Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BENHUR SHIPPING CORPORATION/SUN MARINE SHIPPING S.A. and EDGAR B. BRUSELAS,	**G.R. No. 229179**
	Present:
Petitioners,	GESMUNDO, *C.J.*, *Chairperson*, CAGUIOA, INTING, GAERLAN, and DIMAAMPAO, *JJ.*
- versus -	
	Promulgated:
ALEX PEÑAREDONDA RIEGO, *Respondent.*	MAR 29 2022

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DECISION

GESMUNDO, *C.J.*:

This Appeal by *Certiorari*[1] seeks to reverse and set aside the September 30, 2016 Decision[2] and January 6, 2017 Resolution[3] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 142911, which annulled and set aside the July 16, 2015 Decision[4] of the National Labor Relations Commission *(NLRC)*, and granted total disability benefits to Alex Peñaredonda Riego (*respondent*). The NLRC upheld the February 27, 2015 Decision[5] of the Labor Arbiter *(LA)* which partially granted respondent's complaint for

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[1] *Rollo*, pp. 46-98.
[2] Id. at 12-34; penned by Associate Justice Magdangal M. De Leon, with Associate Justices Elihu A. Ybañez and Nina G. Antonio-Valenzuela, concurring.
[3] Id. at 36-41.
[4] CA *rollo*, pp. 31-45; penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro, concurring.
[5] Id. at 138-147; penned by Labor Arbiter Joanne G. Hernandez-Lazo.

disability benefits and ordered Benhur Shipping Corporation/Sun Marine Shipping S.A. and Edgar B. Bruselas *(petitioners)* to pay respondent the total amount of US$7,465.00 pursuant to Grade 11 Disability Assessment – 1/3 loss of lifting power as determined by the company designated physician plus 10% attorney's fees.

Antecedents

On October 8, 2013, Benhur Shipping Corporation *(BSC)* engaged the services of respondent to work as Chief Cook on board the vessel "MV Hikari I," an ocean-going vessel of its foreign principal, Sun Marine Shipping S.A. *(SMS)*. Subject to the provisions of the Philippine Overseas Employment Association-Standard Employment Contract *(POEA-SEC)*, the Contract of Employment[6] executed by the parties provided for a term of 12 months with a basic monthly salary of US$535.00 for a 48-hour work-week, with provisions for overtime pay and vacation leave with pay. Found fit to work during the Pre-employment Medical Examination,[7] respondent boarded the vessel.[8]

On the first week of December 2013, respondent suffered from abdominal and lower back pain while on board the vessel. He was brought for medical check-up and examined by a doctor in Thailand and was given medications. Respondent was recommended for repatriation for further medical evaluation.[9]

On December 15, 2013, respondent arrived in the Philippines and was immediately endorsed by BSC to Marine Medical Services wherein he was attended to by Dr. Robert D. Lim *(Dr. Lim)*, the company-designated physician, for further medical care and treatment.[10]

On December 16, 2013, the company-designated physician issued the first Medical Report[11] stating that respondent was referred to a gastro-enterologist and orthopedic surgeon. The specialist reviewed respondent's lumbosacral spine x-ray and noted normal results. It was recommended that respondent should undergo laboratory examination, gastroscopy, ultrasound of the whole abdomen and magnetic resonance imaging *(MRI)* of the

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[6] Id. at 70.
[7] Id. at 71.
[8] *Rollo*, p. 13.
[9] Id.
[10] Id. at 13-14.
[11] CA *rollo*, p. 113.

lumbosacral spine. He was likewise requested to come back on December 17, 2013 for re-evaluation.[12]

On December 17, 2013, the company-designated physician issued a second Medical Report[13] stating that respondent was under the care of a gastroenterologist and orthopedic surgeon. His laboratory examination showed normal complete blood count, blood urea nitrogen, creatinine, SGPT and alkaline phosphatase. Gastroscopy showed esophagogastroduodenal muscosa, small hiatal hernia and negative H.pylori infection. Respondent then underwent ultrasound of the upper abdomen and MRI of the lumbosacral spine for further evaluation. He was likewise given medication and advised to come back on December 26, 2013 for the re-evaluation with result.[14]

On December 26, 2013, the company-designated physician issued a third Medical Report[15] indicating that respondent no longer claimed to have abdominal discomfort and that the ultrasound of his upper abdomen showed normal results of his liver, gall bladder, pancreas, spleen, kidneys, urinary bladder and prostate gland. As such, respondent was cleared from a gastro-enterologic standpoint for his hiatal hernia. He was also seen by an orthopedic surgeon and physiatrist since he complained of an on-and-off low localized back pain, especially when bending forward and standing from a sitting position. There was also tightness of both his hamstrings, the manual muscle test was 5/5 on both extremities with pain upon resistance of hip flexion, while there were negative straight-leg raising test results. Respondent's lumbosacral spine x-ray showed normal results. However, the MRI of his lumbosacral spine showed mild lumbar spondylosis, with no evidence of disc herniation, spinal canal or foraminal stenosis at any level. Respondent was advised to start rehabilitation, to continue his medications and to return on January 16, 2014 for re-evaluation.[16] Respondent was diagnosed to have Hiatal Hernia, L4-L5, L5-S1 Disc Bulge.[17]

In the fourth Medical Report[18] dated January 16, 2014, the company-designated physician stated that respondent was previously cleared gastro-intestinal wise with regard to his hiatal hernia. He was seen by an orthopedic surgeon and had no complaints of pain or discomfort from his lower back area. Respondent had full range of motion of his trunk, had normal sitting and standing tolerance, and was ambulatory over all surface. The specialist

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[12] Id.
[13] Id. at 72.
[14] *Rollo*, p. 14.
[15] CA *rollo*, pp. 114-115.
[16] Id.
[17] *Rollo*, pp. 14-15.
[18] CA *rollo*, p. 116.

opined that respondent was cleared from an orthopedic standpoint as of the said date. He was also advised of the proper back mechanics to prevent and minimize the recurrence of his back pain. Also on even date, respondent signed a Certificate of Fitness to Work[19] indicating that he was fit to work notwithstanding the diagnosis that he has Hiatal Hernia, L4-L5, L5-S1 Disc Bulge.[20]

On February 10, 2014, the company-designated physician issued a fifth Medical Report[21] stating that respondent complained of pain on the left lower back radiating to the left lower extremity. The MRI of the lumbosacral spine showed that the mild disc bulge at L4-L5 had not significantly changed. There was, however, no evidence of disc herniation, spinal canal stenosis or foraminal stenosis at any level. Also, no new abnormalities were demonstrated. Respondent was advised to continue his rehabilitation and medication, and to come back on February 24, 2014 for re-evaluation.[22] Several progress notes were issued on February 22, 2014 and March 8, 2014, which indicated that there were still no pertinent improvements and there were still persistent problems, such as lower back pain radiating to the left leg, grade 1 tenderness on the left leg, muscle spasm on paralumbar and leg, and tightness of hamstring.[23] The company-designated physician issued a note referring respondent to Lucena MMG General Hospital *(MMG Hospital)* for continued physical therapy on March 31, 2014.[24]

Respondent claimed that on March 28, 2014, the company-designated physician informed him that petitioners already terminated his medical treatment.[25] In a medical note addressed to the company-designated physician dated May 12, 2014, Dr. Kharen Michelle Esmeralda *(Dr. Esmeralda)*, neurologist of MMG Hospital, suggested, among others, that respondent be referred to neurosurgery to assess the degree of nerve compression and, if possible, the decompression of the spine.[26] It was added therein that neurorehabilitation will only provide transient episodes of pain relief, and it could lead to further damage.[27]

On May 26, 2014, the company-designated physician issued the final Medical Report[28] stating that on follow-up check-up, respondent still complained of lower back pain radiating to the left lower extremity with no

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[19] Id. at 119.
[20] Id.
[21] Id. at 120.
[22] *Rollo*, p. 15.
[23] CA *rollo*, pp. 75-76.
[24] Id. at 77.
[25] Id. at 55.
[26] Id. at 81.
[27] Id.
[28] Id. at 121.

significant improvement with physical therapy, and there was still sensory deficit on his left leg. The company-designated physician further stated that if respondent is entitled to disability benefits, his final disability grading under the POEA schedule of disabilities remains at Grade 11 – 1/3 loss of lifting power.[29] Notably, on May 30, 2014, the company-designated physician issued a certification that respondent has under medical/surgical evaluation treatment from December 16, 2013 to present due to Hiatal Hernia; L4-L5, L5-S1 Disc Bulge.[30]

Consequently, respondent consulted a physician of his choice, Dr. Fidel M. Magtira *(Dr. Magtira)*, for a second medical opinion. On June 5, 2014, Dr. Magtira issued a Medical Report[31] stating that respondent was permanently disabled and permanently unfit to work in any capacity.

On June 11, 2014, respondent through his legal counsel sent a Letter[32] to BSC informing the latter that "[c]onsidering the persistent back pain he continues to suffer, he consulted his chosen medical expert to make another assessment and he was declared permanently unfit to work."[33] Respondent further requested for medical treatment for his back pain due to disc bulge radiating to his extremities, since he had no financial capacity to support continued treatment and therapy. Moreover, respondent requested BSC to refer him for a third medical opinion should it continue to refuse to shoulder his treatment and therapy.[34]

On June 25, 2014, respondent sent another Letter[35] to BSC, reiterating his request for the latter to refer him for a third medical opinion as the medical assessments of their respective doctors differ, and to consider said assessment as final and binding to the parties.

On June 30, 2014, respondent underwent an MRI of his lumbosacral spine at the Banawe Diagnostic MRI Center, Inc. On July 2, 2014, Dr. Magtira issued a Medical Report[36] finding respondent permanently disabled and unfit to work in any capacity.[37]

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[29] Id.
[30] Id. at 83.
[31] Id. at 84-86.
[32] Id. at 87.
[33] Id.
[34] *Rollo*, pp. 15-16.
[35] CA *rollo*, p. 88.
[36] Id. at 89.
[37] *Rollo*, p. 16.

On July 28, 2014, respondent filed a Complaint[38] against petitioners for total and permanent disability benefits, moral and exemplary damages, and attorney's fees.[39]

The LA Ruling

In its February 27, 2015 Decision, the LA granted respondent's complaint for disability benefits in the total amount of US$7,465.00 pursuant to a Grade 11 Disability Assessment – 1/3 loss of lifting power as determined by the company designated physician plus 10% attorney's fees.[40] The dispositive portion of the decision provides:

> **WHEREFORE**, premises considered, respondents Benhur Shipping Corporation, et al. are hereby ordered to pay complainant Alex P. Riego the sum of US$7,465.00 pursuant to the Grade 11 disability assessment – 1/3 loss of lifting power as determined by the company designated physician plus 10% attorney's fees.
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> **SO ORDERED.**[41]

The LA held that it was undeniable that the injury suffered by respondent was work-related, the same having been sustained while he was performing his tasks on board his employer's vessel. Based on respondent's narration of events, he was lifting heavy provisions on board the vessel when he felt pain on his lower back. The pain worsened in the following days, and hence, he was given medical assistance and subsequently, medically repatriated.[42]

The LA gave credence to the medical assessment provided by the company-designated physician. It found that from the medical report rendered by Dr. Magtira, no disability grading was issued. Rather, it was merely declared that respondent was already permanently unfit to work in any capacity as a seafarer. Likewise, Dr. Magtira did not specifically pronounce respondent's illness. The reason for this appears to be because L4-L5, L5-S1 Disc Bulge is not proper for Grade 1 disability. Respondent does not appear to be suffering from such condition. It was never stated that respondent needs to be assisted by crutches when walking or that his sickness caused him incontinence. The absence of a third medical opinion further compounded the situation. The LA concluded that the company-

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[38] CA *rollo*, pp. 50-51.
[39] *Rollo*, p. 16.
[40] CA *rollo*, pp. 146-147.
[41] Id.
[42] Id. at 143.

designated physician's assessment must prevail in view of the facts obtaining in this case.[43]

The NLRC Ruling

In its July 16, 2015 Decision, the NLRC affirmed the ruling of the LA, to wit:

> **WHEREFORE**, premises considered, the appeal is denied for lack of merit. The assailed Decision of Labor Arbiter Joanne G. [Hernandez]-Lazo dated February 27, 2015 is **AFFIRMED**.
>
> **SO ORDERED**.[44]

The NLRC held that respondent's claim for permanent and total disability benefits is without basis at all.[45] Respondent's condition does not constitute Grade 1 disability as provided under Section 32 of the POEA-SEC. According to the NLRC, the record is bereft of any showing that respondent needed to be assisted by crutches when walking or that his illness caused him incontinence of urine and feces.[46]

Furthermore, respondent's evidence casts serious doubt on the findings that he suffered permanent and total disability. In stark contrast to the detailed medical reports of the company-designated physician, a reading of the first Medical Report[47] of Dr. Magtira, dated June 5, 2014 would show that it was not supported by any diagnostic test or procedure sufficient to refute the results of those administered to respondent by the company-designated physician. Dr. Magtira's assessment of "permanent disability" for respondent merely hinged on a physical examination conducted during a single consultation with him.[48]

On the other hand, the company-designated physician conducted two MRI tests upon respondent's lumbosacral spine, the first on December 16, 2013, and the second on February 10, 2014. Both of respondent's lumbosacral spine MRI tests showed that his mild disc bulge at L4-L5 had not significantly changed, there being no evidence of disc herniation, spinal

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[43] Id. at 144-146.
[44] Id. at 45.
[45] Id. at 41.
[46] Id.
[47] Id. at 84-86.
[48] Id. at 41.

canal stenosis or foraminal stenosis at any level. No new abnormalities were also demonstrated.[49]

The NLRC declared that even if the findings of respondent's private physician were to be taken into consideration, the company-designated physician's assessment should prevail over that of the former. The company-designated physician had thoroughly examined and treated respondent for more than five months until the issuance of a disability grading. Conversely, respondent's private physician only attended to him once. Under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of respondent's private physician made on the basis of a single consultation and existing medical records.[50]

In its August 28, 2015 Resolution,[51] the NLRC denied respondent's motion for reconsideration. Hence, respondent filed a petition for *certiorari* before the CA, ascribing grave abuse of discretion on the part of the NLRC when it affirmed the decision of the LA.

The CA Ruling

In its September 30, 2016, Decision, the CA reversed and set aside the ruling of the NLRC. The dispositive portion of the decision, reads:

> **WHEREFORE**, the instant petition is hereby **GRANTED**. The *Decision* dated July 16, 2015 is hereby **ANNULLED** and **SET ASIDE**. Petitioner Alex Peñaredonda Riego is hereby awarded Total Permanent Disability Benefits in the amount of Sixty Thousand (US$60,000.00) US Dollars and Ten Percent (10%) Attorney's Fees.
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> **SO ORDERED**.[52] (emphases and italics in the original; citation omitted)

The CA held that if the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.[53] Respondent should be granted total and permanent disability benefits since no assessment was issued for a disability grade before the lapse of the 120-day period.

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[49] Id. at 43.
[50] Id. at 44.
[51] Id. at 47-48.
[52] *Rollo*, p. 33.
[53] Id. at 28.

The CA noted that respondent was repatriated on December 15, 2013 and was only assessed by the company-designated physician as suffering from Grade 11 disability on May 26, 2014 or after the lapse of 156 days. No justifiable reason was shown why it took that long for the company-designated physician to come up with the assessment. Respondent's Progress Note[54] dated January 15, 2014 indicated that respondent still suffered persistent lower back pain and paralumbar muscle spasm and was prescribed to continue with his rehabilitation. Worse, the Grade 11 disability assessment was only given almost two months after respondent terminated his medical treatment on March 28, 2014.[55]

Petitioners failed to come up with the disability assessment within 120 days without justifiable reason and with respondent being cooperative with the medical treatment that was cut short without proper notice given. Respondent must be awarded total permanent disability benefits.[56]

The CA denied petitioners' motion for reconsideration in its January 6, 2017 Resolution.

Hence, this appeal by *certiorari*, raising the following grounds for allowance of the petition:

I

THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT HEAVILY RELIED IN THE DECISION OF *ELBURG [SHIPMANAGEMENT], PHILS., INC., ET AL. VS. QUIOGUE, JR.* IN HOLDING THAT THE COMPANY-DESIGNATED PHYSICIAN'S FINAL DISABILITY ASSESSMENT OF GRADE 11 ISSUED MORE THAN 120 DAYS SHOULD BE DISREGARDED FOR THE COMPANY-DESIGNATED PHYSICIAN'S FAILURE TO STATE JUSTIFICATION WHY THE TREATMENT SHOULD EXCEED 120 DAYS.

II

UNDER THE POEA-SEC, THE LAW THAT APPLIES BETWEEN THE PARTIES, DISABILITIES ARE NOT ALWAYS REGARDED AS PERMANENT/TOTAL. THUS, THE POEA-SEC INCLUDES THE SCHEDULE OF DISABILITIES WITH EQUIVALENT DISABILITY COMPENSATION, WHICH MUST BE APPLIED. THEREFORE, THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR IN NOT UPHOLDING THE FINAL DISABILITY ASSESSMENT OF **GRADE 11** AND IN DISREGARDING AND

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[54] CA *rollo*, p. 73.
[55] *Rollo*, pp. 31-32.
[56] Id. at 32.

RENDERING NUGATORY THE POEA-SEC PROVISIONS ON DISABILITY SCHEDULE.[57] (emphasis and italics in the original; citation omitted)

In their petition for review, petitioners aver that the CA palpably erred when it held that the respondent is permanently disabled simply because the company-designated physician issued the final disability assessment of Grade 11 beyond the 120-day period without any justification for the extension of treatment.[58] The mere lapse of the 120 days is not a sufficient ground to warrant the award of permanent/total disability benefits to seafarers.[59] Petitioners maintain that the disability shall be based solely on the disability gradings provided under Sec. 32 of the POEA-SEC, and shall not be measured or determined by the number of days a seafarer was under treatment or the number of days in which sickness allowance was paid.[60] Additionally, there is no reason to doubt the medical evaluation given by the company-designated physician as the same enjoys the presumption of validity absent any showing that said medical evaluation was given fraudulently. Respondent failed to adduce sufficient evidence to rebut the said presumption by showing that the company-designated physician's findings were tainted with bias, malice or bad faith. Therefore, with the finding of the company-designated physician that respondent's disability was only partial, Grade 11 should be controlling.[61]

Moreover, petitioners aver that non-referral to a third physician, whose decision shall be considered as final and binding, constitutes a breach of the POEA-SEC.[62] Petitioners assert that respondent failed to initiate third doctor referral. Petitioners argue that while respondent, indeed, sent a letter to BSC to refer him for a third medical opinion, he failed to disclose therein the contradicting findings of his physician of choice. Undeniably, the letter of respondent through his counsel did not include the second medical opinion from his own doctor, Dr. Magtira.[63] It was respondent and his counsel who refused to pursue the third doctor referral. It is very apparent that respondent had no intention to be referred to a third doctor from the very beginning. His letter of request, without his doctor's medical report and his continuous refusal to provide a copy of the same, would only confirm that said letter was merely sent to somehow show compliance which was indubitably empty.[64]

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[57] Id. at 53.
[58] Id. at 54.
[59] Id.
[60] Id. at 57.
[61] Id. at 63-64.
[62] Id. at 84.
[63] Id. at 89.
[64] Id.

In his Comment,[65] respondent maintains that the CA aptly awarded him total and permanent disability benefits. Respondent avers that if the treatment of 120 days is extended to 240 days, but no medical assessment is still given, the finding of permanent and total disability becomes conclusive. He claims that the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such noncompliance. Further, respondent alleges that the evidence clearly showed that he is permanently unfit and was advised to have a change of lifestyle including the kind of maritime work he was usually engaged in as he is permanently disqualified to return to his previous occupation as seafarer. These result to permanent loss of earning capacity. As such, the CA did not commit palpable error in awarding total and permanent disability benefits to respondent as his medical condition is in accord with the prevailing jurisprudence and supported by evidence.[66]

Respondent likewise maintains that he repeatedly requested for petitioners to refer him for a third medical opinion. However, petitioners refused to refer him for third medical opinion in violation of the conflict resolution provision in the POEA-SEC.[67] Given the circumstances under which respondent pursued his claim, especially the fact that he insisted on referral to a third doctor though petitioners refused, respondent's medical certification from his chosen medical expert must be upheld.[68]

In their Reply,[69] petitioners aver that a finding of an illness or disability is not tantamount to full disability benefits, particularly in cases involving seafarers. It must not be overlooked or ignored the fact that employment contracts of seafarers, unlike other employment contracts which involve land-based employees, are governed by the POEA-SEC. The POEA-SEC was specially crafted and written while taking into consideration the rights and the welfare of both parties in the contract for sea-based employment – the employer and the seaman. Under the POEA Contract, there is a schedule of disability grading which simply means that not all disabilities by the seafarers shall be regarded as full.[70]

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[65] Id. at 254-285.
[66] Id. at 260-264.
[67] Id. at 271-272.
[68] Id. at 272; 275.
[69] Id. at 305-319.
[70] Id. at 306.

Moreover, respondent maintains that in order to overturn the opinion and findings of the company-designated physician, the medical opinion of the seafarer's doctor must be supported by the third doctor's opinion without which, the company-designated physician's opinion will prevail. It is, therefore, puzzling why respondent did not bring to petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion. Petitioners likewise reiterate their averment that the mere lapse of the 120 days is not a sufficient ground to warrant the award of permanent/total disability benefits to seafarers.[71]

The Court's Ruling

The petition lacks merit.

At the outset, the issue of whether respondent's illness is compensable as total and permanent disability is essentially a question of fact, which this Court would generally not disturb. The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. [72] In this case, however, the findings of the CA are contradictory with that of the NLRC. The conflicting factual findings make this case an exception to the general rule that only questions of law may be raised before this Court in a petition for review on *certiorari* under Rule 45. For this reason, the Court gives due course to this petition.[73]

Further, the Court finds that it is imperative to resolve this case on the merits as it presents novel issues, such as, the form and content of the request for referral to a third doctor to resolve conflicting medical opinions involving a claim for disability benefits.

In the case at bar, there is no question that respondent suffered an injury while working on board the ship of petitioners. As a result of said injury, respondent was rendered disabled to perform his usual work and lost earning capacity. The issue now raised by the parties is the extent of the disability, whether partial or total and permanent, suffered by respondent. While petitioners do not dispute that respondent's injuries are work-related, they argue that he is only entitled to disability benefits under Grade 11, as against the findings of the CA that respondent is entitled to Grade 1 disability benefits or total and permanent disability benefits.

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[71] Id. at 307.
[72] *Gamboa v. Maunlad Trans, Inc.*, 839 Phil. 153, 166 (2018).
[73] *Esquivel v. Atty. Reyes*, 457 Phil. 509, 516-517 (2003).

Extension of the 120-day period to 240 days

The seafarers' employment is governed by the contracts they signed at the time of engagement. As long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Nonetheless, while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[74]

Under the 2010 POEA-SEC, the company-designated physician is primarily vested with responsibility to determine the seafarer's disability grading or fitness to work.[75] In *Elburg Shipmanagement Phils., Inc. v. Quiogue*[76] *(Elburg)*, the Court set forth the following rules whenever there is a claim for total and permanent disability benefits by a seafarer:

> 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.[77]

To reiterate, for a company-designated physician to avail of the extended 240-day period, he or she must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond the 120 days, but not to exceed 240 days. In such case, the temporary total disability period is extended to a maximum of 240 days. Without sufficient justification for the extension of the treatment period, a seafarer's disability shall be conclusively presumed to be permanent and

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[74] *Calera v. Hoegh Fleet Services Philippines, Inc.*, G.R. No. 250584, June 14, 2021.
[75] Id.
[76] 765 Phil. 341 (2015).
[77] Id. at 362-363.

total.[78] The seaman may, of course, also be declared fit to work at any time such declaration is justified by his medical condition.[79] Further, even if the 120-day period was extended to 240 days, 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.

Here, respondent was repatriated on December 15, 2013 and was immediately referred to the company-designated physician. Petitioners claim that the 120-day period was extended to 240 days as respondent still required further medical treatment, which was implied in several Progress Notes[80] stating that respondent needed further medical attention and/or rehabilitation beyond the lapse of the 120-day period. Petitioners add that since the final medical report was issued after 156 days from repatriation, then it is within the extended 240-day period.

The Court is not convinced.

In the Progress Note[81] dated March 29, 2014, or on the 106th day of the 120-day period, the specialist noted that respondent was still suffering from lower back pain radiating to leg (PS 8/10) aggravated by prolonged sitting, standing, and walking.[82] Afterwards, respondent went to MMG Hospital for rehabilitation as referred by the company-designated physician. In her May 12, 2014 Note, Dr. Esmeralda, neurologist of MMG Hospital, suggested, among others, that respondent be referred to neurosurgery to assess the degree of nerve compression and, if possible, the decompression of the spine.[83] It was added therein that neurorehabilitation will only provide transient episodes of pain relief, and could lead to further damage.[84]

However, the suggestion from MMG Hospital that respondent required further evaluation and treatment regarding his nerve compression and decompression of the spine, fell on deaf ears. Instead, the company-designated physician issued his final medical report on May 26, 2014, stating that respondent still complains of low back pain radiating to the left lower extremity with no significant improvement with physical therapy, and there is still sensory deficit on the left leg.[85]

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[78] *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 396 (2018), citing *Talaroc v. Arpaphil Shipping Corporation*, 817 Phil. 598, 611-612 (2017).
[79] *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).
[80] CA *rollo*, pp. 75-78.
[81] Id. at 78.
[82] Id.
[83] Id. at 81.
[84] Id.
[85] Id. at 121.

Further, the final medical report stated that "[t]he specialist opines that if patient is entitled to a disability, his final disability grading remains at Grade 11-1/3 loss of lifting power."[86] As the CA aptly observed, the report did not even indicate the name of the alleged specialist who made such final disability grading, making the final medical report doubtful.

Glaringly, after the issuance of the said final medical report (on May 26, 2014) by the company-designated physician, the same physician issued a Certification dated May 30, 2014 indicating that respondent has undergone medical/surgical evaluation treatment to Hiatal Hernia; L4-L5, L5-S1 Disc Bulge from December 16, 2013 until the date of the issuance of the same.[87] This evidently demonstrates that the assessment of the medical condition of respondent was still continuing and not conclusive even after the company-designated physician issued his May 26, 2014 Final Medical Report.

Accordingly, the May 26, 2014 Medical Report issued by the company-designated physician cannot be treated as the final medical assessment contemplated by the POEA-SEC and the *Elburg* case. Thus, even if the 120-day period is extended to 240 days, there was still no proper final medical assessment issued. As provided in *Elburg*, 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.

This was likewise reiterated by the Court in *Razonable v. Maersk-Filipinas Crewing, Inc.*,[88] wherein this Court held that the failure of the company-designated physician to issue a final and valid assessment transforms the temporary total disability to permanent total disability, regardless of the disability grade. [89] Hence, it was unnecessary for the seafarer to even refer the findings of the company-designated doctors to his own doctor. Such conflict-resolution mechanism only takes effect if the company-designated physician issues a valid and definite medical assessment. Without such valid final and definitive assessment from the company-designated physicians, the law already steps in to consider the seafarer's disability as total and permanent.[90]

Failure of petitioners to comply with the request of referral to a third doctor

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[86] Id.
[87] Id. at 83.
[88] G.R. No. 241674, June 10, 2020.
[89] Id.
[90] Id.

Even assuming *arguendo* that the company-designated physician issued a proper final medical assessment within the extended 240-day period, the Court finds that respondent is still entitled to permanent and total disability benefits and that petitioners erred in not complying with the request for referral to a third doctor.

The referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision under the POEA-SEC that the company-designated doctor's assessment should prevail. In other words, the company could insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.[91]

Petitioners argue that while respondent sent a letter of request for a referral to a third doctor, the said letter did not include the medical opinion from respondent's physician, Dr. Magtira. They claim that even in the NLRC, respondent failed to bring his own doctor's report. Thus, petitioners conclude that respondent had no intention to be referred to a third doctor from the very beginning, and that the letter of request without his doctor's medical report, was merely an empty compliance.[92]

The argument is unavailing.

Sec. 20(A)(3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment. The said provision states that:

> 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.[93]

On the other hand, in *Carcedo v. Maine Marine Philippines, Inc.*[94] *(Carcedo)*, the Court stated that:

> To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on

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[91] *INC Navigation Co. Philippines, Inc. v. Rosales*, 744 Phil. 774, 787 (2014).
[92] *Rollo*, p. 89.
[93] Section 20(A)(3) of the POEA-SEC.
[94] 758 Phil. 166 (2015).

> the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.[95]

Verily, it is the duty of the seafarer to notify his employer that he or she intends to refer the conflict to a third doctor. Once notified, the burden shifts to the employer to complete the process of referral to a third doctor so that, once and for all, the medical assessment of the seafarer will be put to rest.

Analyzing Sec. 20(A)(3) of the POEA-SEC and *Carcedo*, it was neither stated nor required therein that when the seafarer sends a request for a referral to a third doctor to the employer, the seafarer must mandatorily attach the medical report of his own medical doctor to such request. Notably, it is not the employer who will assess the medical report of the seafarer's chosen physician; rather, it will be the labor tribunals where the complaint for disability benefits is filed that would assess the medical report. As the record shows, the medical report of respondent's chosen physician was indeed attached to his position paper before the LA,[96] thus, it could be fully assessed by the labor tribunals. Succinctly, the argument of petitioners that the letter-request of respondent was improper, because the medical report of his chosen physician was not attached, deserves scant consideration.

As to what the seafarer's letter-request for a referral to a third doctor should contain, *Mangubat, Jr. v. Dalisay Shipping Corporation*,[97] is instructive:

> Jurisprudence has elaborated on the requirements for the validity and procedure for disputing the assessment of the company-designated physician. For the company-designated physician's assessment to be considered valid, it must be timely made and must state the fitness or degree of disability of the seafarer.
>
> Once the company-designated physician has issued the valid assessment, the seafarer may dispute it by referring to his own doctor, thus:
>
> > x x x resort to a second opinion must be done after the assessment by the company-designated physician precisely to dispute the said assessment. Such assessment from the company-designated physician, to reiterate, must be definite and timely issued. x x x
>
> The seafarer has then the duty to signify his intent to challenge the company-designated physician's assessment and, in turn, the employer

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[95] Id. at 189-190, citing *INC Navigation Co. Philippines, Inc. v. Rosales*, supra note 91 at 788.
[96] CA *rollo*, p. 84.
[97] G.R. No. 226385, August 19, 2019, 914 SCRA 413.

must respond by setting into motion the process of choosing the third doctor. As the Court ruled in *Pastor v. Bibby Shipping Philippines, Inc.*:

> Corollarily, should the seafarer signify his intent to challenge the company-designated physician's assessment through the assessment made by his own doctor, the employer must respond by setting into motion the process of choosing a third doctor who, as the 2010 POEA-SEC provides, can rule with finality on the disputed medical situation. In such case, no specific period is required by law within which the parties may seek the opinion of a third doctor, and may do so even during the conciliation and mediation stage to abbreviate the proceedings.

The Court further explained in *Sunit v. OSM Maritime Services, Inc.* that for the third doctor's assessment to be valid and binding between the parties, the assessment must be definite and conclusive:

> Indeed, the employer and the seafarer are bound by the disability assessment of the third-party physician in the event that they choose to appoint one. Nonetheless, similar to what is required of the company-designated doctor, the appointed third-party physician must likewise arrive at a definite and conclusive assessment of the seafarer's disability or fitness to return to work before his or her opinion can be valid and binding between the parties.

The foregoing shows that it is required for both the company-designated physician and the third doctor to arrive at a definite and conclusive assessment of the fitness or disability rating of the seafarer for their assessment to be considered as valid.

The same standards to determine the validity of the assessment should be the same for the company-designated physician, seafarer's physician, and the third doctor. Thus, in order for the seafarer to dispute the assessment of the company-designated physician, the assessment of the seafarer's doctor should state the seafarer's fitness to work or the disability rating.[98] (emphasis and underscoring supplied; citations omitted)

Accordingly, what is required from the medical opinion of the seafarer's chosen physician is that there be a statement regarding the seafarer's fitness to work **OR** the disability rating. Consequently, as long as the seafarer's letter-request for referral to a third doctor sent to the employer indicates the seafarer's doctor's assessment of the seafarer's fitness to work or the disability rating, which is contrary to the company-designated physician's assessment, then that suffices to set in motion the process of choosing a third doctor. Indeed, the seafarer is merely a layman and not a medical professional; thus, he is not expected to indicate every medical term

[98] Id. at 422-424.

in his letter-request for referral to a third doctor. Stating the seafarer's fitness to work or the disability rating in the letter-request for referral to a third doctor would constitute as adequate compliance.

Pursuant to *Carcedo*, when the letter-request for referral to a third doctor indicates the seafarer's fitness to work or the disability rating according to his own physician, then the seafarer is deemed to have duly and fully disclosed the contrary assessment of his own doctor, and the seafarer can signify his intention to resolve the conflict through referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties.

In this case, the June 11, 2014 Letter-request of respondent to petitioners for referral to a third doctor states:

> As our client was assessed with disability Grade 11 and his therapy was discontinued by the company-designated physician last 28 March 2014, [considering] the persistent back pain he continues to suffer, **he consulted his chosen medical expert to make another assessment and he was declared permanently unfit.**
>
> Our client requests for further treatment of his back pain due to disc bulge radiating to his extremities. He has no financial capacity to support continued treatment and therapy. **Nevertheless, should you continue to refuse to shoulder his therapy and treatment, we will invite your good office for a Third Medical Opinion.**[99] (emphases supplied)

However, petitioners ignored respondent's letter-request for referral to a third doctor. Nevertheless, respondent sent another Letter-request dated June 25, 2014 for referral to a third doctor, to wit:

> On 25 June 2014, Mr. Riego was informed by the company-designated clinic, the Marine Medical Clinic at Metropolitan Hospital, that his medical evaluation and/or consultation was already terminated by your office. As you know, he was required to come and report to the company-designated doctor on the said date but he was no longer entertained due to your advice. As Mr. Riego was already assessed with disability Grade 11 and his therapy was discontinued by the company-designated physician last 28 March 2014, **and considering that his chosen medical expert declared him permanently unfit.**
>
> **In view of the above, we invite your good office to refer Mr. Riego for a Third Medical Opinion as the medical assessments by the respective doctors differ and to consider his assessment final and binding to the parties.**[100] (emphases supplied)

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[99] CA *rollo*, p. 87.
[100] Id. at 88.

Again, the June 25, 2014 Letter-request of respondent for referral to a third doctor was disregarded by petitioners.

The Court finds that the June 11, 2014 and June 25, 2014 Letter-requests of respondent to petitioners were sufficient compliance with Sec. 20(A)(3) of the POEA-SEC. Both letters stated that the chosen medical expert of respondent stated that he was permanently unfit, referring to the seafarer's fitness to work. The June 25, 2014 Letter even expressly stated that the medical opinions of the respective doctors (the company-designated physician and respondent's chosen doctor) differ. As a result, both letters requested that a third medical opinion be considered. These letter-requests of respondent to petitioners constitute as sufficient notification to proceed with the process of referral to the third doctor.

As stated in *Carcedo*, upon notification, the employer carries the burden of initiating the process for referral to a third doctor commonly agreed on between the parties. However, in this case, upon receipt of the letter-requests from respondent for referral to a third doctor, petitioners did absolutely nothing. Petitioners simply ignored said letters despite the fact that these documents expressly stated that respondent was declared permanently unfit by his chosen physician, referring to his fitness to work, and that the medical opinions of their respective doctors differ.

If petitioners genuinely believed that respondent should have attached the medical opinion of his chosen physician in his letter-requests, they could have simply replied to those letters and relayed such. However, petitioners chose inaction. Evidently, the Court cannot reward petitioners' apathy towards respondent's plight. In *Saso v. 88 Aces Maritime Service, Inc.*,[101] the Court held:

> x x x **It bears to stress that in the same way that a seafarer has the duty to faithfully comply with and observe the terms and conditions of the POEA-SEC, the employer also has the duty to provide proof that the procedures laid therein were followed.** And in case of doubt in the evidence presented by the employer, the scales of justice should be tilted in favor of the seafarer pursuant to the principle that the employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee.[102] (emphasis supplied)

Notably, a review of recent jurisprudence show that most seafarer-disability cases filed before the Court are often dismissed because of the failure of the seafarer to initiate referral to a third doctor, which is a

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[101] 770 Phil. 677 (2015).
[102] Id. at 691.

mandatory requirement. In *Philippine Transmarine Carriers, Inc. v. San Juan*,[103] the Court held that the seafarer was duty-bound to actively request that the disagreement between his physician's findings and that of the findings of the company-designated physician be referred to a final and binding third opinion. Failure to request or refer the conflicting findings to a third doctor led to the dismissal of the seafarer's claim for disability benefits.[104] Similarly, in *Idul v. Alster Int'l Shipping Services, Inc.*,[105] it was held that the seafarer must actively or expressly request for the referral to a third doctor,[106] which is a mandatory procedure.[107] Failure to comply therewith is considered a breach of the POEA-SEC, and renders the assessment by the company-designated physician binding on the parties.[108]

However, respondent's plight is different from the above-cited cases. Here, respondent, as a seafarer, was completely prudent and compliant by sending the letter-requests to petitioners for a referral to a third doctor. In such rare fashion, respondent indeed paid attention to his obligations under the POEA-SEC by requesting referral to a third doctor before filing a complaint for disability benefits before the LA. He recognized the mandatory procedure regarding the referral to a third doctor in case of conflict between the medical opinions of the company-designated physician and his physician of choice. He even sent two letter-requests to petitioners consistently requesting referral to a third doctor. This shows the utmost good faith of respondent in complying with the POEA-SEC.

Regrettably, petitioners did not reciprocate respondent's good faith-compliance. Instead, they displayed indifference to the prescribed mandatory rules of the POEA-SEC. They tried to rationalize their inaction by providing an afterthought excuse that the letter-requests should have contained the medical report of respondent's chosen physician, when the POEA-SEC does not even mandate such requirement. Accordingly, petitioners' obliviousness to the mandatory procedure of referral to a third doctor must be taken against them.

Assessment of respondent's disability

The consequence that the employer should face for failing to entertain a request for a referral to a third doctor by the seafarer has been discussed in

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[103] G.R. No. 207511, October 5, 2020.
[104] Id.
[105] G.R. No. 209907, June 23, 2021.
[106] Id.; citing *Hernandez v. Magsaysay Maritime Corporation*, 824 Phil. 552, 560-561 (2018).
[107] Id.; citing *Multinational Ship Management, Inc. v. Briones*, G.R. No. 239793, January 27, 2020, 930 SCRA 179, 192.
[108] Id.; citing *Pacific Ocean Manning, Inc. v. Solacito*, G.R. No. 217431, February 19, 2020.

Rodelas v. MST Marine Services (Phils.).[109] In the said case, there were conflicting medical assessments of the company-designated physician and the seafarer's chosen physician. The seafarer therein requested for a third medical assessment but the employer did not act on it despite numerous requests for referral.[110] The Panel of Voluntary Arbitrators, on its own, resolved the conflicting medical opinions. The Court upheld such findings, to wit:

> In this case, Dr. Nolasco gave a Grade 11 disability rating to petitioner's condition without surgery. It does not escape this Court that Dr. Nolasco may have given a disability rating more favorable to the respondent. **It is also apparent that respondent tried to downplay its failure to accede to petitioner's request for a referral to a third doctor. This Court relies on the findings of the Panel of Voluntary Arbitrators that there is no incompatibility in the medical opinion of Dr. Nolasco and that of Dr. Runas:**
>
> > The company-designated physician assessed complainant's disability Grade 11, while Dr. Runas, complainant's doctor, did not give any Specific grade but assessed complainant to be permanently unfit for sea duty in whatever capacity with permanent disability. The company doctor based his assessment on the gravity or the medical significance of the injury while Dr. Runas based his assessment in relation to nature of work of the seafarer. It must be noted that these assessments are not incompatible with each other. Both speak of disability. The only difference is the determination of whether or not complainant is permanently and totally disabled.
> >
> > **And since there was no referral to the third doctor because of the inaction of respondents despite the repeated manifestations of willingness to undergo third assessment by complainant, this Panel took the cudgel to study and decide the contradicting medical opinions of the parties and related jurisprudence.** In *HFS Philippines, Inc. v. Pilar*, the Court held that claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court based on its inherit merit.
> >
> > After judicious evaluation of the medical opinions of the parties, We find reason on the medical assessment of Dr. Renato Runas. As mentioned earlier, both opinions of the doctors speak of disability. They only differed as to whether the latter is permanently or totally disabled. Dr. Renato Runas, as a surgeon specializing in orthopedics and trauma injuries, merely elucidated the impact of

[109] G.R. No. 244423, November 4, 2020.
[110] Id.

> complainant's injury to the nature of his work as a seaman. And true enough, the same is compatible with determining the nature of permanent total disability, which is "disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do."
>
> x x x x
>
> Based on the totality of evidence, it is reasonable that without surgery, petitioner could not have been declared fit for duty as Chief Cook. This explains the numerous opportunities respondent gave to petitioner to consider surgery and risk the chance of improvement. Contrary to respondent's suggestion, it was not petitioner's indecision that prevented him from pursuing his usual work. Rather, it is precisely his strenuous work aboard the MV Sparta that resulted to his disability.[111] (emphases supplied)

Indeed, when the employer fails to act on the seafarer's valid request for referral to a third doctor, the tribunals and courts are empowered to conduct its own assessment to resolve the conflicting medical opinions of the company-designated physician and the seafarer's chosen physician based on the totality of evidence. The employer simply cannot invoke the conclusiveness of the company-designated physician's medical opinion *vis-à-vis* the seafarer's chosen physician's medical opinion when it is because the employer's own inaction and neglect that the medical assessment was not referred to a third doctor.

In this case, the May 26, 2014 Final Medical Report of the company-designated physician, and both the June 5, 2014 and July 2, 2014 Medical Reports of the seafarer's chosen physician, consistently held that respondent indeed suffered a disability. These reports merely differ on the extent of the disability suffered by respondent.

The Court finds that respondent is suffering from permanent disability, which renders him unfit to work in any capacity as a seafarer.

The May 26, 2014 Final Medical Report of the company-designated physician stated that respondent still complains of low back pain radiating to the left lower extremity with no significant improvement with physical therapy, and that there is still sensory deficit on the left leg.[112] It also stated that "[t]he specialist opines that if patient is entitled to a disability, his final disability grading remains at Grade 11-1/3 loss of lifting power."[113] But, as

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[111] Id.
[112] CA *rollo*, p. 121.
[113] Id.

stated earlier, the report never identified the particular specialist who gave such disability rating. Further, the final medical report of the company-designated physician did not indicate whether respondent was fit to work or whether he could return to his previous occupation as a seafarer despite suffering such disability.

As pointed out earlier, the recommendations of Dr. Esmeralda in her May 12, 2014 Report,[114] that respondent be referred to neurosurgery to assess the degree of nerve compression and, if possible, the decompression of the spine to prevent further damage to his spine, was never addressed by the final medical report of the company-designated physician. Even after the company-designated physician issued his final medical report on May 26, 2014, he still issued a Certification[115] dated May 30, 2014 to the effect that respondent's evaluation and treatment was still continuing. Accordingly, the Court cannot give full credence to the May 26, 2014 Final Medical Report issued by the company-designated physician regarding the extent of respondent's disability.

On the other hand, the June 5, 2014 Medical Report of respondent's chosen physician explained the disability suffered by respondent, to wit:

> Because of the chronicity of the patient's symptoms, it is best to consider him as *permanently disabled.* Prolonged relief is less likely if no permanent modification in the patient's activities is made. He should therefore refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. He is now therefore permanently *UNFIT TO WORK in any capacity* at his previous occupation. Having him resume his regular duties will only lead to frequent absences from illness, underperformance, and lost time at work. It is also necessary that in order to avoid the risk of a more serious disability, Mr. Riego should permanently modify his activities and lifestyle.[116]

After respondent underwent an MRI on June 30, 2014, his chosen physician issued another Medical Report, dated July 2, 2014, confirming his findings that respondent was indeed permanently disabled and unfit to work as a seafarer:

> Result of MRI of the lumbosacral spine done at Banawe Diagnostic MRI Center, INC. dated: June 30, 2014.
>
> IMPRESSION:

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[114] Id. at 81.
[115] Id. at 83.
[116] Id. at 86.

> 1. L4-L5 diffuse disc bulge along with ligamentum flavum and bilateral facet joint hyperthrophy causing compression of the anterior thecal sac, mild spinal canal stenosis and bilateral moderate neural foraminal stenosis. A right paracentral annular tear is also seen.
>
> 2. No evident intradural lesion.
>
> Mr. Riego continues to experience back pain. His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has [difficulty] running, and climbing up or going down the stairs. The demands of a Seaman's work are heavy. Mr. Riego has lost his pre injury capacity and is not capable of working at his previous occupation. He is now permanent disable.[117]

Indeed, with respondent's disability, he cannot anymore return to his occupation as a seafarer. He will be unable to perform the tasks required of him as a seafarer. More, the records do not show that respondent was indeed able to return to work as a seafarer.

The Court emphasizes anew that in disability compensation, it is not the injury which is compensated, but rather, the incapacity to work resulting in the impairment of one's earning capacity.[118] Considering respondent's condition, it is highly improbable for him to perform his usual tasks as seafarer on any vessel which effectively disables him from earning wages in the same kind of work or that of a similar nature for which he was trained.

Verily, the occupation that sustains his livelihood is now a thing of the past due to the disability he suffered while employed by petitioners. Respondent's disability resulted to his loss of earning capacity and, therefore, entitles him to permanent and total disability benefits.

Monetary Awards and Interests

The Court laid down the guidelines regarding the imposition of legal interest in *Nacar v. Gallery Frames*[119] in this wise:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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[117] Id. at 90.
[118] *Magadia v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 246497, December 5, 2019, 927 SCRA 356, 366.
[119] 716 Phil. 267 (2013).

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

   And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[120] (italics in the original)

Indeed, the award for payment of a sum of money will inevitably place the losing party in the shoes of a judgment debtor; while the winning party, in the position of a judgment creditor. In this regard, Art. 2209 of the Civil Code states that if the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest

[120] Id. at 282-283.

agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) *per annum*.[121]

Applying the above-mentioned guidelines, and in line with prevailing jurisprudence, all monetary awards in favor of respondent shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this decision until fully paid.[122] The period from the finality of the award until its payment constitutes a loan or forbearance of money for which petitioners should be made to pay interest at the rate of six percent (6%) *per annum*.[123]

Further, in line with jurisprudence, obligations in foreign currency may be discharged in Philippine currency based on the prevailing rate at the time of payment.[124] Thus, as properly held by the CA, respondent is entitled to total and permanent disability benefits in the amount of US$60,000.00 at the prevailing rate of exchange at the time of payment.

Final Note

The Court reminds both the employees and the employers of every crew or manning industry to strictly observe the mandatory procedure on the referral to a third doctor in cases of conflict between the medical opinions of the company-designated physician and the seafarer's chosen physician. It is only through this compulsory procedure that assessment of the disability of the seafarer can be resolved with finality. Consequently, the procedure laid down by the POEA-SEC requires mandatory fulfilment by both the employer and the seafarer. If either of the parties disregards the good faith compliance of the other, the legal consequences shall be borne by the erring party.

WHEREFORE, the petition is **DENIED**. The September 30, 2016 Decision and January 6, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 142911 are **AFFIRMED** with **MODIFICATION**. Petitioners are hereby **ORDERED** to **PAY** respondent Alex Peñaredonda Riego total and permanent disability benefits in the amount of US$60,000.00 at the prevailing rate of exchange at the time of payment, as well as attorney's fees equivalent to ten percent (10%) of the total monetary award. Finally, all monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until full payment.

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[121] *Ventis Maritime Corporation v. Cayabyab*, G.R. No. 239257, June 21, 2021.
[122] See *Jerzon Manpower and Trading, Inc. v. Nato*, G.R. No. 230211, October 6, 2021; *Teodoro v. Teekay Shipping Philippines, Inc.*, G.R. No. 244721, February 5, 2020, 931 SCRA 425, 442; *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, 895 SCRA 546, 558-559, citing *Nacar v. Gallery Frames*, supra note 119.
[123] *Ventis Maritime Corporation v. Cayabyab*, supra.
[124] *C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, 431 Phil. 11, 20 (2002).

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

WE CONCUR:

See Concurring & Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
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