Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CROWN SHIPPING SERVICES/ DOLPHIN SHIPMANAGEMENT INC. and/or CARISBROOKE SHIPPING LTD. and/or MR. EMMANUEL P. GOMEZ and/or MS. SUSAN AGUSTIN, *Petitioners,*	**G.R. No. 214290**
	Present:
	GESMUNDO, *C.J., Chairperson,* CAGUIOA, CARANDANG, ZALAMEDA, *and* GAERLAN, *JJ.*
- versus -	
JOHN P. CERVAS, *Respondent.*	Promulgated JUL 06 2021

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DECISION

GAERLAN, *J.*:

The case is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court challenging the Resolutions dated July 11, 2014[2] and September 12, 2014[3], respectively, of the Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 135983, which affirmed the Decision[4] dated May 6, 2014 and Resolution[5] dated June 10, 2014 of the National Labor Relations Commission (NLRC) granting herein respondent, John P. Cervas (Cervas), total permanent disability benefits.

Antecedents

On September 12, 2012, Carisbrooke Shipping Ltd., through its local manning agent, Crown Shipping Services/Dolphin Ship Management Inc. (petitioners) hired Cervas as an Able Seaman. Cervas boarded MV Vectis

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1 *Rollo,* pp. 3-22.

2 Id. at 34-43; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with Associate Justices Mariflor P. Punzalan-Castillo and Zenaida T. Galapate-Laguilles, concurring.

3 Id. at 45-46.

4 CA *rollo*, pp. 33-44; penned by Commissioner Angelo Ang Palaña with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring.

5 Id. at. 46-47.

Falcon on September 13, 2012. On December 20, 2012, Cervas met an accident while on board.[6] During a Life Boat Drill being conducted in the high seas amidst bad weather and big waves, Cervas injured his left leg. The following day, Cervas' left leg became swollen. Cervas was advised not to work for more or less a week. On December 29, 2012, the vessel dropped anchor at Panama and stayed there for three days. Cervas assisted his fellow crewmate even with a swollen leg.[7] He was given medicine by the Second mate but no relief was afforded. On January 8, 2013, the vessel dropped anchor again in Ecuador. Cervas then informed the chief mate that his leg was still swollen and he was brought to a hospital in Guyaquid. There, Cervas was diagnosed with "Fibular Diaphral Fracture". Cervas' left leg was then plastered and was prescribed to take medications. His immediate repatriation was likewise recommended.[8]

On January 23, 2013, Cervas was repatriated.[9] Upon his arrival, Cervas was referred by petitioners to the company-designated physician, Dr. Carlos Lagman (Dr. Lagman) of St. Jude Hospital, for further evaluation and management. Dr. Lagman treated Cervas as an out-patient.[10] In the Medical Report[11] dated January 28, 2013, Dr. Lagman confirmed that Cervas was suffering from Fibular Fracture and declared the injury to be work-related and that Cervas is unfit to work. Cervas was further advised to return to him on February 18, 2013 for the removal of the cast.[12]

Cervas went to his treatment religiously. In the Medical Report[13] dated April 15, 2013, Dr. Lagman reported that Cervas still complains of tenderness over the fracture site and his repeat x-ray still shows the fracture but with callus formation (bone growth). Cervas was advised to rest and that his condition was for further observation. Cervas was still diagnosed to be unfit to work and was advised to report back on May 20, 2013.[14] However, Cervas did not went back on the said date. Instead, he demanded from the petitioners his disability compensation. Cervas contended that he has been going for medical treatment for more or less four months already with Dr. Lagman but his condition has not improved. He also lives in Aklan and his treatment with the company-designated physician was being done in Manila. Thus, treatment was becoming a financial burden to him already.[15] Cervas demand was ignored by petitioners thus, on May 2, 2013, he formally lodged a Complaint[16]

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6 *Rollo*, p. 34.
7 CA *rollo*, pp. 34-35.
8 Id. at 35.
9 *Rollo*, p. 7.
10 Id. at 35.
11 CA *rollo*, p. 138.
12 Id.
13 Id. at 141.
14 Id.
15 *Rollo*, p. 35.
16 CA *rollo*, p. 82-83.

against petitioners for total and permanent disability benefits, medical expenses, moral and exemplary damages and attorney's fees before the NLRC.[17]

Labor Arbiter's Ruling

In its Decision[18] dated October 30, 2013, Labor Arbiter (LA) Virginia T. Luyas-Azarraga dismissed Cervas' complaint. The LA held that Cervas had no cause of action when he filed the instant case for having discontinued his treatments with the company-designated physician. The LA found that only ninety-three (93) days had lapsed from the time Cervas was initially seen by the company-designated physician up to the time he filed his complaint. Cervas's failure to return for re-assessment of his medical condition deprived the company-designated physician of the opportunity to determine whether or not respondent was already fit for sea duty.[19]

NLRC's Ruling

Cervas then appealed before the NLRC and the NLRC found merit on his appeal. In its Decision[20] dated May 6, 2014, the NLRC set aside the Decision of the Labor Arbiter, ruling that Cervas is entitled to total permanent disability benefits. The NLRC ruled that the absence of an assessment by the company doctor, either because he did not issue on or probably because he was unable to examine the seafarer, will not automatically bar the latter from claiming disability or death benefit.[21]

The dispositive part of the Decision reads as follows:

> IN VIEW WHEREOF, the complainant's appeal is GRANTED. The Decision of the Labor Arbiter is hereby SET ASIDE. The respondents are ORDERED jointly and solidarily to pay the complainant the amount of US$60,000.00 representing his total permanent disability benefits, as well as attorney's fees equivalent to ten percentum (10%) [sic] of the monetary award, both to be paid in US Dollars or in Philippine currency at the conversion rate prevailing at the time of actual payment.
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> SO ORDERED.[22]

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17 Id. at 83.
18 *Rollo*, pp. 95-101.
19 Id. at 98-101.
20 CA *rollo*, pp. 33-44.
21 Id. at 38.
22 Id. at 43.

Petitioners timely filed their Motion for Reconsideration however, the same was denied in the NLRC's Resolution dated June 10, 2014, to *wit*:

> WHEREFORE, the Motion for Reconsideration is hereby DENIED. No second Motion for Reconsideration of the same nature shall be entertained and the filing thereof shall subject the movant to be cited in contempt in accordance to the power of this Commission as provided under Article 218 of the Labor Code of the Philippines vis-à-vis Section 15 of Rule VII and Rule IX of the 2011 Revised Rules of Procedure of this Commission.
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> SO ORDERED.[23]

This prompted petitioners to elevate their case to the CA thru a Petition for *Certiorari*[24] under Rule 65.

The CA's Ruling

In their petition with the CA, petitioners asseverated that Cervas is not entitled to a permanent and total disability benefit as he unilaterally terminated his medical treatment thus preventing the company-designated physician from giving his disability assessment.[25]

The CA, however, denied their petition. CA finds no reversible error with the decision of the NLRC, granting Cervas his disability claim considering that his Fibular Diaphral Fracture prevented him from regaining full use of his leg and returning to his usual work as seafarer for more than 120 days.[26] The dispositive part of the resolution reads as follows:

> ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED for utter lack of merit.
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> SO ORDERED.[27]

On July 28, 2014, petitioners filed their Motion for Reconsideration but the same was likewise denied by the CA thru its Resolution[28] dated September 12, 2014. Hence, the present recourse.

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23 Id. at 47-48.
24 Id. at 3-22.
25 Id. at 9.
26 *Rollo*, p. 40.
27 Id. at 43.
28 Id. at 45-46.

Issues

Herein petitioner claims that the findings of fact of the CA do not conform to the evidence on record. Moreover, there was a misappreciation and/or misapprehension of facts and the CA failed to notice certain relevant points which, if considered, would justify a different conclusion.[29]

> A. The Honorable Court of Appeals – Fourteenth Division committed reversible error in awarding total disability benefits to Private Respondent despite the fact that the instant complaint was prematurely filed.
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> B. The Honorable Court of Appeals – Fourteenth Division committed reversible error when it overlooked the fact that Respondent unilaterally abandoned his medical treatment with the company-designated physician.
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> C. The Honorable Court of Appeals – Fourteenth Division erroneously brushed aside the absence of any medical report as to Respondent's alleged total and permanent disability.
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> D. The Honorable Court of Appeals – Fourteenth Division incorrectly applied the provision of the law by ruling that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness automatically warrants the grant of total and permanent disability benefits in his favor. [30]

Court's Ruling

We find the petition meritorious.

In petitions for review before this Court, We need no longer delve into facts already established by the lower courts. The findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[31]

However, while labor tribunals are imbued with expertise and authority to resolve factual issues, this Court, in exceptional cases, may still reexamine the facts when there is insufficient evidence to support the conclusion or too much is deduced from the bare facts submitted by the parties, or when the LA and the NLRC came up with conflicting findings.[32]

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29 Id. at 8.
30 Id. at 9.
31 *Paredes v. Feed the Children Philippines., Inc., et al.* 769 Phil. 418, 433 (2015).
32 *Scanmar Maritime Services, Inc. et al. v. Conag,* 784 Phil. 203, 212 (2016).

In the case at bar, the factual findings of the LA are conflicting from that of the NLRC as confirmed by the CA. As such is the case, this Court must of necessity make an infinitesimal scrutiny and examine the records all over again to determine which findings should be preferred as more conformable with evidentiary facts.[33]

The pivotal issue to be resolved is whether or not the complaint was filed prematurely and thereby preventing Cervas from claiming permanent and total disability benefits from petitioners.

Disability benefits are granted to an employee who sustains an injury or contracts a sickness resulting in temporary total, permanent total, or permanent partial, disability. For the injury and the resulting disability to be compensable, they must have necessarily resulted from an accident arising out of and in the course of employment.[34] It was undisputed that the injury was sustained by Cervas while he was doing his job as an Abled Seaman on board the vessel. It is clear that Cervas injury is work-related and such being the case, the injury is compensable.

> Pursuant to Section 20 (A) of the 2010 [Philippine Overseas Employment Administration-Standard Employment Contract (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 assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. 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. 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. Otherwise, the law grants the seafarer the relief of permanent total disability benefits due to such noncompliance.[35]

Thus, the rules regarding the duty of the company-designated physician to issue a final medical assessment on the seafarer's disability grading is as follows:

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33 *Philamlife. v. Gramaje* 484 Phil. 880, 890 (2004).

34 *Valeriano v. Employees' Compensation Commission*, 388 Phil. 1115, 1121 (2000).

35 *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018, 878 SCRA 180, 200-201.

> 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.[36]

Based thereon, two requisites must concur for a determination of a seafarer's medical condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive.[37] Case law states that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent. Thus, a temporary total disability becomes total and permanent by operation of law.[38]

Following the cited jurisprudence, the employer must give an assessment of the seafarer disability within one hundred twenty (120) days or two hundred forty (240) days as the case maybe, otherwise the disability shall be deemed total and permanent. The 120/240 days shall be counted from the time of the seafarer's repatriation. In the case at bar, Cervas was repatriated on January 23, 2013. He was first seen by the company-designated doctor on January 28, 2013. Cervas claimed that he religiously followed the course of his treatment until his last consultation with the company-designated doctor on April 15, 2013. It was stated in his medical report on April 15, 2013 that there was already bone growth though he was still feeling some tenderness on his leg. Cervas was advised to return on May 20, 2013, however, he did not do so. Instead, Cervas filed a complaint on May 2, 2013. Based on these facts, Cervas filed his claim on the ninety-ninth (99th) day. It was clear that the 120-days period wherein employer is to give an assessment has not yet expired. Admittedly, Cervas opted to no longer continue his treatment due to financial

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36 *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue*, 765 Phil. 341, 363-363 (2015).

37 *Magadia v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 246497, December 5, 2019.

38 *Gamboa v. Maunlad Trans, Inc.*, supra note at 202; *NYK-Fil Ship Management, Inc. v. Enriquez*, G.R. No. 243783, July 13, 2020.

constraints.[39] Cervas, based on these facts, abandoned his treatment and petitioners should not be held liable if they were not able to give a definite disability rating.

Medical abandonment by a seafarer carries with it serious consequences. Under Section 20(D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." It is but the seafarer's duty to comply with the medical treatment as provided by the company-designated physician, otherwise, when a sick or injured seafarer abandons his or her treatment, such may result to the forfeiture of his/her right to claim disability benefits.[40]

In *Lerona v. Sea Power Shipping Enterprises, Inc.*,[41] citing *C.F. Sharp Crew Management, Inc. v. Orbeta*,[42] this Court held that a seafarer commits medical abandonment when he fails to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability.[43]

It was clear that Cervas is remiss of his duty to complete his medical treatment. Although his reason for discontinuing treatment may be valid, this must still be clearly presented and proven before the Court. Mere allegation will not suffice. As recently held in the case of *Antolino v. Hanseatic Shipping Phils., Inc.*,[44] financial incapacity to travel to and from the place of treatment may serve as an acceptable justification for failure to attend a check-up. That said, an allegation of financial incapacity, like all allegations, must be supported by clear and convincing evidence. This is especially true in situations where the manning agency has consistently provided the seafarer with sickness allowance during the treatment period.[45]

Verily, it was Cervas who abandoned his treatment. Because of his action, petitioners were not able to finish its obligation to have Cervas treated and finally give a definitive disability rating. Further, the second paragraph of Section 20(A)(3) provides:

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39 *Rollo*, p. 35.
40 *Maunlad Trans, Inc. v. Rodelas, Jr.*, G.R. No. 225705, April 1, 2019.
41 G.R. No. 210955. August 14, 2019.
42 818 Phil. 710 (2017).
43 *Lerona v. Sea Power Shipping Enterprises, Inc.*, supra.
44 G.R. No. 245917, February 26, 2020.
45 Id.

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> 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 the liquidation and submission of official receipts and/or proof of expenses.** (Emphasis supplied)

Significantly, in the case at bar, Cervas neither requested for the approval for payment nor reimbursement of his travel and accommodation expenses and that said request had been denied by petitioners.[46]

While it is true that our jurisprudence also provides that absence of final assessment and definitive disability rating does not prevent the seafarer from claiming total and permanent disability, this must still be reconciled with the periods provided by the rules. In *Wallem Maritime Services, Inc. v. Tanawan*,[47] it was held that:

> 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 to the effect that the seafarer suffers a disability and 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.** Although the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly **(that is, more than 120 days after repatriation).**[48] (Citations omitted, emphasis supplied)

Clearly, the declaration of permanent and total disability must still observe the 120/240 day-period provided by the rules. A seafarer may only be declared to be permanently incapacitated if he is still unable to work for more than 120 days. Not only that, the seafarer must provide substantial proof that his injury caused him to be incapacitated to do his usual work. In the instant case, there was no clear finding that Cervas was not able to work for more than 120 days. To reiterate, he stopped his treatment prior the expiration of the 120-days period. Also, records show that Cervas did not provide any medical reports or findings to support his claim that his injury is permanent. There were also no

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46 Reflection of Associate Justice Alfredo-Benjamin S. Caguioa

47 693 Phil. 416, (2012).

48 Id. at 428-429.

record showing that Cervas consulted or sought a doctor of his choice who diagnosed him that he can no longer work or that his present condition incapacitates him to engage in a gainful employment. It is an established principle that these allegations must be substantiated by evidence in order for it to be recognized by this Court.[49] While it is true that what is important in disability cases is not the medical findings but the capacity of the employee to be gainfully employed in the same line of employment, [50] these facts must still be established and supported by substantial evidence before ruling that the employee is entitled to the benefits he is seeking. Thus, Cervas' claim that his injury was total and permanent merely on the basis of his incomplete medical treatment will not suffice. It was Cervas' decision not to continue with his treatment and thus, it would be impossible to determine the degree of disability Cervas suffered or whether he could have fully recover as such facts can no longer be established at this juncture. At most, the rules provides that Cervas is entitled to sickness benefit and medical allowance which herein petitioners had already provided in the span of his treatment.[51]

However, this Court recognized the plight Cervas underwent and the injury he sustained during his employment. Thus, We find that a grant of financial assistance as a measure of social and compassionate justice is proper. For the balancing the interest of the employer and the worker, financial assistance may be allowed as a measure of social justice and exceptional circumstances, and as an equitable concession.[52]

WHEREFORE, in view of the foregoing, herein petition is hereby **GRANTED**. The Resolutions dated July 11, 2014 and September 12, 2014, respectively by the Court of Appeals in CA-G.R. SP No. 135983, are **REVERSED and SET ASIDE**. The ruling of the Labor Arbiter dated October 30, 2013 is hereby **REINSTATED with MODIFICATION** by awarding herein respondent, John P. Cervas the amount of ₱200,000.00 as a form of financial assistance.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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49 *Rosaroso, et al. v. Soria, et al.*, 711 Phil. 644, 656 (2013).
50 *Valenzona v. Fair Shipping Corporation, et al.*, G.R. No. 176884, 675 Phil. 713, 728 (2011).
51 CA *rollo*, p. 228.
52 *Eastern Shipping Lines, Inc., and/or Chingbian v. Sedan*, 521 Phil. 61, 71 (2006).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

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