



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

RAUL D. BITCO,

Petitioner,

G.R. No. 239190

Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., JJ.

CROSSWORLD MARINE
 SERVICES, INC., KAPAL
 (CYPRUS) LTD. and/or
 ELEAZAR G. DIAZ,

Respondents.

Promulgated:

February 10, 2021

MisADC-B-H

X-----X

DECISION

DELOS SANTOS, J.:

It is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.¹

This is to resolve the Petition for Review on *Certiorari*² under Rule 45 of the Rules of Court of petitioner Raul D. Bitco (Bitco) seeking to reverse and set aside the Decision³ dated November 29, 2017 and the Resolution⁴ dated May 3, 2018, both of the Court of Appeals (CA) in CA-G.R. SP No. 151891.

¹ *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 347 (2006).

² *Rollo*, pp. 35-62.

³ Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles, concurring; *id.* at 66-84.

⁴ *Id.* at 86-87.

The factual antecedents are as follows:

Bitco was hired as Ordinary Seaman by respondent Crossworld Marine Services, Inc. (Crossworld) for and in behalf of its foreign principal Kapal (Cyprus) Ltd. after having passed his Pre-Employment Medical Examination and certified fit to work. The employment contract stipulated an eight-month duration plus one month upon mutual consent of both parties for a basic monthly salary of US\$406.39 plus other benefits. Complainant left the Philippines on November 6, 2014 to board his vessel "M/V Eurocargo Bari." Sometime in February 2015, while on duty, Bitco suddenly felt a snap at his lower back while lifting supplies during provisions in Italy that resulted in acute moderate pain. He ignored the pain and continued with his work.⁵

On June 25, 2015, after performing another heavy work, Bitco's lower back pain recurred. He was then brought to a medical facility in Valencia, Spain for check-up. Bitco was diagnosed to be suffering from Post Effort Acute Lumbociatalgia. He was given medication and was advised to rest for three days. Due to persistent pain, however, Bitco was declared unfit for sea duties and was ordered for repatriation to seek further evaluation and management in the Philippines.⁶

Upon arrival in the Philippines on July 22, 2015, Bitco immediately reported to Crossworld for post-employment medical examination. He was referred to Ship-to-Shore Medical Assist in Makati City for medical treatment. Thereafter, Bitco was referred to St. Luke's Medical Center, Global City, Taguig City (St. Luke's Medical Center) for further treatment. He underwent eight sessions of physical therapy.⁷

However, as no significant improvement was noted, Bitco underwent epidural steroid injection on September 12, 2015 and given another set of physiotherapy. On October 16, 2015, he underwent Magnetic Resonance Imaging Examination of the Lumbosacral Spine at St. Luke's Medical Center. Results revealed the following: Straightened Lumbar Curvature maybe due to muscle spasm; Dessicated disks and Spondylosis at L4-L5 and L5-S1 resulting in severe bilateral neural canal narrowing and mild spinal canal narrowing at L4-L5 and mild narrowing of the spinal and both neural canals at L5-S1; small center annular tear L5-S1; mild levoscoliosis; incidental note of small cyst in the right kidney.⁸

⁵ Id. at 67.

⁶ Id.

⁷ Id. at 67-68.

⁸ Id. at 68.

Despite physical therapy, Bitco noted very minimal improvement. Bitco was treated by the company-designated physician until December 15, 2015. Thereafter, the company-designated physician assessed Bitco with a partial disability Grade 8 pursuant to the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).⁹

On January 26, 2016, as Bitco was still experiencing severe pains in his lower back and numbness on his left leg, he consulted Dr. Renato P. Runas (Dr. Runas), an Orthopedic Surgeon. Said doctor issued a Medical Report stating that Bitco is unfit for duty as a seafarer in whatever capacity with a total permanent disability since he can no longer perform his work which he is previously engaged. Dr. Runas further noted that Bitco remains incapacitated and is “saddled with the impediment of being unable to carry and lift heavy objects due to back stiffness which make it difficult for him to bend, pick-up and carry objects from the floor. Prolonged [sitting] and standing worsen the discomfort.”¹⁰

As parties could not agree and settle the disability benefits claimed by Bitco, this case was filed.¹¹

In their defense, respondents argued that Bitco could not claim total and permanent disability because he did not present a second doctor’s opinion and referral to a third doctor. He is only entitled to receive partial disability benefits because that was what was assessed by the company-designated physician (Grade 8 disability). Moreover, they reminded the Labor Arbiter (LA) that the POEA-SEC states that disability compensation shall be complied with in accordance with the schedule of benefits. Likewise, the claim under the Collective Bargaining Agreement should also fail because the ailment did not result from an accident.¹²

In response, Bitco insisted that the referral to a third doctor is merely permissive, not mandatory. While non-referral to a third doctor will render the doctor’s diagnosis controlling, it is not the absolute and automatic consequence in all cases. Courts and tribunals remain duty-bound to evaluate and examine the contents of the medical evaluations submitted in evidence. In Bitco’s case, there was no definite declaration within the 120/240-day period on whether or not he can still resume his post as an Ordinary Seaman. Remarkably, the final medical report stated that his trunk motion remained limited despite extensive treatment, thus, indicating that despite treatment, he remains incapacitated to perform his duties.¹³

⁹ Id.

¹⁰ Id.

¹¹ Id. at 69.

¹² Id.

¹³ Id.

Labor Arbiter's Ruling

On January 23, 2017, LA Irene Castro-De Quiroz rendered a Decision¹⁴ finding merit in the complaint for total and permanent disability. The LA found that Bitco's disability became total and permanent because he failed to return to work after 120 days or even 240 days.

Moreover, the LA found that the company-designated physician's disability grading of 8 doubtful, given that there was no guarantee that physical therapy and/or surgery can restore Bitco's capability to assume sea duties. Thus, while Bitco's own physician assessed him to be permanently incapacitated, the non-referral to a third doctor did not negate Bitco's cause of action. The dispositive portion of the Decision reads as follows:

WHEREFORE, premises considered, this Labor Arbitration Branch finds merit in the complaint for total and permanent disability.

The respondent companies Crossworld Marine Services Inc. and Kapal (Cyprus), are held jointly and severally liable to pay the complainant his disability benefit of USD 60,000.00 and 10% Attorney's fees.¹⁵

Aggrieved by the LA's Decision, respondents elevated the case to the National Labor Relations Commission (NLRC) for review.

NLRC Ruling

On May 9, 2017, the NLRC issued a Decision¹⁶ dismissing respondents' appeal and affirming *in toto* the Decision of the LA.

The NLRC adopted the finding of the LA that Bitco was already declared partially and permanently disabled within the 120-day or 240-day period, but he remained incapacitated to perform his usual sea duties after the lapse of said period.¹⁷

The NLRC also ruled that the lack of opinion by a third doctor did not defeat Bitco's cause of action. It noted the permissiveness of Section 20(A)(3) of the POEA-SEC, which should be invoked for the protection and benefit of the seafarer. The provision used the phrase "may be agreed jointly" when pertaining to the referral to a third doctor. Hence, the said referral is not mandatory.¹⁸

¹⁴ Id. at 213-230.

¹⁵ Id. at 230.

¹⁶ Id. at 339-353.

¹⁷ Id. at 347-348.

¹⁸ Id. at 350.

The respondents filed a Motion for Reconsideration.

On May 31, 2017, the NLRC issued a Resolution¹⁹ denying respondents' Motion for Reconsideration.

Thus, respondents elevated the matter to the CA *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court.

In their petition, respondents argued that Bitco had no cause of action at the time the complaint was filed. There was no evidence that he was incapacitated for work except for the opinion of the company-designated physician. In fact, the company-designated physician gave him a Grade 8 partial disability rating. As regards the allegations that the 240-day period had already lapsed, respondents argue that the number of days alone does not determine the entitlement to disability benefits. Rather, it is the disability ratings that determine the basis for such entitlement.²⁰ They also claimed that the NLRC gravely erred in stating that the referral to a third doctor is not mandatory and absent the third doctor's opinion, a complaint shall be dismissed for lack of cause of action.²¹ As regards the award of attorney's fees, they asserted that Bitco is not entitled to the same since the respondents acted within their rights when they denied his demands for total and permanent disability benefits.²² Moreover, they also argued that Bitco is not entitled to moral damages, as he failed to allege and prove any of the situations provided in the said provision.²³

On the other hand, Bitco averred that the grounds raised by respondents which question the labor tribunal's ascribing of liability upon them is not a proper subject of a *certiorari* petition under Rule 65 of the Rules of Court. Only errors of jurisdiction, not errors of judgment, may be dealt with in a petition for *certiorari*.²⁴ Bitco also reiterated that the Medical Report dated December 17, 2015 clearly failed to make a definite declaration from the company-designated physician within the period of 120 or 240 days that he can still resume his customary duties as an Ordinary Seaman.²⁵ Anent attorney's fees, Bitco argued that the award is proper because he was constrained to secure the services of a counsel to pursue his claims against the respondents.²⁶ Thus, there was no grave abuse of discretion amounting to lack or excess of jurisdiction when the NLRC affirmed the award of attorney's fees.²⁷

¹⁹ Id. at 372.

²⁰ Id. at 74.

²¹ Id. at 76.

²² Id. at 77.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id. at 78.

²⁷ Id. at 79.

CA Ruling

In a Decision²⁸ dated November 29, 2017, the CA granted the petition, the dispositive portion of which reads:

WHEREFORE, the instant petition for *certiorari* is GRANTED. The Decision dated May 9, 2017 and Resolution dated May 31, 2017 of the NLRC are hereby ANNULLED and SET ASIDE.

SO ORDERED.²⁹

The CA reiterated that it is a settled rule that referral to a third doctor is a mandatory procedure. The NLRC is incorrect in automatically concluding that the opinion of the third doctor is no longer binding because the same would have been issued after the lapse of the 240-day period. The rule is that the findings of the company-designated physician shall prevail in cases where the seafarer did not observe the third doctor referral provision in the POEA-SEC.³⁰

The CA ruled that the findings of the company-designated physician have sufficient basis in light of the fact that Bitco has been under her treatment and management for several months. The company-designated physician was likely to have more credible assessment of Bitco's medical condition since she was able to closely monitor his ailment ever since his repatriation.³¹

On December 22, 2017, petitioner filed a Motion for Reconsideration assailing the November 29, 2017 Decision of the CA.

On May 3, 2018, the CA denied, in a Resolution,³² the Motion for Reconsideration. Hence, this Petition raising the following errors:

I.

THE HONORABLE [CA] GRAVELY ERRED IN ANNULLING AND SETTING ASIDE THE DECISION OF THE NLRC AWARDING PERMANENT AND TOTAL DISABILITY BENEFITS TO HEREIN PETITIONER.

II.

THE HONORABLE [CA] ERRED IN NOT AWARDING ATTORNEY'S FEES TO HEREIN PETITIONER.³³

²⁸ Supra note 3.

²⁹ *Rollo*, p. 83.

³⁰ Id. at 82.

³¹ Id. at 82-83.

³² Supra note 4.

³³ *Rollo*, pp. 45-46.

The Court's Ruling

The fundamental issue that the Court must resolve is whether Bitco is entitled to total and permanent disability benefits.

At the outset, it must be emphasized that this Court is not a trier of facts and as general rule, only questions of law raised *via* a Petition for Review under Rule 45 of the Rules of Court are reviewable by this Court.³⁴ The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.³⁵

Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.³⁶ The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court or quasi-judicial agency, as in this case.³⁷ Thus, the Court is constrained to review and resolve the factual issue in order to settle the controversy.

The present case before us involves the claim for permanent and total disability benefits of a seafarer, Bitco.

In his Petition, Bitco argues that he is entitled to permanent and total disability benefits because it is undeniable that his injury remained unresolved. The recommended treatment and therapy accorded to Bitco by respondents' medical team did not restore his pre-injury capacity. Bitco's tasks as Ordinary Seaman were predominantly manual in nature involving a lot of lifting and carrying heavy objects. Thus, while the company-designated physician assessed Bitco of a partial disability of Grade 8, the latter has remained incapacitated to work for more than 240 days owing to the injury he sustained on board respondents' vessel "M/V Eurocargo Bari." As such, he is already considered to be permanently and totally disabled. Bitco avers that it is the inability of a seafarer to work within the period prescribed by law that determines his entitlement to permanent total disability compensation and not merely on the disability gradings provided under the POEA-SEC. Moreover, Bitco also maintains that there was no definite declaration from the company-designated physician with the period of 120 or 240 days whether he can still resume his customary duties as Ordinary Seaman. In the absence of such declaration, Bitco is still deemed

³⁴ *Philippine Transmarine Carriers, Inc. v. Cristino*, 775 Phil. 108, 121 (2015).

³⁵ *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

³⁶ *De Leon v. Maunlad Trans, Inc.*, 805 Phil. 531, 538 (2017).

³⁷ *The Peninsula Manila v. Jara*, G.R. No. 225586, July 29, 2019.

to be permanently and totally disabled. Lastly, since Bitco was constrained to secure the services of a counsel to pursue his claims, he is also entitled to attorney's fees.

In their Comment,³⁸ respondents posit that the lone Medical Report presented by Bitco can be hardly considered to be sufficient under the provisions of the POEA-SEC. First, there was no declaration of how work-related illness applies, as it only provides for generic allegations; second, there was no proper degree of disability assessment; third, it was a product of a single consultation; and fourth, it was obviously issued by mere accommodation. Therefore, it cannot be gainsaid that no physician credibly declared Bitco as permanently and totally disabled, in fact the assessment was not a work-related condition. Respondents also argue that the provisions under the POEA-SEC and not the number of days of disability determine whether or not Bitco is permanently and totally disabled.

The Petition is meritorious.

Without a valid, final, and definitive assessment, the seafarer's disability becomes permanent and total.

The entitlement of an overseas seafarer to disability benefits is governed by law, the employment contract, and the medical findings.³⁹ By law, the seafarer's disability benefits claim is governed by Articles 197 to 199 (formerly Articles 191-193), under Chapter VI (Disability Benefits), Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.⁴⁰ By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract. Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.⁴¹ Since Bitco was employed in 2014, the 2010 POEA-SEC 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 contract.

Pursuant to Section 20(A) of the 2010 POEA-SEC, when a seafarer suffers a work-related injury or illness in the course of employment, the company-designated physician is obligated to arrive at a definite

³⁸ *Rollo*, pp. 407-423.

³⁹ *Aldaba v. Career Philippines Ship-Management, Inc.*, 811 Phil. 486, 496 (2017).

⁴⁰ *OSG Shipmanagement Manila, Inc. v. De Jesus*, G.R. No. 207344, November 18, 2020.

⁴¹ *Aldaba v. Career Philippines Ship-Management, Inc.*, *supra*.

assessment of the former's fitness or degree of disability within a period of 120 days from repatriation.⁴² During the said period, 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 to be permanent, either partially or totally, as his condition is defined under the 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.⁴³ But before the company-designated physician may avail of the allowable 240-day extended treatment period, he must perform some significant act to justify the extension of the original 120-day period.⁴⁴ **Otherwise, the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance.**⁴⁵

In *Elburg Shipmanagement Phils., Inc. v. Quiogue*,⁴⁶ the Court summarized the rules regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.⁴⁷

⁴² *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 522-523 (2017).

⁴³ *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

⁴⁴ *Talaroc v. Arpaphil Shipping Corporation*, 817 Phil. 598, 611-612 (2017).

⁴⁵ *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018, 878 SCRA 180, 201.

⁴⁶ 765 Phil. 341 (2015).

⁴⁷ *Id.* at 362-363.

In the case at bar, Bitco was medically repatriated and he arrived in the Philippines on July 22, 2015. He immediately reported to his manning agency for post-employment medical examination and was referred at Ship-to-Shore Medical Assist in Makati City for medical treatment. Thereafter, Bitco was referred to St. Luke's Medical Center for further treatment wherein he underwent eight sessions of physical therapy. On December 17, 2015 or after 150 days, the company-designated physician assessed Bitco with a partial disability Grade 8 pursuant to the POEA-SEC, but there was no definite declaration whether Bitco can still return to his customary duties as an Ordinary Seaman.

A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.⁴⁸

Without a valid, final, and definitive assessment from the company-designated physician, respondent's temporary and total disability, by operation of law, became permanent and total.⁴⁹

Mandatory third-physician rule, exception.

Petitioner asserts that the CA erred in ruling that referral to a third doctor is mandatory procedure.

Section 20 of the POEA-SEC states:

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

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

⁴⁸ *Razonable v. Maersk-Filipinas Crewing, Inc.*, G.R. No. 241674, June 10, 2020.

⁴⁹ *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 407 (2018).

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 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. (Emphasis supplied)

The assessment referred to in this provision is the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness to work before the 120-day or 240-day period expires.⁵⁰ The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the dispute assessment to a third physician.⁵¹ The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.⁵²

The Court, in the recent cases of *Murillo v. Philippine Transmarine Carriers, Inc.*⁵³ and *Dionio v. Trans-Global Maritime Agency, Inc.*,⁵⁴ reiterated the settled rule that referral to a third doctor is mandatory, and the

⁵⁰ *Esteva v. Wilhelmsen Smith Bell Manning, Inc.*, G.R. No. 225899, July 10, 2019.

⁵¹ *Multinational Ship Management, Inc. v. Briones*, G.R. No. 239793, January 27, 2020.

⁵² *Id.*

⁵³ G.R. No. 221199, August 15, 2018.

⁵⁴ G.R. No. 217362, November 19, 2018.

seafarer's failure to abide thereby is a breach of the POEA-SEC which makes the assessment of the company-designated physician final and binding.

However, our jurisprudence is replete with cases which pronounce that before a seafarer should be compelled to initiate referral to a third doctor, there must first be a final and categorical assessment made by the company designated-physician as to the seafarer's disability within the 120/240-day period. Otherwise, the seafarer shall be considered disabled by operation of law.⁵⁵

In *Kestrel Shipping Co., Inc. v. Munar*,⁵⁶ the Court ruled that a seafarer's compliance with the third-doctor rule presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.

In the case at bar, the company-designated physician issued an assessment on December 17, 2015 that the petitioner is with a partial disability Grade 8, but he did not state whether the petitioner is fit to work or not. Consequently, the absence of a final assessment by the company-designated physician makes the rule on third-doctor-referral inapplicable in the instant case. The failure of the company-designated physician to issue a final assessment and disability grading within the 240-day period made the petitioner's disability total and permanent even without evaluation by a third doctor. Evidently, there is no need for the petitioner to initiate the referral to a third doctor for him to be entitled to permanent disability benefits.⁵⁷

***Incapacity to work is compensated,
not the injury per se.***

In the said final Medical Report dated December 17, 2015, it was declared that the patient's medical condition is work-related and that Bitco's trunk motion remains to be limited despite extensive treatment accorded to him. An analysis of the final Medical Report alongside with the Medical Report in November 2015 also reveals that Bitco was forewarned that "prognosis with his two-level disc herniation/extrusion is guarded when it comes to returning to heavy labor."⁵⁸ As correctly ruled by the NLRC, as an Ordinary Seaman, Bitco cannot choose his tasks which, more often than not, includes heavy lifting. To limit his tasks only means he can no longer function in the same manner for which he was trained and accustomed to perform.

⁵⁵ *Abundo v. Magsaysay Maritime Corporation*, G.R. No. 222348, November 20, 2019.

⁵⁶ 702 Phil. 717 (2013).

⁵⁷ *Abundo v. Magsaysay Maritime Corporation*, supra.

⁵⁸ *Rollo*, p. 226.

Moreover, the Medical Evaluation Report dated January 26, 2016 by Bitco's own physician, Dr. Runas, also revealed that Bitco has not actually recovered from his condition since his repatriation on July 22, 2015.

With practically the same medical observations of the company-designated physician and Bitco's own doctor, it is undeniable that Bitco's injury persists and remained unresolved. Even if the two physicians gave different disability grading, it is a fact that Bitco remained to be incapacitated to work and there is no guarantee that he can return to his normal sea duties. Bitco's disability, thus, became total and permanent as he failed to return to work after 120 and even 240 days after his repatriation.

Permanent disability transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body. On the other hand, total disability means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do. It does not mean absolute helplessness.⁵⁹

Accordingly, permanent total disability means the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated, but the incapacity to work.⁶⁰

Otherwise stated, "it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity."⁶¹ Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness.⁶² Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.⁶³

Applying previous pronouncements of the Court, under the circumstances of this case, Bitco is entitled to permanent and total disability benefits.

⁵⁹ *Career Philippines Shipmanagement, Inc. v. Silvestre*, 823 Phil. 44, 60 (2018).

⁶⁰ *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 244 (2015).

⁶¹ *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 347 (2006).

⁶² *Orient Hope Agencies, Inc. v. Jara*, supra note 49, at 405.

⁶³ *Sunit v. OSM Maritime Services, Inc.*, supra note 42, at 514.

Claim for Attorney's Fees.

Anent Bitco's claim for attorney's fees, Article 2208 of the New Civil Code provides that attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under the employer's liability laws. Attorney's fees is also recoverable when the respondent's act or omission has compelled the complainant to incur expenses to protect his interest.⁶⁴ Such conditions being present in the case at bar, we find that an award of attorney's fees is warranted in favor of Bitco.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated November 29, 2017 and the Resolution dated May 3, 2018, both of the Court of Appeals in CA-G.R. SP No. 151891 are **REVERSED** and **SET ASIDE** and the Decision dated January 23, 2017 of the Labor Arbiter granting Raul D. Bitco disability benefits in the amount of US\$60,000.00 and 10% thereof as and for attorney's fees, is **REINSTATED**.

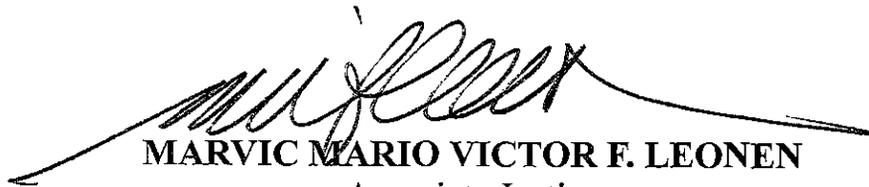
SO ORDERED.



EDGARDO L. DELOS SANTOS
Associate Justice

⁶⁴ *Zonio, Jr. v. 88 Aces Maritime Services, Inc.*, G.R. No. 239052, October 16, 2019.

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
 Associate Justice
 Chairperson


RAMON PAUL L. HERNANDO
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice


JHOSEP V. 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 MARIO VICTOR F. LEONEN
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
 Chief Justice