to discharge.

At this juncture, it bears to stress that factual findings of the PVA, which were affirmed by the CA, are binding and will not be disturbed, absent any showing that they were made arbitrarily or were unsupported by substantial evidence.<sup>41</sup> Since petitioners failed to show any semblance of arbitrariness or that the PVA's and CA's rulings were not supported by substantial evidence, the Court is inclined to uphold the same.

However, even if Quijano is entitled to permanent and total disability benefits by operation of law, the Court deems it proper to adjust the amount awarded in his favor. A perusal of the CBA discloses that the scale of compensation for disability is classified into three (3) groups, namely, ratings, junior officers, and senior officers, with the last group to compose of Master, Chief Officer, Chief Engineer, and 2<sup>nd</sup> Engineer.<sup>42</sup> No similar compositions were made with respect to the remaining two (2) classifications. Other than Quijano's bare allegation that his position is a junior officer, no evidence was presented to substantiate the same. On the other hand, petitioners submitted a Certification<sup>43</sup> dated April 7, 2016, signed by the legal officer of the Associate Marine Officers' and Seamen's Union of the Philippines, a party to the subject CBA, stating that the position/rank of a Chief Cook is considered "Rating" for the vessel M/V Katharina Schepers. Even if the said certification was belatedly submitted before the CA, technical rules should not prevent courts from exercising their duties to determine and settle, equitably and completely, the rights and obligations of the parties.<sup>44</sup> Thus, the documentary evidence submitted by petitioners should have been given weight and credence by the CA.

Accordingly, since Quijano's total and permanent disability is categorized as Impediment Grade 1 under the 2010 POEA-SEC, he shall likewise be entitled to the same grading as provided under Articles 20.1.3.3 and 20.1.3.4,<sup>45</sup> in relation to Appendix E of the CBA; thus, the correct amount of disability benefits granted should be US\$95,949.00 for ratings, and not US\$127,932.00 as affirmed by the CA.

Finally, the Court sustains the award of attorney's fees pursuant to Article 2208 of the New Civil Code which grants the same in actions for

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<sup>40</sup> See *Bautista v. Elburg Shipmanagement Philippines, Inc.*, 767 Phil. 488, 500 (2015).

<sup>41</sup> *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018.

<sup>42</sup> See *rollo*, p. 222.

<sup>43</sup> *Id.* at 291.

<sup>44</sup> *Semblante v. CA*, 671 Phil. 213, 220 (2011).

<sup>45</sup> See *rollo*, p. 200.




indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest,<sup>46</sup> 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] of the award."<sup>47</sup>

In this regard, since petitioners have deposited before the NCMB the judgment award in the amount of ₱6,631,231.20 representing the equivalent of the adjudged total and permanent disability benefits in the amount of US\$127,932.00 and 10% attorney's fees, the excess payment made must be returned, for to hold otherwise would unjustly benefit Quijano to the prejudice and expense of the former.

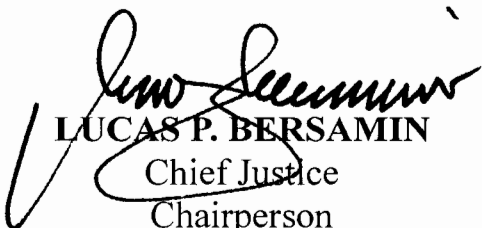
**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated March 29, 2017 and the Resolution dated September 15, 2017 of the Court of Appeals in CA-G.R. SP No. 145056 are **AFFIRMED with MODIFICATION** reducing the award of total and permanent disability benefits in favor of respondent Primo D. Quijano from US\$127,932.00 to US\$95,949.00, or its equivalent amount in Philippine currency at the time of payment, in accordance with Appendix E of the IBF-AMOSUP IMEC/TCCC Collective Bargaining Agreement. The rest of the decision stands.

The case is hereby remanded to the National Conciliation and Mediation Board (NCMB) for a re-computation of respondent's monetary award and for the return to petitioners of the amount in excess of what they had deposited before the NCMB, if so warranted.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

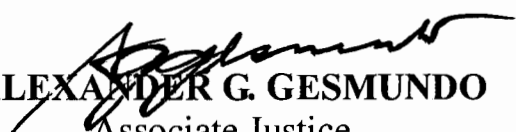
**WE CONCUR:**

  
**LUCAS P. BERSAMIN**  
Chief Justice  
Chairperson

<sup>46</sup> *Deocariza v. Fleet Management Services Philippines, Inc.*, G.R. No. 229955, July 23, 2018.

<sup>47</sup> *Atienza v. Orophil Shipping International Co., Inc.*, G.R. No. 191049, August 7, 2017, 834 SCRA 363, 392.

  
**FRANCIS II JARDELEZA**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**ROSMARIL D. CARANDANG**  
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.

  
**LUCAS P. BERSAMIN**  
Chief Justice