Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

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| **BSM CREW SERVICE CENTRE PHILS., INC., and/or BERNHARD SCHULTE SHIPMANAGEMENT (DEUTSCHLAND) GMBH & CO KG, and ELPIDIO HENRY FETIZA,**<br>*Petitioners,*<br><br>- versus -<br><br>**JAY C. LLANITA,**<br>*Respondent.* | **G.R. No. 214578**<br><br>Present:<br><br>GESMUNDO, *C.J.*,<br>*Chairperson,*<br>CAGUIOA,<br>CARANDANG,<br>ZALAMEDA, *and*<br>GAERLAN, *JJ.*<br><br>Promulgated<br>JUL 06 2021 |

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# DECISION

**GAERLAN, *J.***

Before this Court is a *Petition for Review on Certiorari* dated October 22, 2014 filed by petitioners BSM Crew Service Centre Phils., Inc. (BSM), Bernhard Schulte Shipmanagement (Deutschland) GMBH & Co KG, and Elpidio Henry Fetiza (petitioners), praying for the reversal of the Decision[1] dated May 16, 2014 and the Resolution[2] dated September 30, 2014 of the Court of Appeals (CA) in the case entitled, "***Jay C. Llanita vs. National Labor Relations Commission (First Division), BSM Crew Service Centre Phils., Inc. and/or Bernhard Schulte Shipmanagement and Elpidio Henry Fetiza,***" docketed as CA-G.R. SP No. 124975.

***The Factual Antecedents***

Respondent Jay C. Llanita (Llanita) was employed by BSM, a local manning agency, for and in behalf of Bernhard Schulte Shipmanagement, as

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1 *Rollo*, pp. 26-35; penned by Associate Justice Francisco P. Acosta with Associate Justices Normandie B. Pizarro and Myra V. Garcia-Fernandez concurring.

2 Id. at 37-38.

a seafarer on board the vessel MV "LISSY SCHULTE." Their employment contract, pre-approved by the Philippine Overseas Employment Agency (POEA), was for a period of nine months, and commenced on October 20, 2009. Llanita then boarded the vessel on November 22, 2009.[3]

On May 10, 2010, while Llanita was on board, the vessel's boiler exploded causing injury to several persons, including Llanita. Llanita was then immediately brought to Shahid Mohhamadi Hospital in Iran where he was found to suffer from cerebral concussion, fracture, and burns.[4]

Thereafter, Llanita was medically repatriated on May 21, 2010. He arrived in Manila the next day and was immediately referred to and confined at the Metropolitan Medical Center, Marine Medical Services where he was treated for several months by the company-designated physician.[5] Llanita's medical treatments and examinations, as summarized by the Labor Arbiter, are reproduced below:

> In a Medical Report dated May 24, 2010 x x x, [Llanita] was diagnosed to have suffered the following: *'Cerebral Concussion; Comminuted Fracture, Left Humerus; S/P Closed Reduction with External Fixation, Left Humerus; Fracture, Left Elbow; S/P Closed Reduction, Left Elbow'*.
>
> In a follow-up report, dated June 1, 2010 x x x, [Llanita] was shown to have underwent debridement, removal of foreign body and re-suturing of scalp laceration on May 22, 2010 and debridement and re-application of external fixative device, left humerus on May 27, 2010 and tolerated the procedures well. [Llanita] was being given medication and undergoing rehabilitation.
>
> In a second follow-up report dated June 17, 2010, x x x, [Llanita] was recommended for skin grafting of a non-healing wound on the right foot.
>
> In a third follow-up report dated June 25, 2010 x x x, [Llanita] was shown to have had his left arm x-rayed and skin grafting done on June 23, 2010.
>
> Meanwhile, on July 15, 2010, the hospital issued a medical report with the final diagnosis indicating head, scalp, elbow and leg injuries or fractures x x x.
>
> In a fourth follow-up report dated July 26, 2010 x x x, [Llanita] was declared to be in stable condition and advised to continue his rehabilitation in his home province in Cagayan de Oro. [Llanita] was discharged on July 26, 2010 and advised to come back on August 13, 2010 for re-evaluation.

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3 Id. at 7.
4 Id. at 27.
5 Id.

> **In a fifth follow-up report dated August 13, 2010 x x x, [Llanita] was assessed at "Grade 10-ankylosis of 1 shoulder and 50% Grade 14 due to scar on the right leg."** [Llanita] was advised to come back on September 3, 2010 for re-evaluation.
>
> In a sixth follow-up report dated September 4, 2010 x x x, [Llanita] was shown to have been admitted on September 3, 2010 in the hospital for removal of fixative device and physical therapy and discharged the following day. [Llanita] was again advised to continue his rehabilitation as an out-patient in Cagayan de Oro and to come back on September 24, 2010 for re-evaluation.[6] (Emphasis supplied)

As stated above, the company-designated physician made an assessment on **August 13, 2010** that Llanita was suffering from a Grade 10 and 50% of Grade 14 Disability. Such findings were reiterated by the company-designated physician in his medical report dated **September 25, 2010**.[7] Accordingly, in the medical report dated September 25, 2010, it was concluded that Llanita was suffering from a combined disability grading of:

> Grade 10 – Ankylosis of one shoulder (20.15%); and
> 50% of Grade 14 – Scar on the right leg (1.87%)
> For a total of US$11,010.00 (22.02% x US$50,000).[8]

***Proceedings before the Labor Tribunals***

On September 24, 2010, or one day **prior** to the issuance of the company-designated physician's medical report dated September 25, 2010, Llanita filed a Complaint before the Labor Arbiter. In his Complaint, Llanita argued that he is entitled to permanent and total disability benefits, considering that from the time that he was repatriated, more than 120 days have lapsed and he is still unfit to return to his duties as a seafarer.[9]

While the Complaint was pending, Llanita consulted with Dr. Ramon Y. Te, Jr. (Dr. Te), a private doctor, who issued a medical certificate dated March 1, 2011, which stated that Llanita must continue to undergo rehabilitation and physical therapy for his elbow motion to improve.[10] Notably, the medical certificate issued by Dr. Te did not state that Llanita was unfit for work, nor that he was suffering from permanent and total disability.

On March 28, 2011, the Labor Arbiter rendered his Decision, which stated that Llanita is only suffering from a Grade 10 and 50% Grade 14 Disability, and thus, not entitled to the full amount for permanent and total

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6 CA *rollo*, pp. 49-51.
7 *Rollo*, p. 8.
8 Id.
9 CA *rollo*, pp. 69-70.
10 Id. at 129.

disability benefits considering that BSM's company-designated physician issued his medical evaluation within the 120 and 240-day periods in compliance with the rules laid out in jurisprudence and labor laws.[11] Thus, the dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, judgment is hereby rendered ordering respondents to:
>
> 1. Pay complainant US$13,213.00 corresponding to disability "Grade 10-ankylosis of 1 shoulder and 50% Grade 14 for scar on the right leg"; and
>
> 2. Reimburse complainant Php34,700.00 for transportation, accommodation and medical expenses.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[12]

Aggrieved, Llanita appealed to the National Labor Relations Commission (NLRC).[13] However, in its Decision dated September 29, 2011, the NLRC found no reason to disturb the findings of the Labor Arbiter and dismissed the appeal. In its Decision, the NLRC gave credence to the medical findings of the company-designated physician, and found that Llanita's claim for total and permanent disability lacks any evidentiary support:

> We give greater weight to the assessment of the company-designated physician. There is no question that Llanita suffered injuries during the term of his contract but review of the records readily revealed that after the explosion in the vessel, he was immediately referred for treatment at the foreign port, and was subsequently medically repatriated. Upon repatriation, he was referred to a company-designated physician for examination, treatment and management at the cost to the employer and he was duly paid sickwages. After a little more than four months of medical management, he was assessed a disability grade 10–ankylosis of one of the shoulder (20.15%) and 50% grade 14–scar on the right leg (1.87%).
>
> On the other hand, the report of Llanita's doctor is based on a single visit as could easily be gleaned from the proforma medical certificate which he issued. Most importantly, said doctor did not state that Llanita is permanently and totally disabled or incapacitated to engaged [sic] in seafaring activities or any gainful occupation. He merely gave an advice for Llanita to undergo further rehabilitation or physical therapy to improve his elbow movement.
>
> Verily, Llanita's claim of total and permanent disability lacks any evidentiary support. It is a self-serving declaration of inability to work. But mere inability to work for 120 days is not enough reason to award total

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11 Id. at 57.
12 Id. at 58.
13 *Rollo*, p. 9.

> disability benefits. It must be emphasized that disability grading 1 – permanent unfitness presupposes such degree of disability wherein a seafarer cannot ever be employed. It contemplates a permanent and total loss of earning power without any hope of future employment. Such is not the situation where Llanita is into, as evidenced even by the certification of his own physician, Dr. Te.
>
> x x x x
>
> WHEREFORE, the appeal is DISMISSED for lack of merit and the March 28, 2011 Decision of the Labor Arbiter is AFFIRMED.
>
> SO ORDERED.[14]

Llanita then filed his Motion for Reconsideration dated October 25, 2011, but the same was denied by the NLRC in its Resolution dated March 26, 2012.

***Petition before the CA***

Unsatisfied with the adverse rulings of the NLRC, Llanita assailed the NLRC's Decision before the CA via Petition for *Certiorari* under Rule 65 of the Rules of Court.[15]

In his Petition for *Certiorari,* Llanita alleged that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that he is only entitled to partial disability benefits, considering that his injury lasted for a period of more than 120 days.[16] Llanita likewise argued that he is entitled to sickwage allowance, as well as moral and exemplary damages, and attorney's fees.[17]

On May 16, 2014, the CA rendered its questioned Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the assailed Decision of the NLRC dated 29 September 2011, affirming the Decision of the Labor Arbiter dated March 28, 2011, is hereby MODIFIED as follows:
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> x x x [J]udgment is hereby rendered ordering the respondents to:

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14 CA *rollo,* pp. 45-46.
15 *Rollo,* p. 9.
16 CA *rollo,* p. 26.
17 Id. at 30.

> 1. Pay petitioner Sixty Thousand US Dollars (US$60,000.00) permanent total disability benefits or its peso equivalent at the time of payment; and
>
> 2. Reimburse (petitioner) Thirty[-]Four Thousand Seven Hundred Pesos (P34,700.00) for transportation, accommodation and medical expenses.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[18]

In reversing the Decision of the NLRC, the Court of Appeals stressed that under the POEA Standard Employment Contract, the one tasked to determine whether a seafarer suffers any disability or is fit to work is the company-designated physician. However, the CA highlighted that under governing laws, the company-designated physician **must issue his or her medical certification within a certain period of time.**[19] As such, if the company-designated physician fails to issue his or her medical certification within the period prescribed, there arises a conclusive presumption that the seafarer is totally and permanently disabled:

> Again, from the aforecited governing laws and jurisprudence, **if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled**, whether total or permanent, the **conclusive presumption that the latter is totally and permanently disabled arises**. Also, under the law, there is permanent disability if a worker is unable to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.
>
> x x x x
>
> Disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability. Even in the absence of an official finding by the company-designated physician that the seafarer is unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he is unable to work for more than 120 days. What clearly determines the seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days. **In fact, even if there is already a declaration that the seafarer is fit to work by the company-designated physician, the seafarer's disability is till [sic] considered permanent and total <u>if such declaration is made belatedly (that is, more than 120 days after repatriation)</u>**, much more in this case where there is no declaration to that effect.)[20] (Emphasis and underscoring supplied, citations omitted)

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18 *Rollo*, p. 34.
19 Id. at 32.
20 Id. at. 32-34.

In its questioned Decision, the CA stated that the company-designated physician of BSM issued his medical findings **after the lapse of the 120-day period** since the medical certificate which states that Llanita was suffering from Grade 10–Ankylosis of one shoulder and 50% of Grade 14–Scar on the right leg was only issued on **September 25, 2010**, or **138 days from the onset of Llanita's disability on May 10, 2010, or 127 days from repatriation.** The CA likewise found that the company-designated physician issued another medical assessment, reiterating his findings, on **February 11, 2011**, or **277 days from the accident, or 266 days from repatriation.**[21]

Moreover, the CA found that up to the time of the issuance of the questioned Decision, BSM's company-designated physician has not yet declared that Llanita is fit to work, and Llanita is still unable to perform his job. Thus, the CA ruled that Llanita is undoubtedly suffering from a total and permanent disability, and is entitled to the full amount of benefits for total and permanent disability.[22]

Thereafter, the petitioners filed their Motion for Reconsideration dated June 5, 2014, which the CA denied in its Resolution, the dispositive portion of which reads:

> Finding no new matter of substance which would warrant the modification much less the reversal of the assailed Decision, private respondents' Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.[23]

***The Instant Petition***

In view of the adverse rulings of the CA, the petitioners came before this Court by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, where the petitioners raised the following arguments:

> **I. IN THE UNLIKELY EVENT THAT RESPONDENT SEAFARER IS ENTITLED TO ANY DISABILITY COMPENSATION, HE IS NOT ENTITLED TO FULL DISABILITY BENEFITS CONSIDERING THAT HE WAS ONLY ASSESSED BY THE COMPANY-DESIGNATED DOCTOR TO BE SUFFERING FROM A COMBINED MAXIMUM**

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21 Id. at 33.
22 Id. at 33-34.
23 Id. at 37.

**DISABILITY OF GRADE "10" AND 50% OF GRADE "14" UNDER THE POEA CONTRACT.**

**II. MERE INABILITY TO WORK FOR A PERIOD OF MORE THAN 120 DAYS DOES NOT MEAN THAT RESPONDENT SEAFARER IS SUFFERING FROM TOTAL AND PERMANENT DISABILITY, ENTITLING HIM TO THE MAXIMUM AMOUNT OF DISABILITY COMPENSATION.**[24]

On March 23, 2015, Llanita filed his Comment (to Petitioners' Petition for Review on *Certiorari*), where Llanita stated that both the company-designated physician and Dr. Te, Llanita's doctor of choice, supposedly made similar findings that Llanita can no longer go back to active sea duties after sustaining his injuries.[25] Llanita likewise argued that BSM's company-designated physician's findings are self-serving.[26] Finally, Llanita averred that he has been incapacitated to work since May 2010, and thus, he should be compensated for permanent and total disability.[27]

On November 11, 2015, the petitioners filed their Reply to Comment to Petition for Review on *Certiorari* where they cited the case of *Magsaysay Maritime Corporation v. Simbajon*,[28] and contended that: (1) disability benefits must be based on the schedule provided for in the POEA Standard Employment Contract and not the mere lapse of 120 days; and (2) the assessment made by the company-designated physician deserves more credence for being more thorough and exhaustive.[29]

## Our Ruling

We find the instant Petition meritorious.

***Questions Of Fact May Be Resolved By This Court If The Findings Of Fact Of The CA Differ From That Of The NLRC.***

Upon review of the submissions filed before this Court, it appears that the main issue to be resolved is whether Llanita's disability is considered

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24 Id. at 10.
25 Id. at 171.
26 Id. at 174.
27 Id. at. 172.
28 738 Phil. 824 (2014).
29 *Rollo*, p. 181.

permanent and total for him to be entitled to the full compensation for permanent and total disability. Hence, the issue is essentially factual in nature since it requires a review of the evidence on record.

As a general rule, only questions of law raised via a petition for review on *certiorari* under Rule 45 of the Rules of Court are reviewable by this Court.[30] It is well-settled that this Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence introduced in and considered by the tribunals below.[31] Nevertheless, such rule may be relaxed when, as in the present case, the findings of the Court of Appeals differ with that of the NLRC and the Labor Arbiter.[32] Thus, We find no legal obstacle to conduct this review.

***The CA Can Reverse And Modify The Findings Of Fact Of The NLRC If Grave Abuse Of Discretion Exists.***

To recall, after a careful review of all the evidence on record, both the Labor Arbiter and the NLRC found that Llanita is not entitled to the full amount of permanent and total disability benefits considering that the company-designated physician found that Llanita is only suffering from a Grade 10 and 50% Grade 14 Disability, and such medical findings were issued within the time prescribed by the rules.

Pertinently, the findings of fact of quasi-judicial agencies such as those of the NLRC must be accorded great respect and even finality when supported by substantial evidence.[33] Still, the CA is granted limited jurisdiction under Rule 65 to review, reverse, and modify the factual findings of the labor tribunals **when grave abuse of discretion exists**:

> x x x. We have ruled in a litany of cases that resort to judicial review of the decisions of the NLRC under Rule 65 of the Rules of Court is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the tribunal rendering them. It does not include an inquiry on the correctness of the evaluation of evidence, which served as basis for the labor official in determining his conclusion. Findings of fact of administrative officers are generally given finality. x x x.[34] (Citation omitted)

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30 *Philippine Transmarine Carriers, Inc. v. Cristino*, 775 Phil. 108 (2015), citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

31 *JR Hauling Services v. Solamo*, G.R. No. 214294, September 30, 2020; *Carbonell v. Carbonell-Mendes*, 762 Phil. 529 (2015); *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

32 *Aldaba v. Career Philippines Ship-management, Inc.*, 811 Phil. 486, 494-495 (2017).

33 *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541(2007); *Castillo v. National Labor Relations Commission*, 367 Phil. 605 (1999); *Cabalan Pastulan Negrito Labor Association v. National Labor Relations Commission*, 311 Phil. 744 (1995).

34 *Libres v. National Labor Relations Commission*, 367 Phil. 180,187-88 (1999).

Such ruling is reiterated in *Hubilla v. HSY Marketing Ltd., Co.*,[35] where this Court concluded that the factual findings of the labor tribunals may be overturned when there is an arbitrary and whimsical disregard of the evidence on record:

> Factual findings of labor officials exercising quasi-judicial functions are accorded great respect and even finality by the courts when the findings are supported by substantial evidence. Substantial evidence is "the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Thus, in labor cases, the issues in petitions for *certiorari* before the Court of Appeals are limited only to whether the National Labor Relations Commission committed grave abuse of discretion.
>
> However, this does not mean that the Court of Appeals is conclusively bound by the findings of the National Labor Relations Commission. **If the findings are arrived at arbitrarily, without resort to any substantial evidence, the National Labor Relations Commission is deemed to have gravely abused its discretion**:
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> > On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that **these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The [Court of Appeals] can then grant a petition for *certiorari* if it finds that the [National Labor Relations Commission], in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence**. It is within the jurisdiction of the [Court of Appeals], whose jurisdiction over labor cases has been expanded to review the findings of the [National Labor Relations Commission].[36] (Emphasis supplied, citations omitted)

Therefore, before the CA may reverse and modify the factual findings of the labor tribunals, there must be a clear showing of grave abuse of discretion on the part of the NLRC. Otherwise stated, the CA's inquiry in petitions for *certiorari* under Rule 65 must be limited to whether the NLRC committed grave abuse of discretion in arriving at its factual findings.[37]

Applying the foregoing in the present case, We fail to see any grave abuse of discretion on the part of the NLRC to justify the CA's modification and reversal of the NLRC's factual findings, considering that the NLRC

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35 823 Phil. 358, 375 (2018).
36 Id. at 374-375.
37 Id. at 375-376.

judiciously reviewed the records of the case and its ruling was based on substantial evidence.

***In Disability Compensation, The Company-Designated Physician Is Tasked To Assess The Seafarer's Disability Within The Period Prescribed By The Rules.***

As correctly stated by the CA, the one tasked to determine whether the seafarer is suffering from any disability or is fit to work is the company-designated physician, and such company-designated physician must issue his or her final assessment within a certain period of time.[38] Notably, this Court has already had the occasion to clarify and summarize the rules governing a seafarer's disability claims vis-à-vis the period of time within which the company-designated physician must issue his or her medical findings:

> In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules x x x shall govern:
>
> 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.[39] (Emphasis supplied)

Prescinding from the foregoing, it is clear that the company-designated physician has an initial period of 120 days within which to issue a final and definitive assessment of the seafarer's disability. Nevertheless, if the seafarer is still required to undergo treatment after the lapse of the 120-day period,

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38 *Rollo*, p. 32.

39 *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362-363 (2015).

such period may be extended to 240 days. If the company-designated physician still fails to give a final assessment within this extended period and the seafarer's medical condition remains unresolved, the seafarer's disability shall be deemed permanent and total. **Simply put, the presumption that the seafarer is suffering from a permanent and total disability after the lapse of the 120-day/240-day period only arises when the company-designated physician fails to issue a medical evaluation of the fitness or unfitness of the seafarer within the prescribed period.** If within such period, the company-designated physician issues a final and definitive evaluation that the seafarer is only suffering from permanent and partial disability (such as in this case), then a seafarer's claim for total and permanent disability cannot be sustained. Clearly, therefore, the mere lapse of the 120-day/240-day period does not automatically entitle a seafarer to permanent and total disability benefits.

In the instant case, it appears that the company-designated physician was able to certify that Llanita was only suffering from a Grade 10 and 50% Grade 14 Disability **within the time prescribed by the rules.**

As borne by the records, Llanita was injured on May 10, 2010 and medically repatriated on May 21, 2010. Llanita then underwent several consultations and treatments over the course of several months. On **August 13, 2010** or **95 days** from the time of Llanita's injury and **84 days** from the time he was medically repatriated, the company-designated physician made his assessment that Llanita was suffering from a Grade 10 and 50% Grade 14 Disability. It bears emphasis that such disability gradings are **not considered as permanent and total disability.**

However, since Llanita was still required to undergo medical treatment, the company-designated physician continued to observe and treat Llanita. Finally, on **September 25, 2010** the company-designated physician reiterated his findings that Llanita was suffering from a Grade 10 and 50% Grade 14 Disability. This final and definitive medical assessment was issued **138 days** from Llanita's injury, or **127 days** from repatriation.

Undoubtedly, the company-designated physician complied with the 120-day/240-day period prescribed by the rules when he issued his medical findings on August 13, 2010 and September 25, 2010. Considering that the company-designated physician timely made a final medical evaluation on Llanita's condition, Llanita's claim for permanent and total disability that would entitle him to the maximum disability benefit cannot be sustained.

Notably, and in support of its conclusion that Llanita is entitled to permanent and total disability benefits, the CA mistakenly stated in its questioned Decision that the company-designated physician's second medical assessment was made on **February 11, 2011**, or 277 days from the accident and 266 days from repatriation, **which is after the lapse of the 240-day period.**[40] However, a review of the records reveals that the February 11, 2011 medical certificate was only issued by the company-designated physician because the same was requested by BSM's counsel:

> Attn : Atty. Pedrito Faytaren/
> Atty. Charles Jay Dela Cruz
>
> Cc : Ms. Cecil De Villa
> P&I Supervisor
> BSM Crew Service Centre Phils., Inc.
>
> Re : AB Jay C. Llanita
> Lissy Shulte
> BSM Crew Service Centre Phils., Inc.
>
> This is with regards to your query regarding the case of AB Jay C. Llanita who was initially seen and admitted here at Metropolitan Medical Center on May 22, 2010 x x x.
>
> Based on his last follow-up on September 25, 2010, the specialist opines that suggested disability grades are Grade 10 – ankylosis of 1 shoulder and 50% Grade 14 due to scar on the right leg.
>
> For your perusal.[41]

As can be gleaned from above, such medical certificate was only issued because BSM's counsel inquired about Llanita. Moreover, such medical certificate merely restated the medical findings of the company-designated physician which were made on **September 25, 2010, during the last check-up of Llanita**. Clearly, therefore, the CA erred when it used the February 11, 2011 medical certificate as the reckoning point to count the 120-day/240-day period prescribed under the rules since such medical certificate merely restated the findings priorly and timely made, and no further check-ups were required from Llanita after the September 25, 2010 medical certificate was issued.

In sum, it cannot be disputed that the company-designated physician complied with the 120-day/240-day requirement under the rules when he issued his medical assessment that Llanita is suffering from Grade 10 and 50% Grade 14 Disability. Considering that the company-designated physician was

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40 *Rollo*, p. 33.
41 CA *rollo*, p. 181.

able to make a final and definitive medical assessment within the time prescribed, Llanita is evidently not entitled to permanent and total disability benefits. To reiterate, the mere lapse of the 120-day/240-day period does not automatically entitle Llanita of permanent and total disability benefits because the presumption of permanent and total disability after the lapse of the 120-day/240-day period only comes into play when no medical assessment is issued within such period.

***The Medical Findings of Company-Designated Physicians Are Not Automatically Binding, And The Same Can Be Questioned By The Seafarer.***

As stated above, the task of determining a seafarer's fitness or unfitness to work falls on the company-designated physician. Nonetheless, this Court has ruled on several occasions that the medical findings of the company-designated physician is not automatically final or binding since a seafarer has the prerogative to consult with a doctor of his or her choice:

> Jurisprudence is replete with pronouncements that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. It is his findings and evaluations which should form the basis of the seafarer's disability claim. **His assessment, however, is not automatically final, binding or conclusive on the claimant, the labor tribunal or the courts, as its inherent merits would still have to be weighed and duly considered. The seafarer may dispute such assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice.** x x x.[42] (Emphasis supplied, citations omitted)

Thus, if a seafarer disagrees with the medical findings made by the company-designated physician, such seafarer may consult with a doctor of his or her choice, and ask for a second opinion. Thereafter, if the findings of the seafarer's doctor of choice differs from the findings made by the company-designated physician, the dispute must be referred to a third doctor, whose evaluation shall be final and binding on both parties.[43]

In the present case, BSM's company-designated physician timely issued his certification that Llanita was suffering from a Grade 10 and 50%

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42 *Andrada v. Agemar Manning Agency, Inc.*, 698 Phil. 170, 183 (2012).

43 *Dionio v. Trans-Global Maritime Agency, Inc.*, G.R. No. 217362, November 19, 2018; *Ilustricimo v. NYK-Fil Ship Management, Inc.*, 834 Phil. 693 (2018).

Grade 14 Disability. Since Llanita was unsatisfied with such findings, he hastily filed his Complaint before the Labor Arbiter.

While the Complaint was pending and during the submission of Position Papers before the Labor Arbiter, Llanita belatedly consulted with his doctor of choice, Dr. Te, who issued a medical certificate on March 1, 2011. Relevantly, and contrary to what Llanita wants this Court to believe, **nowhere in Dr. Te's medical certificate did it state that Llanita was suffering from a permanent and total disability nor was he unfit for work.** As such, the medical certificate presented by Llanita, which to reiterate, was only based on one visit, deserves scant consideration compared to the medical findings of the company-designated physician, whose findings were based on several months of evaluation and treatments. It is likewise worthy to note that the supposed conflicting assessments were not referred to a third doctor.

Given all the foregoing, this Court must uphold the medical findings of BSM's company-designated physician that Llanita is only suffering from a Grade 10 and 50% Grade 14 Disability considering that Llanita did not properly question the same. Worse, it must be stressed that Llanita's doctor of choice did not even make a definitive and final assessment that Llanita is unfit for work and is permanently and totally disabled.

All said, this Court holds that the CA clearly erred when it awarded full disability benefits to Llanita considering that there is no iota of evidence to support the same.

**WHEREFORE**, premises considered, the instant Petition for Review on *Certiorari* dated October 22, 2014 filed by petitioners BSM Crew Service Centre Phils., Inc., Bernhard Schulte Shipmanagement (Deutschland) GMBH & Co KG, and Elpidio Henry Fetiza is **GRANTED**. The Decision dated May 16, 2014 and the Resolution dated September 30, 2014 of the Court of Appeals are hereby **REVERSED** and **SET ASIDE**, and the Decision dated September 29, 2011 of the National Labor Relations Commission is **REINSTATED**.

**SO ORDERED.**

**SAMUEL H. GAERLAN**
Associate Justice

WE CONCUR:

**ALEXANDER G. GESMUNDO**
Chief Justice
Chairperson

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

**ROSMARI D. CARANDANG**
Associate Justice

**RODIL V. ZALAMEDA**
Associate Justice

## CERTIFICATION

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

**ALEXANDER G. GESMUNDO**
Chief Justice