



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

FALCON MARITIME AND ALLIED SERVICES, INC., YOKOHAMA MARINE AND MERCHANT CORPORATION, and/or FLORIDA Z. JOSE,

Petitioners,

- versus -

G.R. No. 223295

Present:

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
REYES, J. JR., and
LAZARO-JAVIER, *JJ.*

ANGELITO B. PANGASIAN,
Respondent.

Promulgated:

.13 MAR 2019

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DECISION

REYES, J. JR., *J.*:

The Facts and the Case

Before this Court is a Petition for Review on *Certiorari* seeking to annul the August 10, 2015 Decision¹ and the February 29, 2016 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 135163 which affirmed with modification the November 5, 2013 Decision³ and the March 24, 2014 Resolution⁴ of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board-NCR (Panel) in Case No. AC-949-NCMB-NCR-45-09-06-13, which awarded the respondent his claims for

¹ Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 62-75.

² Id. at 77-78.

³ Id. at 116-149.

⁴ Id. at 151-153.

permanent and total disability benefits, moral damages, illness allowance, reimbursement for medical expenses and attorney's fees.

From 2002 to 2012, Falcon Maritime and Allied Services, Inc. (Falcon Maritime), Yokohama Marine and Merchant Corporation (Yokohama), and/or Florida Z. Jose (Jose) [collectively, the petitioners], continuously hired Angelito B. Pangasian (respondent) as Chief Cook under various contracts.⁵

After undergoing the requisite pre-employment medical examination on April 13, 2011 and having been declared "*fit for sea duty, without restrictions*,"⁶ respondent was rehired by the petitioners on July 21, 2011 to resume his former position as Chief Cook on board the reefer ship *M/V New Hayatsuki*,⁷ under the following terms and conditions of employment:

- 1.1 Duration of Contract: 9 MONTHS
- 1.2 Position: CHIEF COOK
- 1.3 Basic Pay: US\$ 599.00
- 1.4 Hours of Work: 40 HOURS PER WEEK
- 1.5 Overtime: Fixed/Closed: US\$ 446.00 (GRTD 103 HRS)
- 1.6 Leave Pay: US\$ 180.00/SBS 54.00
- 1.7 TOTAL:
- 1.8 Point of Hire: MANILA, PHILIPPINES⁸

The employment contract was duly approved by the Philippine Overseas Employment Administration (POEA)⁹ and was covered by the International Bargaining Forum All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines-International Mariners Management Association of Japan Collective Bargaining Agreement (CBA).¹⁰

Respondent left the Philippines and boarded *M/V New Hayatsuki* at the port of Manta, Ecuador on July 23, 2011.¹¹

Aside from the normal duties of a Chief Cook, respondent alleged that he also helped in the loading and unloading of tons of cargoes of skipjack, tuna fish and big squid from numerous fishing boats in the high seas of the Pacific Ocean and then unloading them at different ports of destinations.¹²

On March 15, 2012, while the *M/V New Hayatsuki* was sailing on the Pacific Ocean within the State of Peru in West South America, respondent noticed swelling and felt pain in his testicles after lifting, carrying and

⁵ Id. at 565.

⁶ Id. at 564.

⁷ Id. at 541.

⁸ Id.

⁹ Id. at 176.

¹⁰ Id. at 435-455.

¹¹ Id. at 566.

¹² Id. at 228, 520.

loading heavy sacks of big squid into the ship and performing chamber cleaning works. Respondent informed his Chief Officer about this and he was given antibiotics for temporary relief.¹³

At around 9:00 p.m. of April 17, 2012, in yet another course of loading heavy sacks full of skipjack, tuna fish and big squid into the ship, respondent averred that he accidentally slipped and lost his balance. Although he felt a crack at his lower back, he did not make much of it given that the pain was tolerable at that time. He continued with his task of loading the cargoes together with the other crew members until the reefer ship was fully loaded and set sail for Bangkok, Thailand where the cargoes will be unloaded.¹⁴

On April 20, 2012, while the reefer ship was en route to Bangkok, Thailand, respondent alleged that the swelling and the pain in his testicles, and his back pains became alarming so he reported the same to his ship master, Captain Isamo Yamamoto (Captain Yamamoto),¹⁵ and requested for a referral to a port doctor in Bangkok, Thailand, their next port of call.¹⁶

When they reached the port of Bangkok, Thailand on May 18, 2012, respondent was surprised when the ship captain, instead of referring him to a port doctor, told him that he will be repatriated and that his replacement was already waiting to board the reefer ship. Thus, respondent claimed that he just asked Captain Yamamoto for a medical referral upon his arrival in the Philippines.¹⁷

Respondent left Bangkok, Thailand on May 18, 2012 and arrived in the Philippines on the same day. Without wasting time, he immediately went to Falcon Maritime, the local manning agency, and personally delivered Captain Yamamoto's referral letter to petitioner Jose, who, in turn, referred him to NGC Medical Specialist Clinic, Inc.

On May 21, 2012, respondent was examined by Dr. Paul C. Comising (Dr. Comising), the company-designated physician, and was diagnosed with *varicocele, bilateral*.¹⁸

On May 22, 2012, he underwent Inguinoscrotal Ultrasound with Color Doppler at the University Physicians Medical Center which revealed the following findings:

¹³ Id. at 521.

¹⁴ Id. at 228-229.

¹⁵ Also referred to as "Isamu Yamamoto" in some parts of the *rollo*.

¹⁶ *Rollo*, p. 229.

¹⁷ Id.

¹⁸ Id. at 194. Sometimes referred to as "*varicocele, bilateral*" in some parts of the *rollo*.

IMPRESSION:

1. BILATERAL VARICOCO[E]LE, MORE SEVERE IN THE LEFT[;]
2. EPIDIDYMAL HEAD CYSTS VERSUS SPERMATOCOELES, RIGHT[;]
3. NORMAL ULTRASOUND OF THE TESTES AND LEFT]EPIDIDYMIS; and]
4. UNENLARGED INGUINAL LYMPH NODE, BILATERAL¹⁹

On May 23, 2012, respondent underwent various tests such as CBC, BUN, creatinine, cholesterol, LDL, SGPT, SGOT, urinalysis and abdominal ultrasound, all of which yielded normal results. However, his inguinoscrotal ultrasound showed *varicocele, bilateral*. Thus, Dr. Comising recommended a procedure called varicocelectomy, bilateral.²⁰

On June 26, 2012, respondent underwent varicocelectomy, bilateral at the Manila Doctor's Hospital.²¹ The histopathologic diagnosis²² was:

VARICOCOELECTOMY,²³ BILATERAL
VARICOCOELE

Upon his return for evaluation on July 5, 2012, Dr. Comising noted that there was minimal tolerable pain over the operative wounds which were healing well.²⁴ On his follow-up check-up on July 12, 2012, the doctor observed that there was decreasing pain over the operative wounds.²⁵ During his check-up on August 28, 2012, Dr. Comising noted that the pain respondent was feeling in the operative wounds has resolved and the wounds have healed well. As such, respondent was declared fit to work.²⁶

Doubtful of his fit to work assessment, respondent wrote petitioners, through Jose, immediately the following day informing them that despite his operation and the said assessment, he still continues to feel pain on his surgical wound and experience numbness on the site of operation. He also feels pain on his spine. He, thus, asked that he be reevaluated and Magnetic Resonance Imaging (MRI) be performed on him to determine his present state. He also asked for illness allowance.²⁷

Since he did not get any response on his requests from the petitioners and anxious to know the real cause of his lower back pains, respondent decided to undergo MRI of his lumbo-sacral spines at the BDM MRI Center, Inc. on September 21, 2012.²⁸ The result of the MRI was:

¹⁹ Id. at 568.

²⁰ Id. at 195.

²¹ Id. at 196, 569-570.

²² Id. at 571.

²³ Sometimes referred to as "varicocelectomy" in some parts of the *rollo*.

²⁴ *Rollo*, p. 197.

²⁵ Id. at 198.

²⁶ Id. at 199.

²⁷ Id. at 572. In his letter, respondent referred to Dr. Comising as "Dr. Cruz."

²⁸ Id. at 573.

IMPRESSION:

- DEGENERATIVE DISC DISEASE, L3-L4 AND L4-L5
- BROAD BASED DISC BULGE WITH AN ANNULAR TEAR AT L4-L5²⁹

On October 1, 2012, respondent consulted Dr. Omar T. Cortes (Dr. Cortes), Chief of Urology Section, Department of Surgery, Armed Forces of the Philippines Medical Center (AFPMC) for a second opinion. Dr. Cortes interviewed the respondent and studied the medical records and documents he presented which showed that he had *Varicoc[o]ele, Bilateral S/P Varicoc[o]lectomy, Bilateral; Broad-based disc bulge with annular tear at level L4-L5; and Degenerative disc disease L3-L4 and L4-L5*. In a Certification dated October 5, 2012, Dr. Cortes opined that the present clinical status and health problem of the respondent may have been brought about by strenuous physical activities and that the condition of his spine poses a serious health problem which requires immediate spine surgical intervention. Respondent's inguinal problem may spontaneously resolve in a year's time. However, pending the needed surgery, the condition of his spine may worsen and become irreversible, thereby incapacitating him physically permanently.³⁰

On October 11, 2012, respondent wrote petitioners a follow-up letter to inform them that he was constrained to undergo MRI at his own expense as he did not receive any reply on his first letter request despite the lapse of more than one month from the time it was written. He also asked for further medical assistance, having been advised by his doctor to continue with his physical therapy.³¹

On October 12, 2012, respondent went to Dr. Francis Pimentel (Dr. Pimentel), Physical Medicine and Rehabilitation, EMG-NCV, who diagnosed him to be suffering from *herniated nucleus pulposus* (HNP) and recommended that he undergo six sessions of physical therapy.³²

On October 25, 2012, respondent again wrote the petitioners, through Jose, appealing for medical assistance, treatment and reimbursement of the expenses he incurred for his physical therapy, and expressing that such will be of great help inasmuch as he cannot yet resume his work because of his injuries.³³

²⁹ Id.

³⁰ Id. at 574-575.

³¹ Id. at 576.

³² Id. at 577.

³³ Id. at 578.

On November 9, 2012, respondent was seen again by Dr. Pimentel who noted that he was diagnosed with HNP and advised him to continue with his physical therapy twice a week for another six sessions.³⁴

On November 29, 2012, St. Dominic Medical Center issued a Physical Therapy Report³⁵ which showed that respondent, who was noted with (+) HNP, (-) DM, (-) CAD, and diagnosed by Dr. Pimentel “*with HNP and complains of intermittent localized dull aching pain on both paralumbers[, with] pain scale 5/10 aggravated upon prolonged standing,*” after undergoing 15 physical therapy sessions has shown improvements as follows:

Improvements noted on after 15 PT treatments from Oct. 13, 2012 to Nov. 29, 2012:

1. Decreased pain on (B) paralumbers from pain scale 5/10 to 3/10[;]
2. Increase in (B) trunk rotation by 5°, (B) hip flexion with knee extended by 20° as to active motion[; and]
3. Improved ADL difficulty from moderate to minimal.³⁶

Inasmuch as respondent was not restored to his previous condition despite having undergone varicocele surgery and numerous sessions of physiotherapy, and as certified by his private physicians that he was already suffering from total and permanent disability, he filed a claim with the petitioners for the payment of his disability benefits based on POEA-Standard Employment Contract (POEA-SEC). Petitioners, however, refused to grant his claim on the ground that the respondent had already been declared fit to work by the company-designated physician.³⁷

Because petitioners refused his claims, respondent filed a Notice to Arbitrate before the Panel on December 11, 2012.³⁸

On December 19, 2012, respondent consulted an independent orthopedic specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira) of the Department of Orthopaedic Surgery & Traumatology, AFPMC for an assessment of his lumbar injury based on the result of his September 21, 2012 MRI. In the December 19, 2012 Medical Report³⁹ Dr. Magtira issued, he opined that respondent “*continues to experience back pain. His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has difficult[y] running, and climbing up or going down the stairs. The demands of a Seaman’s work are heavy. [Respondent] has lost his pre[-]injury capacity and is not capable of working at his*

³⁴ Id. at 579.

³⁵ Id. at 472.

³⁶ Id.

³⁷ Id. at 126.

³⁸ Id.

³⁹ Id. at 598-600.

*previous occupation. He is totally and permanently disabled with Grade 1 Impediment based on the POEA contract.*⁴⁰

On November 5, 2013, the Panel rendered a Decision,⁴¹ the dispositive portion of which reads as follows:

WHEREFORE, respondents are ordered to solidarily pay complainant:

1. Disability Benefit in the amount of **US\$ 60,000.00** or its equivalent amount in Philippine currency, computed at the rate of exchange at the time of payment;
2. Moral damages amounting to **US\$3,000.00** or its equivalent amount in local currency;
3. Illness Allowance in the amount of **US\$ 2,595.66** less Php. 36,000.00 and medical expenses reimbursement in the amount of **Php. 7,645.75**.
4. Attorney's fees equivalent to 10% of the total award.

SO ORDERED.⁴²

It held that respondent was in perfect health condition before he boarded petitioners' reefer ship as shown by the result of his pre-employment medical examination. However, prior to his disembarkation, respondent complained of testicular pains, swelling, and lower back pains. The series of medical tests he went through revealed that he was suffering from multiple disabilities, namely:

Varicoc[o]ele, Bilateral S/P Varicoc[o]lectomy, Bilateral Broad-based disc bulge with annular tear at level L4-L5 Degenerative disc disease L3-L4 and L4-L5

While working as a Chief Cook for *M/V New Hayatsuki*, respondent performed strenuous physical activities which included the constant lifting, carrying, pushing and pulling of heavy materials and ship provisions. On top of these, he was also tasked to help the other crew members during loading and unloading of heavy sacks full of skipjack, tuna fish and big squid from different fishing boats plying the Pacific Ocean to different ports of unloading destinations. In fact, it was in one of these loading tasks, or on April 17, 2012, that respondent slipped while carrying a heavy sack of big squid, and then felt a crack at his back and pain thereon. On the other hand, *varicocoele* develops over time and worsens when the patient is physically exerting himself, standing or sitting. Prolonged exertion is also more likely to bring pain. The Panel rejected the claim of the petitioners that

⁴⁰ Id. at 598.

⁴¹ Supra note 3.

⁴² Id. at 148-149.

respondent's back pains is not work-related because he did not complain or mention it even to the company-designated physician when he was getting treated for his *varicocoele, bilateral* since respondent was able to sufficiently explain the absence of any report on his back pains.

Given that after continuous medical treatment, respondent remained incapacitated to resume his sea duties despite the lapse of 18 months from the time of repatriation, coupled with the evaluation of medical experts who examined his health condition that he is now unfit to perform his customary work, the Panel held that respondent is entitled to total and permanent disability compensation based on POEA-SEC. Respondent must also be reimbursed of his medical expenses for his physical therapy sessions as evidenced by the medical receipts⁴³ he presented pursuant to Article 25 of the CBA, and granted sickness allowance under Article 26 of the CBA.

The Panel further held that the petitioners cannot validly reject respondent's claims for disability benefits on the ground that he had been declared fit to work by the company-designated physician as the latter's assessment is not final and conclusive, and does not deprive the seafarer of the right to seek a second opinion. The Panel pointed out that after respondent was declared fit to work by the company-designated physician, he wrote the petitioners the very next day to dispute the said findings, raised concerns about his back and requested for a medical reevaluation and treatment which were all not heeded, thereby prompting the respondent to seek medical attention using his own funds. His medical evaluation, after receiving extensive treatment, showed that he is unfit to work at his previous job. The detailed, comprehensive, extensive and medically-backed up evaluation and assessment of respondent's doctor must prevail over the unsupported fit-to-work declaration of the company-designated physician.

Anent the claims of respondent for damages, the Panel ruled that the (a) ship captain's lack of candidness in informing respondent that he will be repatriated upon reaching Bangkok, Thailand and the insensitivity of informing him of his immediate repatriation without giving him a chance to prepare himself for the shocking news; (b) the manner by which the company-designated physician rebuffed his request for inclusion of his lower back pains in his medical referral; (c) his questionable declaration of being fit to work within the 120-day period from his repatriation, notwithstanding the fact that he was still not well; and (d) the consistent cold indifference petitioners treated respondent's three letter requests for medical treatment, medical assistance, and medical reimbursement all show the abusive and fraudulent manner by which petitioners dealt with their moral and legal obligations toward the respondent in order to avoid the payment of disability benefits clearly due him. The actuations of the petitioners which were all prejudicial to the respondent entitled the latter to an award of moral damages.

⁴³ Id. at 473-488.

The Panel also found the award of 10% attorney's fees to the respondent justified in view of the fact that respondent was forced to litigate and had incurred expenses to protect his rights and interests.

Petitioners moved for reconsideration but the same was denied by the Panel in a Resolution⁴⁴ dated March 24, 2014.

On August 10, 2015, the CA rendered a Decision,⁴⁵ the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition is **DISMISSED**. Accordingly, the *Decision* dated 5 November 2013 and the *Resolution* of the Panel of Voluntary Arbitrators, Department of Labor and Employment (DOLE), National Conciliation and Mediation Board (NCMB) – National Capital Region (NCR), Intramuros, Manila, are hereby **AFFIRMED WITH MODIFICATION** in that petitioners are hereby ordered to pay respondent the legal interest of 12% *per annum* of the total monetary awards, computed from [the] date of private respondent's repatriation or on May 18, 2012 until finality of judgment, and 6% *per annum* from finality of judgment until their full satisfaction.

SO ORDERED.⁴⁶

Like the Panel, the CA held that respondent was able to establish the work connection of his multiple disabilities to his daily duties as Chief Cook on board *M/V New Hayatsuki* taking into account the nature of his work, the daily working conditions while on sea duty and his additional strenuous activities of pushing, pulling, lifting, carrying, loading and unloading of heavy materials, provisions and cargoes. Since his condition was shown to be work-related, the same is compensable. While it may be true that respondent was already operated on to address his *varicocoele, bilateral* and was financially assisted by the petitioners in his operation, petitioners still remained liable to the respondent because he still continues to suffer numbing pain on his back, cannot resume his sea duties, is unable to perform tasks producing stress on his back and is unable to perform even his customary work.

The CA also found not worthy of credence the fit-to-work assessment of respondent by the company-designated physician in light of the opposing medical opinions of Drs. Cortes and Magtira which were supported not only by the present state of the respondent, but also by diagnostic tests and procedures and reasonable findings. The appellate court also took into account that respondent had been working for the petitioners for almost a decade. Since respondent was unfit to work and unable to resume work at his previous occupation and in any capacity, and was unable to perform his

⁴⁴ Supra note 4.

⁴⁵ Supra note 1.

⁴⁶ Id. at 74.

job as a Chief Cook for more than 120 days, the CA held that respondent was permanently and totally disabled and was properly assessed to be suffering from a Grade 1 disability.

Petitioners moved for reconsideration, but the CA denied it in its February 29, 2016 Resolution.⁴⁷

Hence, this petition.

The Issues

Petitioners submit the following issues for this Court's consideration:

I

THE HONORABLE [CA] COMMITTED SERIOUS ERRORS OF LAW IN AFFIRMING THE PANEL'S AWARD OF PERMANENT/TOTAL DISABILITY BENEFITS TO RESPONDENT CONSIDERING THAT THE RESPONDENT'S ALLEGED BACK PAIN **WAS NOT THE ILLNESS FOR WHICH HE WAS REPATRIATED**. THEREFORE, SAID ILLNESS **DID NOT EXIST** DURING THE EXISTENCE OF THE [RESPONDENT'S] EMPLOYMENT CONTRACT OR EVEN THEREAFTER DURING THE [RESPONDENT'S] TREATMENT FOR *VARICOCOELE, BILATERAL*. HENCE, THE ALLEGED *BACK PAIN* IS **NOT WORK-RELATED AND NOT COMPENSABLE** UNDER THE POEA-SEC.

II

THE HONORABLE [CA] ERRONEOUSLY HELD THAT THE RESPONDENT IS PERMANENTLY UNFIT FOR SEA DUTIES ON THE BASIS OF THE ALLEGATION THAT HE WAS UNABLE TO PERFORM ANY GAINFUL OCCUPATION FOR MORE THAN 120 DAYS.

III

THE [HONORABLE CA] PALPABLY ERRED IN AWARDING THE RESPONDENT PAYMENT FOR ILLNESS ALLOWANCE AND MEDICAL REIMBURSEMENTS.

IV

THE [HONORABLE CA] ERRONEOUSLY AWARDED THE RESPONDENT DAMAGES AND ATTORNEY'S FEES.⁴⁸

⁴⁷ Supra note 2.

⁴⁸ *Rollo*, pp. 39-40.

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The Arguments of the Parties

Petitioners contended that the CA erred in affirming the award of disability benefits to the respondent for his back pains since there is absolutely no evidence on record that he reported said illness to vessel authorities. As proof, they presented Captain Yamamoto's May 18, 2012 letter which specifically reported that what respondent complained of was "*testicle pain and swelling during chamber cleaning.*"⁴⁹ Had respondent truly complained of and reported his back pains, the ship captain would have no reason to conceal the same. Respondent's claim that the company-designated physician refused to examine him for back pains for the reason that said condition was not included in the referral letter should not be believed for being self-serving and lacking of any substantiation. Petitioners insisted that what is clear from the records is that respondent was only referred for treatment for *varicocoele, bilateral*. After undergoing the recommended surgery, and after the pain in his operative wounds have resolved and healed well, he was declared fit to work. Petitioners emphasized that respondent made known to them his lower back pains only after his treatment, that is, through his August 29, 2012 letter. The fact that respondent sought treatment for his back pains only on December 19, 2012, or seven months after his repatriation as shown by the medical report issued by Dr. Magtira on even date proved that such illness was contracted after his repatriation. Given that the illness that respondent was seeking compensation for, specifically his back pains, is an entirely different illness, which was absent during the term of his contract and even several months thereafter, and not for the *varicocoele, bilateral* that he was complaining about during his nine-month contract with the petitioners and for which he was treated upon his arrival in the Philippines, the said illness is clearly not work-related and not compensable.

Petitioners contended further that the CA erred when it considered respondent as permanently unfit for sea duties when he was not able to go back to his seafaring work within 120 days for two reasons. First, the 120-day rule should not have been used as basis for the award of disability benefits because respondent's illness is not work-related. Second, the 120-day rule has been superseded by the 2010 POEA-SEC. The 2010 POEA-SEC and relevant jurisprudence stated that the disability shall be based solely on the disability gradings provided under Section 32 of POEA-SEC, 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.

As for the claims for sickness allowance, petitioners averred that respondent is no longer entitled to it as he had already been paid the same as evidenced by check vouchers dated August 22, 2012, September 20, 2012, and December 5, 2012 for ₱20,000.00, ₱10,000.00, and ₱6,000.00,

⁴⁹ Id. at 567.

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respectively, issued by the petitioners.⁵⁰ Neither is respondent entitled to medical reimbursement because petitioners shouldered the costs of his treatments as well as the professional fees of his attending physicians.

Petitioners also argued that there is no basis for the award of moral damages in favor of the respondent. First, there is no truth that he was immediately repatriated upon the vessel's arrival in Bangkok, Thailand. His repatriation was by reason that his contract had already ended. Thus, there is nothing fraudulent in his repatriation. Second, there is no evidence that he reported his lower back pains to the company-designated physician. There is also no evidence that the company-designated physician rebuffed his request for the inclusion of his lower back pains in his medical referral. His not being treated for back pains is not tainted by fraud but occasioned by the lack of report thereof. Petitioners have no obligation to cause the treatment of a condition that was not contracted during the term of the seafarer's employment contract. Third, there is nothing questionable about the fit to work certification issued by the company-designated physician inasmuch as the same had been issued to the respondent after 99 days of treatment. Since petitioners were never remiss in fulfilling their obligations towards the respondent and their acts were not tainted with malice or bad faith, they cannot be held liable for moral damages for refusing to honor respondent's baseless demands.

Lastly, petitioners averred that attorney's fees should not have been awarded to the respondent as none of the exceptional circumstances mentioned in Article 2208 of the Civil Code had been shown to exist in this case.⁵¹

For his part, respondent averred that the issues raised by the petitioners are purely factual, which cannot be entertained by this Court in the exercise of its discretionary appellate jurisdiction. Considering that the factual findings of the Panel had been affirmed by the CA, the same must be accorded not only respect but even finality. At any rate, he contended that he had sufficiently shown that his back pains was work-related; that he had been suffering from it while he was still on board petitioners' vessel; and that he reported it to the ship captain. Petitioners never denied in any of the pleadings that they filed before the Panel and the CA that during his last contract with the petitioners, he was involved in at least three loading operations of marine cargoes. After lifting heavy cargoes on March 15, 2012, he experienced testicular swelling and pain which he reported to the Chief Officer. On April 17, 2012, while carrying heavy sacks of squid, his foot slipped which caused him to lose his balance. He felt a crack at his lower back. While he did not report the slipping incident on April 17, 2012, he reported it on April 20, 2012 to Captain Yamamoto when his back pains had become unbearable. His duties as Chief Cook and the additional

⁵⁰ Id. at 319-321.

⁵¹ Id. at 52-53.

strenuous activities of lifting, carrying, loading and unloading heavy cargoes reasonably established the work relation of his back pains to his work. The CA also correctly ruled that he is suffering from permanent and total disability. Contrary to the claim of the petitioners, respondent argued that jurisprudence has consistently ruled that in the assessment of whether a seafarer's injury is partial and permanent or total and permanent, the same must be so characterized not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC, but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. Since he is unable to perform his job as Chief Cook for more than 120 days, he is permanently and totally disabled and properly assessed to be suffering from Grade 1 disability. He was also correctly awarded sickness allowance pursuant to Section 20(A)(3) of the POEA-SEC and reimbursement for the expenses he incurred for his physical therapy sessions. Anent the attorney's fees granted to him, respondent claimed that the same was correctly awarded in his favor as he was forced to litigate by reason of petitioners' adamant denial of his claim for full disability benefits. Petitioners' stubborn refusal to satisfy his valid claims entitled him to recover moral damages.⁵²

The Ruling of the Court

Preliminary considerations: Only questions of law may be raised in a petition for review, exceptions

The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect. There are, however, recognized exceptions 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.⁵³

Respondent is not entitled to disability benefits

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 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2(a), Rule X of the AREC. By contract, the material contracts are

⁵² Id. at 518-540.

⁵³ *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.

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' CBA, if any, and the employment agreement between the seafarer and the employer.

Section 20(A) of the 2010 POEA-SEC, which is the rule applicable to this case since respondent was employed in 2011, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract.⁵⁴ The section provides:

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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. 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.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

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

⁵⁴ Id.

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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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

For disability to be compensable under the 2010 POEA-SEC, three elements must concur: (1) the seafarer must have submitted to a mandatory post-employment medical examination; (2) the injury or illness must be work-related; and (3) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The post-employment medical examination has two requisites: (1) it is done by a company-designated physician; and (2) within three working days upon the seafarer's return.⁵⁵ Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.⁵⁶

There is no denying that respondent submitted himself to post-employment medical examination within the required period. However, what is peculiar in this case is that his examination was confined only to the pain and swelling in his testicles as had been mentioned in the doctor's referral, as well as for abdominal pain that he informed the doctor he had been experiencing on and off since March 15, 2012.⁵⁷ Respondent claimed that he brought to the attention of the company-designated physician his back pains but the company-designated physician refused to examine him for such condition as it was not the ailment referred to him. The Panel believed the respondent. It held:

For his back pains which [petitioners] find baseless and not work-related since Mr. Pangasian never complained nor mentioned such back pains even to the company-designated physician during his treatment for his varicocele, this panel is inclined to believe complainant's explanation. Mr. Pangasian narrated that while the reefer ship was sailing to Bangkok,

⁵⁵ *Ceriola v. NAESS Shipping Phils., Inc.*, 758 Phil. 321, 334 (2015).

⁵⁶ *De Andres v. Diamond H Marine Services & Shipping, Agency, Inc.*, G.R. No. 217345, July 12, 2017, 831 SCRA 129, 146-147.

⁵⁷ *Supra* note 18.

Thailand, he informed the ship master of his testicular pains and swelling and his lower back pains, the reasons why he requested for referral to a port doctor in Bangkok, Thailand. **When they reached Bangkok, he was bluntly told by the ship captain that he would be immediately relieved and repatriated to the Philippines, to his bewilderment, the reason why he failed to notice that the doctor referral he requested from the ship captain did not include a referral for his back pains.** Complainant likewise narrated that when he reported to the company doctor in connection with the ship captain's referral for his testicular pain and swelling, he requested that his lower back pains be included but that the company-doctor outrightly rejected his proposition explaining that it was not included in the referral letter.⁵⁸ x x x (Emphasis supplied)

A close scrutiny of the records reveals that the findings of the Panel is not supported by the evidence on record. The records would show that the explanation alluded to by the Panel is based on the *Reply (to [Petitioners'] Position Paper)* filed by the respondent before it.⁵⁹ The problem is that the Panel believed respondent's word hook, line, and sinker even if the same contradicts respondent's very own letter dated August 29, 2012. The letter reads:

x x x x

Magandang araw po: Ako po si Angelito B. Pangasian, Chief Cook sa barkong M/V Hayatsuki. Dumating po ako dito sa Pilipinas last May 18, 2012. During my contract, month of March 2012 ay nagko[-] complain na po ako sa pain sa likod at maging sa aking testicles. Me mga time na tumataas ang aking blood pressure due to heavy work dahil ako lang po mag-isa ang nagtatrabaho sa kitchen. Last May 18, 2012 ay nag-request na po ako sa aking Kapitan thru letter na maipa[-]check-up ako due to testicle pain noong mag[-]disembark kami sa Bangkok pero ang advise po ng Kapitan ay dito na lamang sa Pilipinas ako magpa[-]check-up.

Last June 21, 2012 nag[-]report po ako sa inyong agency and I was referred to NGC under Dr. Cruz for further medical check-up. Naoperahan po ako sa varicoc[o]jele, bilateral last July 26, 2012.

Nito pong last check-up ko (August 28, 2012) ay sinabihan po ako ni Dr. Cruz na fit to work na daw po ako. Nagpapasalamat po ako sa lahat ng inyong tulong medical. Kaya lamang napilitan po akong sumulat sa inyo dahil sa ngayon po naroon pa rin ang sakit doon sa naoperahan at manhid pa rin ang aking pakiramdam. Ang aking likod sa gulugod ay sumasakit din po.

Sa ngayon po ay di pa ako tuluyang magaling. Ako po ay nakikiusap na kung maaari ay maipa-evaluate uli ako at matignan muli upang malaman ko ang tunay kong kalagayan. Nakikiusap din po ako na

⁵⁸ *Rollo*, p. 133.

⁵⁹ *Id.* at 329-330.

*sana ay maipa- MRI ako dahil ang sakit sa aking likod ay hindi nagbago. Makikiusap din po sana ako na maibigay po ang aking illness allowance na hanggang ngayon po ay wala pa akong natatanggap.*⁶⁰ (Emphasis, italics and underscoring supplied)

X X X X

Respondent's letter shows that there is no truth that the ship captain failed to include his back pains in the doctor's referral and that because he was in a state of shock and disbelief upon learning that he will be immediately repatriated that he failed to notice such omission. The truth of the matter was that his back pains was not included in the referral precisely because his *written request* only asked for a referral for his testicular pain. If respondent had truly been experiencing continuing back pains while he was still on board the vessel, then it stands to reason that respondent's written request for medical referral would not only be for his testicular pain but would naturally include his back pains, especially so when he claimed that the same had become unbearable.

Moreover, respondent's contention that the company-designated physician refused to examine and treat him for his back pains because it was not included in the referral is not worthy of belief. Aside from the pain and swelling in his testicles, respondent's abdominal pain was likewise taken into account when the company-designated physician examined the condition of the respondent following his repatriation. The May 21, 2012 Medical Report prepared by Dr. Comising supports this finding. Thus:

X X X X

REVIEW OF THE SYSTEM

(-) Fever	(-) Body Weakness	(-) Headache	(-) Blurring Vision
(-) Constipation	(-) Difficulty of Breathing	(-) LBM	(-) Chest Pain
(-) Body Numbness	(-) Difficulty with [A]mbulation		

X X X X

REPORT:

1st

The patient is a 45-year-old, chief cook **who claimed he developed on and off abdominal pain** with left testicular pain since March 15, 2012. No medications were taken and no consultations done. He finished his contract and was referred to our clinic for evaluation and treatment.

He was seen at our clinic today. **He is complaining of on and off abdominal pain** with left testicular pain. On physical examination, patient is conscious, coherent and ambulatory. The abdomen is flabby soft and non tendern. There is note of engorged blood vessel on both testicle which are tender. The following were requested: CBC, BUN, creatinine, lipid profile, uric acid, SGPT, SGOT, urinalysis, **ultrasound of the abdomen and inguinoscrotal area.**

⁶⁰ Id. at 465.

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DIAGNOSIS:

Varicocele, bilateral⁶¹ (Emphases supplied)

x x x x

The foregoing shows that contrary to the contention of the respondent, the company-designated physician would not have left undiagnosed and untreated an illness or injury that was brought to his attention, with or without a referral. Otherwise, the post-employment medical examination of the respondent would have only been confined to his testicular pain, the only ailment referred to the company-designated physician, and would not include his abdominal pain. Such was not the case here.

Also telling is the negative answers respondent gave when he was asked if he was experiencing body numbness, body weakness and difficulty in ambulation at the time of his examination. If his back pains was already existing at the time of his post-employment medical examination and his condition was slowly debilitating him as his back pains worsened and became unbearable, then he would not have answered the way he did.

Respondent's failure to disclose his lumbar problem is fatal to his cause. Given that the respondent failed to bring to the attention of the company-designated physician his back pains thereby precluding the latter from assessing whether the same is work-related or not, the respondent is deemed not to have undergone the required post-employment medical examination contemplated under the POEA-SEC relative to his back pains for purposes of claiming compensation therefor. This is not without rationale basis.

The High Court has consistently held that that the three-day mandatory reporting requirement must be strictly observed since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arise after the employment. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employer would have no protection against unrelated claims. Therefore, it is the company-

⁶¹ Supra note 18.

designated physician who must proclaim that the seafarer suffered a permanent disability, whether total or partial, due to either illness or injury, during the term of the latter's employment.⁶²

To be sure, the assessment of the company-designated physician is not final, binding, or conclusive on the claimant, the labor tribunal, or the courts. The seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.⁶³

Unfortunately, in this case, the company-designated physician had no opportunity to assess the back pains of the respondent since, to emphasize, he made no mention of such back pains to the company-designated physician during his post-employment medical examination. To hold the petitioners liable for disability benefits when they were robbed of the opportunity to determine the work relation of the injury now being complained of by the respondent, a right guaranteed by the POEA-SEC, would be the height of injustice.

It is true that the POEA-SEC is designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels and its provisions should be construed and applied fairly, reasonably, and liberally in favor or for the benefit of the seafarer and his dependents. However, one who claims entitlement to the benefits provided by law should not only comply with the procedural requirements of law, but must also establish his right to the benefits by substantial evidence. The burden, therefore, rests on the respondent to show that he suffered or contracted his injury while still employed as a seafarer, which resulted in his permanent disability.⁶⁴

Regrettably, respondent failed to discharge this burden. Aside from his bare allegation that he experienced back pains during the term of his employment contract, he presented no other evidence to substantiate his claim. To reiterate, when he underwent post-employment medical examination, he did not call the attention of the company-designated physician to his back pains. In fact, when he was asked if he was experiencing numbness or weakness in his body or difficulty with ambulation, he answered in the negative. On record, he informed the petitioners about his lumbar problem only on August 29, 2012, or three months after he was repatriated. Thus, the reasonable conclusion is that at the time of his repatriation, respondent was not suffering from any back pains requiring any medical assistance. That he was found to be suffering

⁶² See *The Heirs of the Late Delfin Dela Cruz v. Philippine Transmarine Carriers, Inc.*, 758 Phil. 382, 394-395 (2015); *Tagud v. BSM Crew Service Centre Phils., Inc.*, G.R. No. 219370, December 6, 2017, 848 SCRA 176, 189.

⁶³ *Dizon v. Naess Shipping Phils., Inc.*, 786 Phil. 90, 99 (2016).

⁶⁴ *Tagud v. BSM Crew Service Centre Phils., Inc.*, supra note 62, at 189-190.

from *degenerative disc disease, L3-L4 and L4-L5 and broad based disc bulge with annular tear at L4-L5* when he underwent medical tests and was examined by his doctors after August 29, 2012 is of no moment. It is well noted that many other incidents could have occurred in the duration of three months from the time he was repatriated until he consulted a private physician which could have triggered the pain in his lower back and that such illness or injury could not have been work-related at the time he was still employed by petitioners.⁶⁵

In sum, respondent utterly failed to establish by substantial evidence his entitlement to disability benefits for his back pains for his failure to effectively undergo the required post-employment medical examination contemplated by the POEA-SEC by a company-designated physician within three working days from his return without valid or justifiable reason; that his back pain was work-related; and that it was contracted during the term of his employment contract.

Respondent is entitled to sickness allowance

While the Court rules that respondent is not entitled to disability benefits for his back pains, the Court does not lose sight that when the respondent was repatriated on May 18, 2012, he was already complaining of pain and swelling in his testicles. His post-employment medical examination on May 21, 2012 revealed that he was suffering from *varicocele, bilateral* for which he was treated and operated on. After a series of follow-up check-ups, he was declared fit to work on August 28, 2012. As respondent was suffering from an illness that required medical attention after he was repatriated, he is clearly entitled to a sickness allowance pursuant to Section 20(A)(3) of the 2010 POEA-SEC. Petitioners acknowledged their obligation as in fact they had already paid the amount of ₱36,000.00 to the respondent.⁶⁶ The question now is this: How much sickness allowance is respondent entitled to?

Under Section 20(A)(3) of the 2010 POEA-SEC, the amount of sickness allowance that the seafarer shall receive from his employer shall be in an amount equivalent to his basic wage computed at 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, but shall in no case exceed 120 days.

Since respondent signed off from the vessel on May 18, 2012 and was declared fit to work on August 28, 2012, he is entitled to a sickness allowance equivalent to 102 days or the amount of US\$2,036.60 computed based on his basic pay of US\$599.00 per month at 40 hours of work per week, or its equivalent amount in Philippine currency, minus the amount of

⁶⁵ Id. at 190.

⁶⁶ Supra note 50.

₱36,000.00 already advanced by the petitioners.

While the respondent may have undergone a number of medical examinations and consultations, it must be taken into account that they were geared towards getting treatment and compensation for his back pains which the Court has already ruled to be not compensable. Thus, respondent cannot claim sickness allowance after August 28, 2012, the day he was declared fit to work.

Respondent is not entitled to a reimbursement of medical expenses, damages and attorney's fees

Inasmuch as respondent is seeking reimbursement for the expenses he incurred for undergoing physical therapy for his back pains, an injury which, as mentioned above, the Court held to be not compensable, petitioners cannot be made liable for the same.

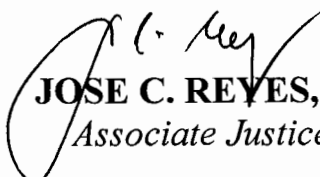
Also, given that petitioners are justified in refusing to satisfy respondent's baseless claims, they cannot be held liable for moral damages and attorney's fees.

One final note

The Constitutional mandate in providing full protection to labor is not meant to be a sword to oppress employers. This Court's assurance to this policy does not stop us from upholding the employer when it is in the right. Thus, when evidence contradicts compensability, the claim cannot prosper, otherwise it causes injustice to the employer.⁶⁷

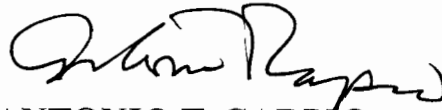
WHEREFORE, premises considered, the petition is **GRANTED**. The assailed August 10, 2015 Decision and the February 29, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 135163 are **REVERSED** and **SET ASIDE**. The petitioners are found jointly and severally liable for the payment of sickness allowance to the respondent in the amount of US\$ 2,036.60, or its equivalent amount in Philippine currency at the time of payment.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

⁶⁷ *Madridejos v. NYK-FIL Ship Management, Inc.*, G.R. No. 204262, June 7, 2017, 826 SCRA 452, 482.

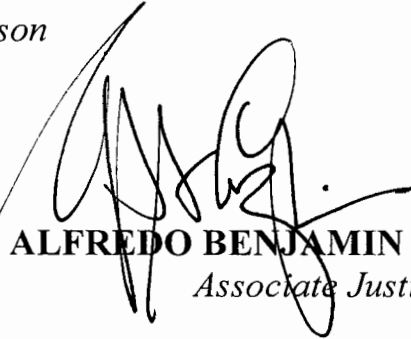
WE CONCUR:



ANTONIO T. CARIPO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

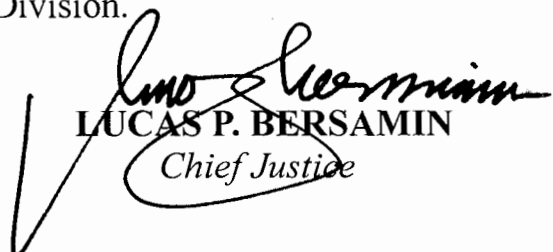
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARIPO
Senior Associate Justice
Chairperson, Second 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.



LUCAS P. BERSAMIN
Chief Justice