

Republic of the Philippines  
 Supreme Court  
 Manila

**THIRD DIVISION**

**FLORENCIO B. DESTRIZA,**  
 Petitioner,

**G.R. No. 203539**

- versus -

Present:  
 LEONEN, *J.*,  
*Chairperson,*  
 HERNANDO,  
 DELOS SANTOS,  
 GAERLAN, \* and  
 LOPEZ, *J. Y., JJ.*

**FAIR SHIPING**  
**CORPORATION, ANGEL C.**  
**CACHAPERO, and/or**  
**BOSELINE S.A.,**  
 Respondents.

Promulgated:  
**February 10, 2021**

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**DECISION**

**HERNANDO, J.:**

Challenged in this Petition for Review on *Certiorari*<sup>1</sup> are the April 27, 2012 Decision<sup>2</sup> and August 22, 2012 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 99351, which modified the May 21, 2007 Resolution<sup>4</sup> of the Panel of Voluntary Arbitrators (PVA) in a voluntary arbitration case between petitioner Florencio B. Destriza (Destriza) and respondents Fair Shipping Corporation (FSC), Angel C. Cachapero (Cachapero), and Boseline S.A. (Boseline) docketed as AC-089-NCR-33-01-06-06.

The PVA found Destriza not entitled to permanent total disability benefits but awarded him US\$20,000.00 as it was apparent that he contracted

\* Designated as additional Member per raffle dated February 3, 2021 vice *J. Inting* who recused himself, his sister, former Justice Socorro B. Inting, participated in the proceedings before the Court of Appeals.  
<sup>1</sup> *Rollo*, pp. 4-11. Posted on September 28, 2012 and received by the Court on October 10, 2012.  
<sup>2</sup> *Id.* at 124-135; penned by then Associate Justice Mario V. Lopez (now a member of this Court) and concurred in by Associate Justices Fernanda Lampas Peralta and Socorro B. Inting.  
<sup>3</sup> *Id.* at 141-142.  
<sup>4</sup> *Id.* at 93-98.

the disease while in the employ of the respondents.<sup>5</sup> The CA, in turn, deleted the monetary award for lack of legal basis.<sup>6</sup>

### **Factual Antecedents:**

Destriza filed a complaint for permanent disability benefits, sickness allowance, medical reimbursement, compensatory, moral, and exemplary damages, and attorney's fees before the National Conciliation and Mediation Board (NCMB) against the respondents FSC, Cachapero and Boseline.<sup>7</sup>

FSC is a domestic corporation duly organized and existing under Philippine laws.<sup>8</sup> Boseline is a foreign juridical entity engaged in the business of shipping.<sup>9</sup> FSC is Boseline's local manning agent in the Philippines<sup>10</sup> while Cachapero is the President of FSC.<sup>11</sup>

Destriza is a seafarer formerly employed by FSC for its foreign principal Boseline.<sup>12</sup> He was first deployed by FSC in 2001 as a cook aboard M/V Pacific Venus.<sup>13</sup> He was again deployed in 2002 in the same capacity aboard M/V Tocho-Maru.<sup>14</sup>

In 2003, FSC deployed Destriza for the third time as a cook aboard M/V Cygnus, a ship owned by Boseline, pursuant to a contract of employment signed on February 10, 2003 and approved by the Philippine Overseas Employment Administration (POEA) on February 12, 2003.<sup>15</sup> He boarded the vessel on March 4, 2003.<sup>16</sup>

On or about December 10, 2003, while on board M/V Cygnus, Destriza experienced abdominal pain, fever, and yellowish discoloration of the skin and eyes.<sup>17</sup> He was rushed to a hospital in Nagoya, Japan<sup>18</sup> where he was diagnosed with biliary duct stone, jaundice, and suspected pancreatitis.<sup>19</sup> After

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<sup>5</sup> Id. at 97.

<sup>6</sup> Id. at 134.

<sup>7</sup> Id. at 13.

<sup>8</sup> Id. at 163.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 13.

<sup>14</sup> Id.

<sup>15</sup> Id. at 124, 182.

<sup>16</sup> Id. at 124.

<sup>17</sup> Id. at 124-125.

<sup>18</sup> Id. at 86, 125.

<sup>19</sup> Id.

his discharge from the hospital he was medically repatriated to his home country for further treatment.<sup>20</sup>

Upon arrival in the Philippines, Destriza was immediately referred to FSC's company physician, Dr. Nicomedes Cruz (Dr. Cruz).<sup>21</sup> He underwent cholecystectomy and intraoperative cholangiogram in Medical Center Manila.<sup>22</sup> Findings showed that Destriza has a contracted gallbladder with thickened walls and adhesion, and one gallstone impacted the cystic duct.<sup>23</sup> He was diagnosed with "Chronic Calculus Cholecystitis."<sup>24</sup>

In a Report<sup>25</sup> dated August 10, 2004, Dr. Cruz stated that Destriza was "evaluated by their gastroenterologist who allowed him to resume his previous activities," and declared him fit to return to work.<sup>26</sup> The treatment was shouldered by FSC.<sup>27</sup>

However, Destriza insisted that he remained unfit as he continued to experience recurring and severe abdominal pains.<sup>28</sup> This prompted him to undergo a medical check-up with Dr. May S. Donato-Tan (Dr. Donato-Tan), a cardiologist, on October 14, 2004.<sup>29</sup> He was subsequently admitted to a hospital on December 10 to 16, 2004.<sup>30</sup> After his discharge, Dr. Donato-Tan concluded that he was "unfit to resume work as a seaman in any capacity."<sup>31</sup>

Based on the foregoing, Destriza filed the labor complaint before the NCMB claiming that he contracted his illness during his employment with FSC and Boseline due to the poor working conditions in the vessels.<sup>32</sup>

The respondents countered that Dr. Donato-Tan's findings should be disregarded<sup>33</sup> and credence should instead be given to Dr. Cruz's finding that Destriza is fit to return to work because it was issued by a gastroenterologist<sup>34</sup> and designated company physician.<sup>35</sup> Further, the respondents argued that the illness was not work-related.<sup>36</sup>

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<sup>20</sup> Id.

<sup>21</sup> Id. at 125.

<sup>22</sup> Id. at 87-88, 125.

<sup>23</sup> Id. at 88, 125.

<sup>24</sup> Id.

<sup>25</sup> Id. at 89, 224.

<sup>26</sup> Id. at 89, 125, 224.

<sup>27</sup> Id. at 125.

<sup>28</sup> Id. at 126.

<sup>29</sup> Id. at 13, 126; *CA rollo*, p. 163.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id. at 26-37, 126.

<sup>34</sup> Id. at 26-37, 126-127.

<sup>35</sup> Id.

<sup>36</sup> Id. at 23-26.

The NCMB constituted a PVA to resolve the case.<sup>37</sup>

Two issues were submitted for arbitration: (1) whether Destriza is entitled to full disability benefits under the collective bargaining agreement; and (2) whether he is entitled to attorney's fees.<sup>38</sup>

**Ruling of the Panel of Voluntary Arbitrators:**

It a May 21, 2007 Resolution,<sup>39</sup> the PVA ruled that Destriza is not entitled to permanent disability benefits in view of the declaration of the company physician that he was fit to work.<sup>40</sup> It also ruled that Destriza is not entitled to attorney's fees.<sup>41</sup> However, the panel awarded Destriza the amount of US\$20,000.00 because he contracted his illness while on board M/V Cygnus.<sup>42</sup>

The dispositive portion of the PVA Resolution reads:

**WHEREFORE**, in view of the foregoing, we find the complainant not entitled for permanent total disability benefits because evidence will prove that he is still fitted [sic] to work. However, there is substantial evidence to prove that his illness became apparent while he was on board the vessel and that the complainant was serving on board the same company vessel for three consecutive contracts. With this, he is hereby awarded US\$20,000.00.

Further, the claim for attorney's fees is hereby denied for lack of merit.

**SO ORDERED.**<sup>43</sup>

Aggrieved, the respondents elevated the case to the CA via a petition for review under Rule 43 of the Rules of Court.<sup>44</sup>

While the petition was pending in the CA, Destriza moved for the issuance of a writ of execution of the PVA's Resolution.<sup>45</sup> On July 20, 2007,

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<sup>37</sup> Id. at 93.

<sup>38</sup> Id.

<sup>39</sup> Id. at 93-97.

<sup>40</sup> Id. at 97.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> *CA rollo*, pp. 2-27.

<sup>45</sup> Id. at 225-237 (See respondents' Reply to Destriza's Comment on the petition for review in the CA). Attached to the Reply as annexes are the following: Destriza's Motion for the Issuance of a Writ of Execution (Annex "A," id. at 238); Joint Manifestation before the NCMB (Annex "B," id. at 240-242); Affidavit of Claimant (Destriza) re: conditional payment (Annex "C," id. at 243-244); Receipt of Payment dated August 16, 2007 (Annex "D," id. at 245). See also p. 215 (copy of check paid to Destriza).

the parties agreed that the respondents will make a conditional payment to Destriza covering the amount of the award without prejudice to the outcome of the pending petition for review.<sup>46</sup> On August 16, 2007, FSC paid Destriza the amount of ₱902,440.00.<sup>47</sup>

### **Ruling of the Court of Appeals:**

In its April 27, 2012 Decision,<sup>48</sup> the CA modified the PVA's Resolution by deleting the award of US\$20,000.00 for lack of legal basis.<sup>49</sup> It pointed out that the POEA Standard Employment Contract does not contain any reference to compensation or benefit to be awarded to the seafarer simply because his illness became apparent while he was on board the vessel or because he was serving on board the same company for three consecutive contracts.<sup>50</sup>

The award could not be classified as disability benefits as defined in the POEA Standard Employment Contract because Destriza failed to show that his illness was work-related or that the ship's working conditions aggravated it.<sup>51</sup> The CA also gave greater weight on Dr. Cruz's finding that Destriza is fit to return to work, thereby negating Destriza's claim for disability benefits.<sup>52</sup>

The dispositive portion of the CA Decision reads:

**ACCORDINGLY**, We **GRANT** the Petition. The Decision of the Panel of Voluntary Arbitrator[s] is **MODIFIED** by deleting the award of US\$20,000.00 for lack of legal basis. In view of the parties' manifestation that the company had **conditionally** paid Florencio the peso equivalent of the award, Florencio is **ORDERED** to return the sum paid to him.

**SO ORDERED.**<sup>53</sup>

Destriza moved for a reconsideration of the Decision but the motion was subsequently denied in a Resolution dated August 22, 2012.<sup>54</sup>

Hence, this Petition.

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<sup>46</sup> Id. at 225-237.

<sup>47</sup> Id.

<sup>48</sup> *Rollo*, pp. 124-135.

<sup>49</sup> Id. at 129 & 134.

<sup>50</sup> Id. at 130-131.

<sup>51</sup> Id. at 133.

<sup>52</sup> Id.

<sup>53</sup> Id. at 134.

<sup>54</sup> Id. at 141-142.

Destriza claims that the CA erred in ruling that he is not entitled to the US\$20,000.00 award.<sup>55</sup> He argues that his exposure to extreme environment and high fat intake while on board Boseline's vessels for the duration of his three contracts were factors that caused the development of gallstones and gall inflammation.<sup>56</sup> Further, he alleges that his illness was work-related because the diet on board the vessel consisted mainly of meat products.<sup>57</sup>

Lastly, his inability to work for more than 120 days (i.e., eight months) meant that he was suffering from a permanent disability; therefore, he is entitled to disability benefits.<sup>58</sup> Destriza prays for this Court to declare his illness a permanent disability or a compensable illness.<sup>59</sup>

In their Comment,<sup>60</sup> respondents argue that the POEA Standard Employment Contract does not grant any monetary benefits to a seafarer by the mere fact that he got ill while onboard the vessel.<sup>61</sup> The respondents also contend that other than his general allegations, Destriza failed to prove by substantial evidence that his illness was indeed work-related to be entitled to disability benefits.<sup>62</sup>

On Destriza's position that he was thrice hired as a cook, the respondents point out that his employment as a seafarer is contractual in nature and has a fixed period; therefore, his employment contracts were independent of each other and may not be integrated for the purpose of computing tenure.<sup>63</sup>

On the application of the 120-day period for entitlement to permanent disability benefits, the respondents advance the following arguments: (1) that the 120-day period is not iron-clad, and may be extended to 240 days if further medical attendance is required beyond the original period; (2) temporary total disability becomes permanent only if the 240-day period expires without a declaration of either fitness to work or the existence of a permanent disability; and (3) the mere counting of 120 days is insufficient for entitlement to permanent disability.<sup>64</sup>

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<sup>55</sup> Id. at 6.

<sup>56</sup> Id. at 6-7.

<sup>57</sup> Id. at 8.

<sup>58</sup> Id. at 8-9.

<sup>59</sup> Id. at 9.

<sup>60</sup> Id. at 162-181.

<sup>61</sup> Id. at 167-169.

<sup>62</sup> Id. at 169-171.

<sup>63</sup> Id. at 169.

<sup>64</sup> Id. at 174-178.

### Issue

Whether Destriza is entitled to disability benefits as previously awarded by the PVA.

### Our Ruling

We affirm the assailed Decision of the CA finding Destriza not entitled to the award of US\$20,000.00.

The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247, series of 1987<sup>65</sup> to “secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith” and to “promote and protect the well-being of Filipino workers overseas.”<sup>66</sup>

The POEA Standard Employment Contract governs Destriza’s claim for disability benefits. Since his contract was signed on February 10, 2003 and approved by the POEA on February 12, 2003, POEA Memorandum Circular No. 9, series of 2000<sup>67</sup> applies in this case and is deemed integrated in Destriza’s contract.

Section 20 of Memorandum Circular No. 9 provides that for an illness or injury to be compensable, it must be work-related and must be incurred during the term of the seafarer’s contract.<sup>68</sup> It defines work-related illness as “any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied.”<sup>69</sup> Section 32-A in turn states:

#### 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;

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<sup>65</sup> Executive Order No. 247, Reorganizing the Philippine Overseas Employment Administration and For Other Purposes (1987).

<sup>66</sup> *Remigio v. National Labor Relations Commission*, 521 Phil 330, 346 (2006).

<sup>67</sup> Memorandum Circular No. 9, Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (2000).

<sup>68</sup> Id. sec. 20(B); *Skippers United Pacific, Inc. v. Lagne*, G.R. No. 217036, August 20, 2018.

<sup>69</sup> Memorandum Circular No. 9, Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, Definition of Terms, par. 12 (2000).

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4. There was no notorious negligence on the part of the seafarer.

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein.

x x x x<sup>70</sup>

Section 32-A likewise enumerates the various diseases that are considered as occupational diseases when contracted under the working conditions involving the risks described therein.

Notably, the list does not include Chronic Calculus Cholecystitis.<sup>71</sup> However, Section 20 of Memorandum Circular No. 9 provides that “those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.”<sup>72</sup> The case of *Madridejos v. NYK-FIL Ship Management, Inc. (Madridejos)*<sup>73</sup> discusses the disputable presumption of work-relatedness of illnesses (sebaceous cyst in this instance) not listed in Section 32-A, to wit:

A sebaceous cyst is not included under Section 32 or 32-A of the 2000 Philippine Overseas Employment Agency Standard Employment Contract. However, the guidelines expressly provide that those illnesses not listed in Section 32 “are disputably presumed as work[-]related.”

Similarly, for an illness to be compensable, “it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer.” It is enough that there is “a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.”

The disputable presumption implies “that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits.” Similarly, “the disputable presumption does not signify an automatic grant of compensation and/or benefits claim.” There is still a need for the claimant to establish, through substantial evidence, that his illness is work-related.

“Substantial evidence is more than a mere scintilla.” It should attain “the level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.”

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<sup>70</sup> Id. sec. 32-A.

<sup>71</sup> See *rollo*, p. 88.

<sup>72</sup> Memorandum Circular No. 9, Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, sec. 20 (2000).

<sup>73</sup> 810 Phil 704 (2017). The seafarer’s contract in this case is also governed by POEA Memorandum Circular No. 9, series of 2000.

Madridejos cannot solely rely on the disputable presumption. For his failure to substantiate his claim that his cyst was either work-related or work-aggravated, this Court cannot grant him relief.

Accordingly, the disputable presumption “does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness.” Concomitantly, there is still a need for him to corroborate his claim for disability benefits.<sup>74</sup>

Thus, if an illness is not included in the list under Section 32-A of Memorandum Circular No. 9, it is disputably presumed as work-related. Despite the disputable presumption, case law such as *Madridejos* provides that to be compensable, the seafarer still has the burden to establish, by substantial evidence, that his illness is work-related. As stated, the disputable presumption does not amount to an automatic grant of compensation.

In the instant case, it is undisputed that Destriza was suffering from Chronic Calculus Cholecystitis due to development of gallstones. This is a gallbladder inflammation that may result to gallstones blocking the opening of the gallbladder into the cystic duct or the cystic duct itself.<sup>75</sup> Since Chronic Calculus Cholecystitis and even contracting of gallstones are not included in Section 32-A of Memorandum Circular No. 9, Destriza had the burden of establishing, by substantial evidence, that his illness was work-related or was at least aggravated by work. In short, he had the burden of showing that he contracted gallstones because of his work as cook in M/V *Cygnus*.

In this regard, the Court agrees with the CA that Destriza failed to establish work-relatedness relative to his illness. The records do not show that the cause of the development of his gallstones resulting to Chronic Calculus Cholecystitis was his work as cook aboard the vessel. He merely presented general averments and allegations that the hot temperature and constant meat or high fat diet aboard the vessel caused or aggravated the development of his gallstones. The Court stated in *Status Maritime Corporation v. Spouses Delalamon*.<sup>76</sup>

At the very least, these general statements surmise mere possibilities but not the probability required by law for disability compensation. Mere possibility will not suffice and a claim will still fail if there is only a possibility that the employment caused or aggravated the disease. Even considering that the respondents have shown probability, their basis is, nonetheless incompetent for being uncorroborated. Probability of work-connection must at least be anchored on credible information and not on self-serving allegations.

<sup>74</sup> Id. at 728-730. Citations omitted.

<sup>75</sup> See Cholecystitis, available at <https://www.msmanuals.com/home/liver-and-gallbladder-disorders/gallbladder-and-bile-duct-disorders/cholecystitis?query=cholecystitis> (last visited November 9, 2020).

<sup>76</sup> 740 Phil 175 (2014).

xxx

Certainly, disability compensation cannot rest on mere allegations couched in conjectures and baseless inferences from which work-aggravation or relatedness cannot be presumed. “[B]are allegations do not suffice to discharge the required quantum of proof of compensability. Awards of compensation cannot rest on speculations or presumptions. The beneficiaries must present evidence to prove a positive proposition.”<sup>77</sup>

As stated, awards of compensation cannot rest on speculations or presumptions, such as Destiza’s allegations. His claims on work-relatedness were not corroborated by other evidence. Other than his conjectures of entitlement to compensation, there is nothing in the records to substantiate the claims that would have justified the award. Therefore, Destriza is not entitled to illness benefit for failure to establish work-relatedness by substantial evidence.

Hence, as the CA correctly found, the PVA has erred in awarding US\$20,000.00 on top of the medical expenses already shouldered by FSC.

In addition, Destriza’s failure to resort to a third-doctor opinion proved fatal to his cause. It is settled that in case of disagreements between the findings of the company-designated physician and the seafarer’s doctor of choice, resort to a third-doctor opinion is mandatory. The third-doctor opinion is final and binding between the parties. The opinion of the company-designated physician prevails over that of the seafarer’s personal doctor in case there is no third-doctor opinion. Thus, Dr. Cruz’s declaration that Destriza is fit to resume sea duties prevails over the medical opinion issued by Dr. Donato-Tan.

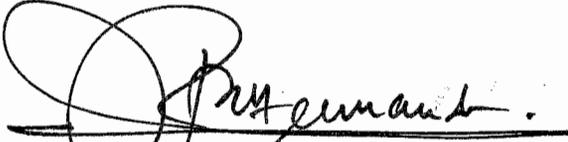
Finally, it does not escape the Court that FSC conditionally paid Destriza the peso equivalent of the award in the amount of ₱902,440.00. In view of this, Destriza shall return the amount paid to him by FSC.

**WHEREFORE**, the Petition is hereby **DENIED**. The April 27, 2012 Decision and August 22, 2012 Resolution of the Court of Appeals in CA-G.R. No. SP No. 99351 are hereby **AFFIRMED**. Petitioner Florencio B. Destriza is **ORDERED** to return to Fair Shipping Corporation the amount of ₱902,440.00.

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<sup>77</sup> Id. at 197. Citations omitted.

**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
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.



**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson

**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.



**DIOSDADO M. PERALTA**  
Chief Justice