Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALEXEI JOSEPH P. GROSSMAN, Petitioner, - versus - **NORTH SEA MARINE SERVICES CORPORATION, V. SHIPS LEISURE S.A.M., and/or SILVERSEA CRUISES LTD.,** Respondents.	**G.R. No. 256495** Present: LEONEN, *S.A.J.*, Chairperson LAZARO-JAVIER, M. LOPEZ, J. LOPEZ, and KHO, JR., *JJ.* Promulgated: DEC 07 2022

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DECISION

KHO, JR., *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 28, 2020 and the Resolution[3] dated May 21, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 159377 which reversed the Decision[4] dated September 28, 2018 and the Resolution[5] dated January 15, 2019 of the Office of the Voluntary Arbitrators (VA) in AC-980-RCMB-NCR-MVA-020-04-01-2018, and accordingly, dismissed the complaint for

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1 *Rollo*, pp. 11-47.

2 Id. at 74-85. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Celia C. Librea-Leagogo and Eduardo B. Peralta, Jr. concurring.

3 Id. at 52-53. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edwin D. Sorongon and Eduardo B. Peralta, Jr. concurring.

4 Id. at 290-310. Signed by Chairman MVA Reynaldo R. Ubaldo and Member MVA Walfredo D. Villazor. Member MVA Gregorio B. Sialsa dissented, id. at 311-325.

5 Id. at 250-251.

payment of disability benefits filed by petitioner Alexei Joseph P. Grossman (petitioner).

The Facts

On February 26, 2016, respondents V. Ships Leisure S.A.M., 'Les Industries', through its agent North Sea Marine Services Corporation (North Sea; collectively, respondents), hired petitioner to work as Galley Utility on board the vessel Silver Whisper for a period of eight (8) months, plus or minus one (1) month. Petitioner's contract is covered by the International Transport Workers' Federation (ITF) Cruise TCC-FIT/CISL Collective Bargaining Agreement (CBA).[6]

Sometime in July 2016, while on board the vessel, petitioner felt pain in his left knee that radiated to his leg and thigh. Petitioner reported his condition to the ship doctor who referred him for medical attention in Norway on July 20, 2016 and in Russia on August 1, 2016. Petitioner was diagnosed to be suffering from "*Tumor of distal metaepiphysis of left femur, which damage medial condyle with lysis of cortical rim with soft tissue component[.] Extremely high risk for pathological fracture.*"[7]

Petitioner's condition led to his repatriation to the Philippines on August 5, 2016.

On **August 8, 2016**, petitioner reported to respondents' office who thereafter referred him to the company-designated physicians of Trans Global Health System, Inc. for evaluation and treatment. After examination of the tests and findings of the foreign doctors, Dr. Fidel Chua (Dr. Chua) concluded that petitioner has Giant Cell Tumor (GCT). Petitioner was then referred to Dr. Tiong Sam Lim (Dr. Lim) of the Chinese General Hospital who concurred with Dr. Chua's findings and suggested the resection of petitioner's tumor and bone grafting.[8]

On August 17, 2016, petitioner underwent a procedure for the excision of left femur mass and curettage with application of bone cement.[9] The surgery resulted in the deformity of petitioner's left leg, as well as muscle atrophy, which caused difficulty in walking. Petitioner thereafter underwent physical therapy from September 2016 until April 2017.[10]

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6 Id. at 74. See also id. at 350-365.
7 Id. at 75. See also id. at 443.
8 Id.
9 See Operative Record Sheet, id. at 375.
10 Id. at 17.

In a **Notice**[11] **dated April 11, 2017**, petitioner was required to report for follow-up treatment and re-evaluation on May 12, 2017. When petitioner reported for re-evaluation on **May 12, 2017**, Dr. Chua *allegedly* declared him unfit to work and assessed his medical condition as **not work-related. Dr. Chua, however, did not issue any medical report of said findings and assessment.**[12]

Thereafter, on **March 2, 2018**, Dr. Lim executed an Affidavit[13] stating that *GCT is a benign tumor which histogenesis remains unclear. The cause is unknown but it is not known to be caused by trauma, environmental factors, or diet.* Additionally, Dr. Lim noted that it is *not work-related and not related to the seafaring profession, and that stress and work strain are not factors in the development of GCT.*

Meanwhile, since petitioner was still having difficulty of movement and pain in his left knee, he sought medical assistance from an orthopedic specialist, Dr. Renato P. Runas (Dr. Runas). In his Medical Evaluation Report,[14] Dr. Runas stated that as of the date of examination on August 23, 2017, petitioner still complained of pain in his deformed knee; and that physical therapy was no longer a viable option to regain full extension as it may result to fracture. As such, Dr. Runas declared petitioner "*permanently and totally unfit to work in any capacity as a seafarer.*"[15]

Armed with this evaluation, petitioner, through counsel, sent a letter[16] dated September 18, 2017 to North Sea requesting a meeting to discuss the payment of disability benefits, but to no avail. Thus, petitioner filed a Notice to Arbitrate[17] before the Regional Conciliation and Mediation Board-NCR wherein the parties agreed to undergo voluntary arbitration.

Petitioner claimed that his illness is work-related inasmuch as he was declared fit to work during the pre-employment medical examination. He also averred that the presumption of work-relation and compensability must be upheld as GCT has no known cause and his employer failed to show contrary evidence. Further, **petitioner pointed out that Dr. Chua's assessment was issued beyond the 240-day period provided under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC); thus, his disability should be deemed total and permanent**. Lastly, petitioner argued that he is entitled to moral and exemplary damages, as well as attorney's fees, due to respondents' fraudulent intent to evade their contractual obligations and continued refusal to pay the disability benefits.[18]

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11 Id. at 378.
12 Id. at 17 and 75.
13 Id. at 454.
14 Id. at 379-380.
15 Id. at 380.
16 Id. at 381-383.
17 Id. at 494.
18 Id. at 75-76. See also petitioner's Position Paper, id. at 326-347.

For their part, respondents argued that the provisions of the CBA cannot apply to petitioner's claim since his illness was not caused by accident onboard Silver Whisper. They also claimed that his illness is not compensable under the POEA-SEC since the Court already ruled[19] that GCT is not a work-related illness. Lastly, they argued that Dr. Lim's assessment must prevail as he provided extensive treatment to petitioner, in contrast with Dr. Runas whose medical evaluation was based on a single examination of petitioner and did not indicate any disability grading.[20]

The VA Ruling

In a Decision[21] dated September 28, 2018, the VA found petitioner totally and permanently disabled, and accordingly, ordered respondents to pay the former the full disability benefits under the POEA-SEC equivalent to US$60,000, plus six percent (6%) interest per annum, and ten percent (10%) attorney's fees based on the total judgment award.[22] The VA, however, dismissed petitioner's other claims for lack of merit. The VA ruled that while petitioner is not entitled to disability benefits under the CBA since the same applies only to accident-related illnesses or injuries, he is nonetheless entitled to full disability benefits under the POEA-SEC.[23]

The **VA declared that there was no final assessment made by the company-designated physicians with respect to petitioner's disability within 120 days, and even 240 days, from the commencement of his treatment as required by the law and jurisprudence**. In this regard, while the VA noted the Medical Reports dated December 9, 2016[24] and December 27, 2016[25] issued by Dr. Chua, it nonetheless found these insufficient considering that **nowhere in said reports did Dr. Chua categorically state that petitioner's disability was not work-related nor did he provide sufficient justification for the extension of the 120-day period or a final, definite, and conclusive assessment of petitioner's disability**.[26]

Moreover, the VA observed that the monitoring of petitioner's condition continued until May 12, 2017, based on the Notice of Follow-Up

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19 Id. at 76, citing *OSG Ship Management Manila, Inc. v. Monje*, 820 Phil. 142 (2017) [Per J. Reyes, Jr., Second Division].

20 Id. See also respondents' Position Paper, id. at 386-418.

21 Id. at 290-310.

22 Id. at 309.

23 Id. at 308-309.

24 See Medical Report of Dr. Chua, id. at 449. It pertinently stated: "[c]onsidering his illness, he may no longer can (sic) go back for sea duty.

He is for re-evaluation on January 6, 2017."

25 See Medical Report of Dr. Chua, id. at 450. It pertinently provides: "[b]ased on the last report of the Specialist, the above subject may no longer can (sic) go back to work for sea duty.

Giant cell tumor is not listed in the POEA Contract and Disability cannot be given."

26 Id. at 296.

Treatment, but even then, no final and definitive medical report was issued and submitted by respondents. Since the company-designated physician failed to issue within the 120/240-day period a final and definitive assessment of petitioner's disability, which remained unresolved, **the VA concluded that the same is considered, by operation of law, as total and permanent.**[27]

Finally, the VA noted that while respondents, through the Affidavit issued by Dr. Lim, declared petitioner's GCT as not work-related, said declaration was made only on March 2, 2018. Thus, under the circumstances, the VA opined that the declaration of petitioner's disability as not work-related is **nothing more than a mere afterthought** which can no longer overcome petitioner's entitlement to disability benefits as confirmed by law prior to such declaration. At any rate, the VA pointed out that the declaration by the company-designated physician that petitioner's disability is not work-related is not conclusive and final as the same will still be subject to the court's determination and subject to the provisions of the law.[28]

Dissatisfied with the ruling, respondents moved for reconsideration[29] which was denied in a Resolution[30] dated January 15, 2019. Thus, they filed a petition for review[31] under Rule 43 of the Rules of Court before the CA.

The CA Ruling

In a Decision[32] dated January 28, 2020, the CA reversed the VA's ruling, and accordingly, dismissed petitioner's claim.[33] It held that while petitioner's disability was presumed work-related pursuant to Section 32-A of the POEA-SEC, respondents nonetheless successfully overthrew this presumption based on the explanations given by Dr. Chua, in his Medical Report dated December 27, 2016, and by Dr. Lim, in his Affidavit dated March 2, 2018.[34]

Moreover, the CA ruled that petitioner failed to prove by substantial evidence that the conditions of his work onboard the vessel as Galley Utility caused or, at least, increased the risk of contracting GCT. As such, petitioner is not entitled to his disability benefits claim. This notwithstanding, the CA awarded petitioner financial assistance in the amount of US$3,000.00 in the interest of equity and compassionate justice.[35]

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27 Id. at 296-300.
28 Id. at 300-308.
29 Id. at 252-277.
30 Id. at 250-251.
31 Id. at 205-249.
32 Id. at 74-85.
33 Id. at 82.
34 Id. at 79-80.
35 Id. at 81-82.

Aggrieved, petitioner sought reconsideration[36] but was denied in a Resolution[37] dated May 21, 2021. Hence, the present petition.

The Issue Before the Court

The issue before the Court is whether or not the CA reversibly erred in declaring that petitioner is not entitled to total and permanent disability benefits under the POEA-SEC.

Petitioner argues that respondents failed to overthrow the disputable presumption of work-relation accorded by law to his disability. He points out that since there is no known cause of GCT, as in fact stated by Dr. Lim, there is therefore no basis to support the latter's conclusion that the same could not have been caused by his work on board the vessel.

Petitioner further argued that Dr. Lim's opinion cannot cure the absence of a final and definitive medical assessment from Dr. Chua within the periods provided under the law. In the absence of such final and definitive assessment, the disputable presumption of work-relation stands and thus, rendered his disability total and permanent. Besides, petitioner argues that the Court, in *Panotes v. ECC*,[38] had already ruled that the fact of unknown cause of a disease creates a probability that the working conditions could have increased the risk of contracting said disease. At any rate, petitioner asserts that he has sufficiently established the reasonable connection between his work and his disability, entitling him to his claim. Lastly, petitioner maintains that he is entitled to ten percent (10%) attorney's fees, as well as six percent (6%) interest per annum on the total judgment award.

For their part,[39] respondents echo the CA's ruling that petitioner failed to prove that his GCT was caused by the working conditions onboard the vessel. Additionally, they point out that Dr. Chua had already finally and definitively assessed petitioner's disability as not work-related and compensable under the POEA-SEC in the Medical Report dated December 27, 2016, and which assessment was supplemented by Dr. Lim's explanation in his March 2, 2018 Affidavit.[40]

Further, respondents argue that petitioner never complied with his obligation to refer the conflicting medical findings of Dr. Chua and Dr. Lim, on the one hand, and Dr. Runas, on the other hand, to a third-doctor as required by the POEA-SEC. Hence, the former's assessments must prevail. Finally, they aver that under Section 20-A of the POEA-SEC, the disability benefits

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36 Id. at 60-72.
37 Id. at 52-53.
38 213 Phil. 426 (1984).
39 See Comment dated January 6, 2022. *Rollo*, pp. 503-541.
40 Id. at 454.

compensation shall be based solely on the schedule of benefits provided under Section 32. Since no disability grading was given by any of the doctors, then he is not entitled to total and permanent disability benefits.

The Court's Ruling

The petition is meritorious.

At the outset, it must be reiterated that only questions of law may be raised in a petition under Rule 45 of the Rules of Court. The Court is not a trier of facts. Factual findings of administrative or quasi-judicial bodies, like voluntary arbitrators, are generally accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[41] However, the Court allows relaxation of this rule where, as in this case, the factual findings are conflicting.[42] There being a variance in the findings of fact of the VA, on the one hand, and the CA, on the other, the Court deems it necessary to re-assess these factual findings for the just resolution of the case.

Proceeding to the merits of the case, it is basic that a seafarer's entitlement to disability benefits is a matter governed not only by medical findings, but also by law and contract.[43] By law, the pertinent statutory

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41 See *Guadalquiver v. Sea Power Shipping Enterprise, Inc.*, G.R. No. 226200, August 5, 2019, 912 SCRA 73, 82 [Per J. Inting, Third Division]; and *OSG Ship Management Manila, Inc. v. Monje*, supra note 19, at 150-151.

42 The other exceptions to the rule are:
(1) when the findings are grounded entirely on speculations, surmises or conjectures;
(2) when the inference made is manifestly mistaken, absurd or impossible;
(3) when there is grave abuse of discretion;
(4) when the judgment is based on a misapprehension of facts;
(5) when the findings of fact are conflicting;
(6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
(7) when the findings are contrary to that of the trial court;
(8) when the findings are conclusions without citation of specific evidence on which they are based;
(9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;
(10) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;
(11) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
(12) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.
(See *Adriano v. Lasala*, 719 Phil. 408, 416-417 [2013] [Per J. Mendoza, Third Division], citing *Development Bank of the Philippines v. Traders Royal Bank*, 642 Phil. 547, 556-557 [2010] [Per J. Carpio, Second Division])

43 See *Career Phils. Shipmanagement, Inc. v. Tiquio*, G.R. No. 241857, June 17, 2019, 904 SCRA 387, 398-399 [Per J. Perlas-Bernabe, Second Division]; *Olidana v. Jebsens*, 772 Phil. 234, 245 (2015) [Per J. Mendoza, Second Division]; and *CF Sharp Crew Management, Inc. v. Taok*, 691 Phil. 521, 533 (2012) [Per J. Reyes, Second Division]. See also *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 180 (2015) [Per J. Carpio, Second Division].

provisions are Articles 197 to 199[44] (formerly Articles 191 to 193) of the Labor Code, as amended,[45] in relation to Section 2 (b),[46] Rule VII and Section 2 (a),[47] Rule X of the Amended Rules on Employees Compensation (AREC). Under Article 198 (c) (1) of the Labor Code, the disability **shall be deemed total and permanent when the "[t]emporary total disability [lasts] continuously for more than one hundred twenty days,** except as otherwise provided for in the [AREC]." Under the AREC, Section 2 (b), Rule VII, in relation to Section 2, Rule X thereof, provides that **the disability is total and permanent if, as a result of the injury or sickness, the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except where the injury or illness still requires medical attendance beyond 120 days but not to exceed 240 days.**

On the other hand, by contract, the pertinent provisions are: (*a*) the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; (*b*) the Collective Bargaining

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44 ARTICLE 197. [191] *Temporary Total Disability*. – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than Ten Pesos nor more than Ninety Pesos, nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x

ARTICLE 198. [192] *Permanent Total Disability*. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: *Provided*, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x x x x

(c) the following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x

ARTICLE 199. [193] *Permanent Partial Disability*. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability.

x x x x (Underscoring supplied)

45 See Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

46 SECTION 2. *Disability*. – x x x

(b) **A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days**, except as otherwise provided for in Rule X of these Rules. (Emphasis supplied)

47 SECTION 2. *Period of entitlement*. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Agreement (CBA), if any; and (*c*) the employment agreement between the seafarer and his employer.[48]

In this respect, the Court recognizes that petitioner's CBA does not apply in this case since as found by the VA, which is not contested, the same applies only to accident-related illnesses or injuries. On the other hand, since petitioner's contract of employment with respondents was executed in 2016, the 2010 POEA-SEC governs the procedure for his claim for disability benefits, to wit:

> SEC. 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
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> **The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract** are as follows:
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> 1. x x x x
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> 2. x x x [I]f after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
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> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. x x x
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> x x x x
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.
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> x x x x

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[48] See *Career Phils. Shipmanagement, Inc. v. Tiquio*, supra note 43, at 400.

> 4. **Those illness not listed in Section 32 of this Contract are disputably presumed as work-related.**
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> 5. x x x x
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> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
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> **The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.** (Emphases supplied)

Thus, under Section 20-A of the POEA-SEC, the employer shall be liable for disability benefits only when (*i*) the seafarer suffers a work-related injury or illness, and (*ii*) the illness or injury existed during the term of the seafarer's employment contract. The POEA-SEC defines work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[49] With respect to illnesses not listed under Section 32-A, Section 20-A (4) of the POEA-SEC provides for a disputable presumption of work-relation such that all illnesses (or injuries) that occur during the period of the employment are presumed work-related.

Given the legal presumption of work-relation, our Rules on Evidence allows the seafarer to rely on and invoke the same to establish a fact in issue **with no corresponding obligation to present any evidence**, at the first instance, to claim for disability benefits. Rather, **the burden lies on the employer to prove that the illness is not work-related and therefore, not compensable.**[50] **It is only after the employer discharges its burden to controvert the presumption of work-relation that the seafarer is charged with the burden to go forward with the evidence proving work-relation and his/her compliance with the conditions for compensability found in Section 32 of the POEA-SEC.**[51] **In the absence of contrary evidence on the part of the employer, the legal presumption of work-relation prevails.**[52]

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49 See Paragraph 16 of the Definition of Terms of the POEA-SEC.

50 See *Salas v. Transmed Manila Corporation*, G.R. No. 247221, June 15, 2020 [Per J. Perlas-Bernabe, Second Division], citing *Romana v. Magsaysay Maritime Corporation*, 816 Phil. 194, 203-204 (2017) [Per J. Perlas-Bernabe, First Division].

51 See *Phil-man Marine Agency, Inc. v. Dedace, Jr.*, 835 Phil. 536, 547 (2018); and *Career Phils. Shipmanagement, Inc. v. Tiquio*, supra note 43, at 408.

52 See *Salas v. Transmed Manila Corporation*, supra note 50; *Phil-man Marine Agency, Inc. v. Dedace*, id.; and *Bahia Shipping Services, Inc. v. Castillo*, G.R. No. 227933, September 2, 2020.

Correlatively, the legal presumption of work-relation also automatically triggers the obligation of the employers under Section 20-A of the POEA-SEC to provide seafarers medical assistance and benefits, in cases of permanent disability, based on the gradings provided under Section 32. Thus, in *Pelagio v. Philippine Transmarine Carriers, Inc.* (*Pelagio*),[53] through Associate Justice Estela M. Perlas-Bernabe, the Court reiterated the following guidelines that govern seafarers' claims for permanent and total disability benefits:

> 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;
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> 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;
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> 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
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> 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**.[54] (Emphasis and underscoring in the original)

Verily, *Pelagio* categorically instructs that "the company-designated physician is required to issue a **final and definite assessment** of the seafarer's disability rating within the aforesaid 120/240-day period; otherwise, the opinions of the company-designated and the independent physicians are **rendered irrelevant** because the seafarer is already conclusively presumed to be suffering from a [work-related] permanent and total disability, and thus, is entitled to the benefits corresponding thereto."[55]

In this respect, the Court emphasizes that in order to be conclusive, the final and definite disability assessment **should not only inform the seafarers of their fitness or non-fitness to resume their duties, as well as the perceived level or rating of their disability, or whether such illness is work-related;**[56] likewise, **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 they have exhausted all possible**

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53 G.R. No. 231773, March 11, 2019, 895 SCRA 546 [Per J. Perlas-Bernabe, Second Division].

54 Id. at 556, citing *Jebsens Maritime, Inc. v. Rapiz*, 803 Phil. 266, 273 (2017) [Per J. Perlas-Bernabe, First Division].

55 Id. at 557; citations omitted.

56 See *Salas v. Transmed Manila Corporation*, supra note 50, citing *Ampo-on v. Reinier Pacific International Shipping, Inc.*, G.R. No. 240614, June 10, 2019, 904 SCRA 125, 136-137 [Per J. Perlas-Bernabe, Second Division].

treatment options within the periods allowed by law.[57] More importantly, **it should sufficiently explain and justify a finding of non-work relation that could preclude the seafarer's claim for disability benefits.**[58]

Further, case law provides that the obligation of the company-designated physician to issue a final and definite assessment carries the correlative obligation to **fully and properly inform and explain to the seafarer his findings and assessment**. This requirement of proper notice is necessary considering the process laid down in Section 20-A of the POEA-SEC which the seafarers, the employers, and the latter's agents must comply with, failing at which, could adversely affect the non-compliant party. Thus, in *Gere v. Anglo-Eastern Crew Management Phils. Inc.*,[59] through Associate Justice Andres B. Reyes, Jr., the Court held that the "the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to [them] by any other means sanctioned by present rules;"[60] failing at which, they fail to comply with the due process requirement and consequently, with the foregoing guidelines.

Finally, *Olidana v. Jebsens Maritime, Inc.*,[61] through Associate Justice Jose C. Mendoza, settles that "**before the disability gradings under Section 32 should be considered, these disability ratings should be properly established and contained in a valid and timely medical report of a company-designated physician.**"[62] In the absence of a timely issued final and definite assessment, any disability grading issued cannot be seriously appreciated.[63]

In this case, it is undisputed that petitioner's disability occurred during the term of his employment contract with respondents. The controversy lies on the characterization of petitioner's disability as either work-related or not. To recall, the VA – whose findings petitioner echoes – found the latter entitled to total and permanent disability benefits because respondents failed to rebut the legal presumption that petitioner's GCT is work-related, considering that **the company-designated physician failed to issue a final, conclusive, and definite assessment of petitioner's disability within the 120/240-day period provided under the law.**

On the other hand, the CA – with which respondents agree – dismissed petitioner's claim on the ground that his disability is not work-related and

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57 *Jebsens Maritime, Inc. v. Mirasol*, G.R. No. 213874, June 19, 2019, 905 SCRA 113, 121 [Per J. Caguioa, Second Division].

58 See *Salas v. Transmed Manila Corporation*, supra note 50, citing *Ampo-on v. Reinier Pacific International Shipping, Inc.*, supra note 56; and *Carcedo v. Maine Marine Philippines, Inc.*, 758 Phil. 166, 183 (2015) [Per J. Carpio, Second Division].

59 830 Phil. 695 (2018) [Per J. Reyes, Jr., Second Division].

60 Id. at 706.

61 772 Phil. 234 (2015) [Per J. Mendoza, Second Division].

62 Id. at 245.

63 See *Parce v. Magsaysay Maritime Corporation*, G.R. No. 241309, November 11, 2021.

thus, not compensable, **without, however, ruling on the consequent effect thereon of the company-designated physician's failure to issue the final and definite assessment within the prescribed periods**. In this regard, respondents additionally argue that under Section 20-A of the POEA-SEC, the disability benefits compensation shall be based solely on the schedule of benefits provided under Section 32, absent which, he shall not be entitled to any disability benefits.

The Court fully agrees with the VA. Records show that as of April 11, 2017[64] – or 244 days from his first consultation with Dr. Chua on August 8, 2016 and the date of the latest report/notice issued with respect to petitioner's medical condition – petitioner was still undergoing treatment and monitoring by the company-designated physicians. In fact, petitioner was still required to report back for a follow-up treatment and re-evaluation on May 12, 2017. And despite the cessation of petitioner's treatment on May 12, 2017, or 265 days from August 8, 2016, neither Dr. Chua nor Dr. Lim issued the required final, definite, and conclusive assessment of petitioner's disability. **Since there is no final and definite assessment issued by the company-designated physicians within the prescribed periods, respondents failed to discharge their burden of controverting the presumption of work-relation. Consequently, the obligation of petitioner to present evidence proving work-relation did not arise.**

On this score, the Court notes that in denying petitioner's claim, the CA relied on the Medical Report issued by Dr. Chua on December 27, 2016 (or 141 days from August 8, 2016), stating that "*[b]ased on the last report of the Specialist, the above subject may no longer can [sic] go back to work for sea duty. Giant cell tumor is not listed in the POEA Contract and Disability cannot be given.*"[65] The CA likewise referred to the Affidavit issued by Dr. Lim on March 2, 2018 explaining the nature and cause of petitioner's illness. To the Court's mind, however, **these documents were insufficient to constitute as the final and definite assessment that the law, POEA-SEC, and jurisprudence require.**

For one, on its face, the December 27, 2016 Medical Report provides no categorical statement that petitioner is no longer fit to resume duties. Moreover, while it indicated that GCT is not listed in the POEA-SEC, said report likewise provides no clear and definite declaration that GCT is not work-related, with the supporting reasons or explanations for this conclusion. It bears stressing that illnesses not listed as occupational diseases under Section 32 of the POEA-SEC are presumed work-related, and thus, the employer bears the burden of proving otherwise, failing at which, the legal presumption of work-relation stands.

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[64] See Notice of Treatment, *rollo*, p. 378.

[65] Id. at 450.

Additionally, the Court observes that the December 27, 2016 Medical Report was not meant to inform and explain to petitioner the assessment of Dr. Chua of the former's disability. **In fact, there was hardly any indication in the records that respondents informed petitioner of the company-designated physician's final and definite assessment at any time within the prescribed periods.** Rather, said report was clearly addressed solely to North Sea and its officials to apprise them of the status of petitioner's treatment. To reiterate, **the company-designated physician must issue a medical certificate, which should be personally received by the seafarer, failing at which, they fail to comply with the due process requirement and consequently, with the guidelines laid down by the Court.**

Further, the Court notes that as of December 27, 2016, petitioner was still undergoing treatment and it was only on May 12, 2017 when his treatment finally ceased. In fact, as the records bear out, petitioner had been scheduled for re-evaluation on the following successive dates after December 27, 2016 up until May 12, 2017: on January 6, 2017, per Dr. Chua's Medical Report[66] dated December 9, 2016; on February 8, 2017, per the Medical Report[67] dated January 6, 2017; on March 8, 2017, per the Medical Report[68] dated February 9, 2017; on April 6, 2017, per the Medical Report[69] dated March 8, 2017; and finally, on May 12, 2017, per the Notice of Follow-Up Treatment[70] dated April 11, 2017. However, despite the cessation of his treatment on May 12, 2017, petitioner was still suffering from difficulty of movement and pain in his left knee. Thus, under these circumstances, the Court is convinced **that the December 27, 2016 Medical Report was a mere interim evaluation that fell short of the requirements for a final, definite, and conclusive assessment.**

Finally, as regards the March 2, 2018 Affidavit of Dr. Lim, suffice it to say that the same cannot be given any legal significance in this case considering that **it was clearly issued way beyond the 240-day period**. Verily, under the circumstances, the Court is hard-pressed not to agree with the VA's observation that the same was a "mere afterthought"[71] which can no longer overcome petitioner's "entitlement to disability benefits [as] confirmed by law prior to [such] declaration."[72]

Viewed in these lights, the Court therefore finds that the CA reversibly erred in dismissing petitioner's claim based on what it perceived as petitioner's failure to prove the work-relation of his illness. **There being no final and definite assessment of petitioner's fitness to work or permanent disability within the prescribed periods, and since petitioner's disability remains unresolved, which thus precludes him from pursuing his usual**

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66 Id. at 449.
67 Id. at 451.
68 Id. at 452.
69 Id. at 453.
70 Id. at 378.
71 Id. at 300.
72 Id. at 302.

work as a seafarer, his disability has, by operation of law, become total and permanent. As such, petitioner is entitled to the corresponding disability benefits under the POEA-SEC.

Anent petitioner's claim for attorney's fees, Article 2208 (8) of the Civil Code provides that attorney's fees are recoverable in actions for indemnity under the workmen's compensation and employer's liability laws, as well as when the employer's act or omission has compelled the employee to incur expenses to protect their interest. Considering that petitioner was forced to litigate to protect his right and interest under the POEA-SEC, the award of ten percent (10%) attorney's fees by the VA was proper. Moreover, the Court agrees that, in line with prevailing jurisprudence, all monetary awards due petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

ACCORDINGLY, the petition is **GRANTED.** The Decision dated January 28, 2020 and the Resolution dated May 21, 2021 of the Court of Appeals in CA-G.R. SP No. 159377 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 28, 2018 and the Resolution dated January 15, 2019 of the Office of the Voluntary Arbitrators in AC-980-RCMB-NCR-MVA-020-04-01-2018 are **REINSTATED**, in that respondents North Sea Marine Services Corporation, V. Ships Leisure S.A.M., and/or Silversea Cruises Ltd. are jointly and severally liable to pay petitioner Alexei Joseph P. Grossman total and permanent disability benefits in the amount of US$60,000.00, or its equivalent amount in Philippine currency at the time of payment, and ten percent (10%) attorney's fees on the total judgment award. These amounts shall likewise earn six percent (6%) legal interest per annum from finality of this Decision until full payment.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

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

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
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
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice