Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NELSON M. CELESTINO, Petitioner,	**G.R. No. 246929**
	Members:
-versus-	**LEONEN, M.,** *Chairperson,* **LAZARO-JAVIER, A.,** **LOPEZ. M.,** **LOPEZ, J.**, and **KHO, JR.,** ***JJ.***
BELCHEM PHILIPPINES, INC., BELCHEM SINGAPORE PTE., and/or JASMIN D. SALVADOR,	Promulgated:
Respondents.	March 2, 2022

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DECISION

LAZARO-JAVIER, ***J.:***

The Case

This resolves the Petition[1] assailing the following dispositions of the Court of Appeals in CA-G.R. SP No. 145564:

1) **Decision**[2] dated August 17, 2018 affirming the dismissal of the claim for total and permanent disability benefits of petitioner Nelson M. Celestino; and

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1 *Rollo* pp. 9-40.

2 Penned by Associate Justice Ramon M. Bato, with Associate Justices Ramon A. Cruz and Rafael Antonio M. Santos concurring; *rollo*, p. 45-57.

2) **Resolution**[3] dated March 12, 2019 denying petitioner's motion for reconsideration.

Antecedents

On June 22, 2012, respondent Belchem Singapore Pte. Ltd., through its local agent, respondent Belchem Philippines, Inc., hired petitioner Nelson M. Celestino as third officer for a period of nine months.[4]

Prior to his deployment, petitioner underwent routinary pre-employment medical examination (PEME). When asked whether he had or had been told he had suffered from, among others, any of the following conditions: heart trouble, diabetes mellitus, endocrine disorders, kidney or bladder trouble, he answered in the negative. He then got deployed on July 1, 2012.[5]

As third officer on board M/T Gandhi, petitioner maintained the operational readiness of life rafts and firefighting equipment, wrote navigational logs, operated navigational equipment, placed ship-to-shore communication, trained other seafarers to properly operate lifesaving and firefighting equipment, and supervised seafarers to clean, paint, and maintain the vessel.[6]

On December 8, 2012, petitioner experienced severe body discomfort with high fever, chills, and convulsions. Because his condition persisted despite medication, petitioner was admitted on December 11, 2012, at the Fiden Medical Center in Tema, Ghana, West Africa, where he was diagnosed as a "Diabetic de Novo," or someone in the early stages of diabetes. After confinement and medication, he was repatriated on December 14, 2012.[7]

On the same day he arrived in the country, petitioner reported to Belchem Philippines, Inc. for post employment medical examination. He got referred to the company-designated medical facility, the Metropolitan Medical Center, Manila, where Dr. Kharen Frances Hao-Quan (Dr. Quan) attended to him. After the requisite laboratory examination, Dr. Quan issued an initial impression on December 18, 2012, noting that petitioner was suffering from "Diabetes Mellitus" and prescribing medication to manage the illness. Dr. Quan then advised him to return on January 3, 2013 for further treatment, and accordingly informed Belchem of his condition.[8]

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3 Penned by Associate Justice Ramon M. Bato, with Associate Justices Ramon A. Cruz and Rafael Antonio M. Santos concurring; *Rollo*, p. 43.
4 *Rollo*, pp. 45-46.
5 *Id.* at 46.
6 *Id.*
7 *Id.*
8 *Id.*

Under the care of an endocrinologist, petitioner continued his treatment on January 8, 2013, and consulted a nephrologist on January 22, 2013. His laboratory examinations on both days showed elevated fasting blood sugar.[9] Petitioner was, thus, advised to undergo continuous monitoring and check-up by the company-designated physicians until August 31, 2013. He consulted these physicians on March 5, April 22, May 21, and June 4, 2013. In the interim, or on May 9, 2013, Dr. Quan confirmed that petitioner was suffering from "Diabetes Mellitus" with incidental finding of "Ureterolithiasis".[10]

On July 1, 2013, petitioner filed a complaint for total and permanent disability benefits, damages, and attorney's fees against respondents.

On September 2, 2013, or two months after filing the complaint, petitioner decided to consult his own physician, Dr. May S. Donato-Tan (Dr. Tan), who issued a medical certificate diagnosing him with permanent disability, thus:

> [Seafarer] Celestino had Extracorporeal Shockwave Lithotripsy Left and the procedure does not guarantee that the stones will not recur and a possibility of a recurrent stone formation can damage the parenchyma of the kidney's ureters, that's why the [Seafarer] Celestino is very apprehensive. He is also with BP Elevation coupled with the presence of DM Type II. He already had chest pain and the occurrence/presence of elevated BP and diabetes puts [Seafarer] Celestino at a high-risk situation. He is therefore given a permanent disability for he will not be able to do his job effectively, efficiently, and productively as a [Seafarer].[11]

Petitioner alleged that his illnesses were work-related, having been acquired in the performance of his strenuous duties. Notably, his PEME initially declared him "fit to work," but he is now unable to carry out his job as seafarer for more than 120 days from repatriation. Therefore, he should be deemed to have suffered total and permanent disability.[12]

Respondents, on the other hand, maintained that diabetes is a metabolic and genetic disease that is not work-related and not considered an occupational disease under settled jurisprudence, hence, not compensable. There is nothing in petitioner's work conditions or duties that would make him prone to either illness. Consequently, he would have developed those diseases regardless of whether he was deployed at sea as third officer. Petitioner also prematurely filed his claim since he did so without yet even seeking the opinion of his own physician; in fact, he was still undergoing treatment when he filed his complaint.[13]

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9 *Id.*
10 *Id.* at 47.
11 *Id.*
12 *Id.*
13 *Id.* at 47-48.

Ruling of the Labor Arbiter

By Decision[14] dated June 4, 2015, the labor arbiter ruled that petitioner was entitled to total and permanent disability benefits but dismissed his other claims and charges, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered finding the complainant's disability as (total and permanent) and compensable, hence, he is entitled to the compensation for disability pursuant to Item 31, Part VI of the CBA in conjunction with Appendix IV (for year 201[2]), thereof.
>
> The respondent companies, Belchem Philippines, Inc. and Belchem Singapore Pte. Ltd. are hereby ordered solidarily, TO PAY to the herein complainant the peso equivalent based on the exchange rate at the time of actual payment of US Dollar Ninety Thousand Eight Hundred Eighty-Two (US$90,882.00) representing his permanent total disability benefits plus ten percent (10%) thereof, as and for attorney's fees.
>
> Other claims and charges are dismissed.
>
> SO ORDERED.

The Labor Arbiter held that as third officer, his functions caused him to suffer from fatigue, as well as, mental and physical stress. More, he performed other tasks and even worked beyond his regular hours. They found that petitioner's diseases are work-related having been exacerbated by stress, fatigue, and diet during the term of his contract. Diseases not listed as occupational under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) are disputably presumed to be work-related. The laboratory tests in petitioner's PEMEs showed that there was no problem in his blood sugar level or any other possible cause for infirmity, and based thereon, the company doctors certified petitioner as "fit to work".[15]

It was of no consequence that petitioner answered "no" to the query if he had diabetes because the burden to prove misrepresentation lies on respondents. The Labor Arbiter further ruled that petitioner's medical condition had been unresolved even after 240 days with no final assessment issued by the company-designated doctors. Therefore, petitioner's disability is deemed total and permanent.[16]

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14 *Id.* at 48.
15 *Id.* at 49.
16 *Id.*

Ruling of the National Labor Relations Commission

By Decision[17] dated November 27, 2015, the National Labor Relations Commission (NLRC) reversed. It ruled that petitioner is not entitled to total and permanent disability benefits.

It added that petitioner prematurely filed his complaint for total and permanent disability benefits because he was then still under treatment at that time and had not yet procured the medical opinion of his physician of choice. Too, the Court had previously ruled that "diabetes mellitus" is not work-related. "It is a metabolic and familial disease to which one is predisposed by reason of heredity, obesity, or old age."[18] Finally, petitioner failed to substantiate his claim for disability compensation. He cannot merely wait for private respondents to present evidence to overcome the disputable presumption of work-relatedness of an illness under Section 20 (B)(4) of the POEA-SEC.[19]

The Ruling of Court of Appeals

In its assailed Decision[20] dated August 17, 2018, the Court of Appeals affirmed. It held that when petitioner filed his complaint for disability benefits on July 1, 2013, he was still on his 199th day of treatment since he was referred to the company-designated physician upon his repatriation on December 14, 2012. In fact, even petitioner himself admitted that he was still undergoing treatment when he filed his complaint and that his treatment ended on August 31, 2013. Thus, petitioner was still under total and temporary disability inasmuch as the extension of the 240-day period provided under the POEA-SEC had not yet lapsed. There being no final assessment, petitioner's condition could not be considered as a total and permanent disability.

To be sure, petitioner's illnesses, "Diabetes Mellitus" and its complication "Ureterolithiasis" are not listed as occupational diseases under Section 32-A of the POEA-SEC and are, therefore, not compensable. At any rate, petitioner failed to show that the risk of contracting said illnesses was increased by his working conditions.[21]

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17 *Id.*
18 *Status Maritime v. Court of Appeals*, 740 Phil. 175 (2014).
19 *Rollo*, pp. 49-50.
20 *Id.* at 51-53.
21 *Id.* at 54-57.

The Present Petition

Petitioner asserts that he is entitled to total and permanent disability benefits. He essentially argues:

First. The complaint was not prematurely filed because he filed the same on the 199th day of treatment, well beyond the 120-day period of assessment by the company-designated physician. Significantly, the 240-day extended period does not come into play considering that there was no justifiable reason why his medical treatment needed to be extended beyond the 120-day statutory period.[22]

Second. The NLRC and the Court of Appeals erred in finding that his illnesses are not work-related. In *Zonio v. 88 Aces Maritime Services*[23] and *Employees' Compensation Commision v. Court of Appeals*,[24] the Court declared that "Diabetes Mellitus" and "Ureterolithiasis", respectively, are compensable.[25]

Finally. He is entitled to recover attorney's fees under Article 2208 of the New Civil Code, considering that the same is an action for indemnity and he was compelled to litigate and incur legal expenses.[26]

For their part, respondents maintain that petitioner's arguments are factual in nature, thus, must be dismissed since the Court only resolves questions of law.[27] They also reiterate that petitioner's complaint was premature. He also only presented as evidence his PEME declaring him "fit to work," which is not conclusive proof that he was free from ailment prior to his deployment.[28] Finally, they argue petitioner's illnesses are not work-related.

Issue

Is petitioner entitled to total and permanent disability benefits?

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22 *Id.* at 22-24
23 G.R. No. 239052, October 16, 2019.
24 332 Phil. 278, 290 (1996).
25 *Rollo*, pp. 26-34
26 *Id.* at 38-39.
27 *Id.* at 123-124.
28 *Id.* at 136-139.

Ruling

At the outset, we note that the issue involves a question of fact and a recalibration of evidence. As a rule, the Court is not a trier of facts. It is not the Court's function to analyze evidence all over again because of the legal precept that factual findings of the Court of Appeals are conclusive and binding on this Court. As an exception though, the Court may proceed to resolve both factual and legal issues, when the factual findings of the Court of Appeals and the NLRC are contrary to the findings of the labor arbiter, as here.

The complaint was not prematurely filed

To recall, petitioner filed his complaint on July 1, 2013, which was only the 199th day from when he was first referred to the company-designated physician upon his repatriation on December 14, 2012. The Court of Appeals ruled that for failure of petitioner to wait for the final assessment of the company-designated physician within the 240-day period, no cause of action for total and permanent disability benefits had yet accrued.

We do not agree.

Orient Hope Agencies v. Jara[29] set out the guidelines to determine a seafarer's disability, *viz.*:

> 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 [them];
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> 2. If the company-designated physician fails to give [their] assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes (total and permanent);
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> 3. If the company-designated physician fails to give [their] 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 [their] assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

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[29] 832 Phil. 380, 396 (2018).

Verily, if the company-designated physician still fails to give their assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification, as in this case.

Here, petitioner got repatriated and referred to one of the company-designated physicians on December 14, 2012. He was told to return regularly during the succeeding months, which he heeded conscientiously. Thus, he went and consulted with at least three company-designated physicians on the same days set by the latter for that purpose. Thereafter, he was eventually told that his "ongoing treatment" shall last until August 31, 2013. Notably, however, the 240-day maximum period for assessment of petitioner's disability grading started on December 14, 2012, and already ended on August 11, 2013. The advice therefore of the company-designated physicians for petitioner to undergo further treatment to last until August 31, 2013, or 20 days beyond the 240-day period, was an effective declaration that his "Diabetes Mellitus and Ureterolithiasis" are permanent, and his disability, total.

All told, petitioner cannot be faulted for filing his complaint on the 199th day of his ongoing treatment even before the lapse of the 240-day period, nor can he be faulted for acquiring a second opinion from his own physician only after he had already initiated his complaint. For even prior to such date, he was already deemed to be suffering from total and permanent disability when the company-designated physicians assessed that his treatment shall last well-beyond the 240-day maximum period.

Petitioner is entitled to total and permanent disability benefits

The employment of seafarers is governed by the contracts they enter into at the time of their engagement. So long as the contract is not contrary to law, morals, public order, or public policy, they have the force of law as between the parties themselves. The POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract, therefore, it is also integrated into the provisions of petitioner's employment contract with respondents.[30]

The POEA-SEC provides that if the employee is suffering from any of the occupational diseases or illnesses listed under its Section 32(A), such disease is deemed to be work-related, provided the conditions set therein are satisfied. Section 20(B)(4) of the POEA-SEC, on the other hand, states that if the illness, such as "Diabetes Mellitus," is not listed as an occupational disease under Section 32(A), there is still a disputable presumption that the ailment is work-related. This means that there is a legal presumption in favor of the

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30 *Romana v. Magsaysay Maritime Corp.*, 816 Phil. 194 (2017).

seafarer that their illness is work-related, and the employer has the burden of presenting evidence to overcome such presumption.[31]

As third officer for respondents, petitioner performed duties that exposed him to various hazards and stresses. He was constantly placed in harsh conditions and exposed to perils of the sea. His work consisted of physically strenuous tasks that lasted anywhere from eight to sixteen hours a day. He was constrained to eat only food from the vessel that regularly consisted of preserved meats high in fats and cholesterol.[32]

On December 8, 2012, or after more than five months of rendering services for respondents, his body finally broke. He experienced severe fever, body aches, chills, and convulsions until he had to be brought to a hospital where he was diagnosed as "Diabetic De Novo." He was confined there for three days and had to be repatriated back to the Philippines on December 18, 2012, where he was diagnosed by company-designated physicians with "Diabetes Mellitus and Ureterolithiasis" and was thereafter advised to undergo monitoring and check-up for the next several months until August 31, 2013, a span of 260 days.

Notably, prior to assuming his duties as third officer, he was declared "fit to work" in his PEME. It was only during his work therein that he was diagnosed with "Diabetes Mellitus" and "Ureterolithiasis". While these illnesses are not listed as occupational diseases under Section 32(A) of the POEA-SEC, said ailments are still presumed to be work-related under Section 20(B)(4) of the contract. Respondents have the burden of overcoming such presumption.

For their part, respondents merely argued that since it was petitioner who was claiming for total and permanent disability benefits, it was he (petitioner) who had the burden of evidence of proving such claim.[33]

In ***Zonio v. 88 Aces Maritime Services***,[34] the Court ruled in favor of the compensability of "Diabetes Mellitus" that afflicted the seafarer, thus:

> As earlier stated, respondents herein failed to adduce any contrary medical findings from the company-designated physician to show that Apolinario's illness was not caused or aggravated by his working conditions on board the vessel. There was also no showing that Apolinario is predisposed to the illness by reason of genetics, obesity or old age. Such being the case, this Court considers that the stress and strains he was exposed to on board contributed, even to a small degree, to the development of his disease. Inasmuch as, compensability is the entitlement to receive disability compensation upon a showing that a seafarer's work conditions

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31 *Id.*
32 *Rollo*, p. 71.
33 *Id.* at 131-139.
34 Supra note 22.

> caused or at least increased the risk of contracting the disease, We find Apolinario's disease as compensable at bar.

Similarly, during his employment as third officer, petitioner was assigned duties which were physically, mentally, and emotionally taxing due to its long hours of work. Too, during the 9-month duration of his employment, he was constrained to eat the high-fat, high-cholesterol food served in the ship. It was during this time that he developed his illnesses and had to be medically-repatriated due to its severity.[35]

As held in ***Flores v. Workmen's Compensation Commission***,[36] "Diabetes Mellitus" is generally not compensable. It is, however, compensable in instances when it is complicated with other illnesses.

Here, petitioner was diagnosed by the company-designated physicians with "Diabetes Mellitus" complicated with "Ureterolithiasis",[37] another illness previously deemed as compensable in ***GSIS v. Court of Appeals and Lilia S. Arreola***.[38]

Finally, respondents argue that the PEME presented by petitioner does not *ipso facto* mean that his illnesses were acquired during the term of his employment, hence, petitioner is deemed not to have proved that his illnesses are work-related.

We disagree.

Although a PEME is not conclusive proof to show that a seafarer is free from any ailment, the Court, in previous cases, has referred to the results of a PEME to conclude that a disability only arose during employment.

In ***Magat v. Interorient Maritime Enterprises, Inc.***,[39] the Court ruled that petitioner Alfredo Magat was entitled to permanent disability benefits when, after passing his PEME, he developed a heart ailment. Although nothing in the records showed that Magat contracted his illness aboard M/T North Star, the fact that petitioner passed his PEME without any finding that he had a preexisting heart ailment before boarding the vessel strongly indicates that such illness developed while he was on board the same vessel.

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35 *Rollo*, p. 77-78.

36 178 Phil. 65, 70-71 (1979).

37 Supra note 23 at 282-283; The Court explained that ureterolithiasis is the presence of renal stones in the ureter, which usually arise because of a breakdown of a delicate balance of conservation of water and excretion of materials that have low-solubility in the kidneys. This balance is interrupted by an adaptation to diet, climate, and activity, such as the lifestyle of petitioner when he was employed as a seafarer in respondent's vessel.

38 332 Phil. 278 (1996).

39 829 Phil. 570, 583-586 (2018).

Here, petitioner, too, passed his PEME prior to embarking on his duties and thereafter developed "Diabetes Mellitus" complicated with "Ureterolithiasis." This clearly creates the legal presumption that petitioner's illnesses are work-related. Respondents, however, were unable to overcome such presumption in favor of petitioner, thus, his illnesses are deemed work-related and compensable.

Petitioner is entitled to attorney's fees

Article 2208 of the New Civil Code provides that attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws. It is also recoverable when the respondent's act or omission has compelled the complainant to incur expenses to protect their interest. Since these conditions are present here, the award of attorney's fees in favor of petitioner is warranted. This is in accord with the Court's pronouncement in ***Pastor v. Bibby Shipping Philippines, Inc.***[40]

Lastly, pursuant to ***C.F. Sharp Crew Management, Inc. v. Santos***[41] and ***Nacar v. Gallery Frames***,[42] the Court imposes on the total monetary award, six percent (6%) legal interest *per annum* from finality of this Decision until full payment.

ACCORDINGLY, the Decision dated August 17, 2018 and Resolution dated March 12, 2019 of the Court of Appeals in CA-G.R. SP No. 145564 are **REVERSED** and **SET ASIDE**.

The Decision dated June 4, 2015 of the Labor Arbiter is **REINSTATED.** Respondents Belchem Philippines, Inc. and Belchem Singapore Pte. Ltd. are **ORDERED TO PAY** jointly and solidarily petitioner Nelson M. Celestino the peso equivalent based on the exchange rate at the time of actual payment of US Dollar Ninety Thousand Eight Hundred Eighty-Two (US$90,882.00) representing his total and permanent disability benefits plus ten percent (10%) thereof as attorney's fees. Further, they shall pay six percent (6%) legal interest *per annum* of the total monetary amount from finality of this Decision until full payment.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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40 G.R. No. 238842, November 19, 2018.
41 *See* 838 Phil. 82, 101 (2018).
42 716 Phil. 267, 283 (2013).

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC MARIO VICTOR F. LEONEN
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice