Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

ROGER GALON LONGNO,
Petitioner,

-versus-

SKANFIL MARITIME SERVICES, INC., and CROWN SHIPMANAGEMENT, INC.,
Respondents.

G.R. No. 266494

Present:

CAGUIOA, *J.*, *Chairperson*,
INTING,*
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

Promulgated:

APR 07 2025

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DECISION

SINGH, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision,[2] dated September 8, 2022, and the Resolution,[3] dated March 17, 2023 of the Court of Appeals (**CA**) in CA G.R. SP No. 167823. The CA annulled and set aside the Decision,[4] dated July

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* On official business.

1 *Rollo*, pp. 12–38.

2 *Id.* at 40–51. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Ramon R. Garcia and Jennifer Joy C. Ong of the Sixth Division, Court of Appeals, Manila.

3 *Id.* at 53–54. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Ramon R. Garcia and Jennifer Joy C. Ong of the Former Sixth Division, Court of Appeals, Manila.

4 *Id.* at 273–283. Penned by Commissioner Gina F. Cenit-Escoto and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Ma. Minerva S. Paez-Collantes of the First Division of the National Labor Relations Commission.

22, 2020, and the Resolution,[5] dated November 16, 2020 of the National Labor Relations Commission (**NLRC**) which modified the Decision,[6] dated September 17, 2019 of the Labor Arbiter which ordered herein respondents, jointly and severally, to pay petitioner total and permanent disability benefits, and attorney's fees.

The Facts

On October 4, 2017, petitioner Roger Galon Longno (**Roger**) entered into a contract of employment with respondents Crown Shipmanagement, Inc., (**Crown Shipmanagement**) through its local agent, Skanfil Maritime Services, Inc. (**Skanfil Maritime**) (collectively, **Crown Shipmanagement and Skanfil Maritime**). Under the said contract, Roger would be employed as a Boatswain on board bulk carrier "Nautical Loredana" for a period of nine months, with a basic monthly salary of USD 779.00. Also included in the contract are the 2010 Philippine Overseas Employment Agency (**POEA**) Standard Employment Contract (**POEA-SEC**) and the parties' Collective Bargaining Agreement, FESMAR/ITF, by operation of law.[7]

On October 20, 2017, upon passing the routine pre-employment medical examination, Roger boarded Nautical Loredana.[8]

Sometime in February 2018, while cleaning the hatch of the ship, Roger suddenly heard and felt his back snap after trying to reach the dirty bulk head about 15 meters high with a bamboo pole. Roger tolerated the resulting pain and proceeded to perform his daily duties on board. On April 2018, while cleaning the cargo hold, the pain he previously endured intensified and his upper and lower extremities also felt numb. Thus, Roger was brought to a hospital in India, where he was diagnosed with Acute Lumbosacrum Strain. Roger was given medications and eventually, on June 5, 2018, he was medically repatriated for further evaluation and management.[9]

On June 6, 2018, Roger appeared before the company-designated physician, Marine Medical Services (**MMS**). The designated orthopedic surgeon of MMS recommended that Roger undergo cervical, thoracic MRI, and EMG-NGV studies of the upper extremities.[10]

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5 *Id.* at 309–310. Penned by Commissioner Gina F. Cenit-Escoto and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Ma. Minerva S. Paez-Collantes of the First Division of the National Labor Relations Commission.

6 *Id.* at 221–229. Penned by Labor Arbiter Maki T. Datu-Ramos II.

7 *Id.* at 41.

8 *Id.*

9 *Id.*

10 *Id.* at 275.

On June 8, 2018, Roger was diagnosed with Upper Trapezius Muscle Strain and Mild Degenerative Disc Disease of the Cervical and Thoracic Spine. The orthopedic surgeon then advised Roger to start his conservative management, medication, physical therapy, and rehabilitation program.[11]

On July 13, 2018, Roger underwent a medical procedure called Carpal Tunnel Release to treat his Left Carpal Tunnel Syndrome. Two weeks after the operation, Roger returned to MMS with an improved left hand and dried post-operation wound. However, Roger complained of upper back pain and occasional weakness of his left knee, hence, the orthopedic surgeon of MMS advised him to continue his rehabilitation program and medication.[12]

On August 31, 2018, Roger visited MMS for another medical check-up. He informed the orthopedic surgeon that he can still feel pain in his upper back and weakness in his left-hand grip.[13] The condition of Roger persisted despite constant treatment until MMS issued a Medical Report, dated 24 September 2018, where MMS gave Roger a final disability rating of Grade 12, referring to the slight stiffness of his neck or 1/3 loss of motion:[14]

> "This is regarding the case of Bosun Roger G. Longno, who was initially seen here at [MMS] and was diagnosed to have Upper Trapezius Muscle Strain[,] Mild Degenerative Disc Disease[,] Cervical and Thoracic Spine[,] Carpal Tunnel Syndrome[,] Left: S/P Carpal Tunnel Release, Left
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> . . . .
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> *"His final disability gradings [sic] are [sic] Grade 12 – slight stiffness of the neck or 1/3 loss of motion.*[15] (Emphasis supplied)

Acting on MMS's final disability rating of Grade 12, Crown Shipmanagement and Skanfil Maritime offered Roger a disability compensation benefit in the amount of USD 5,225.00[16] corresponding to disability Grade 12 under section 32 of the 2010 POEA-SEC. However, Roger refused to accept the disability grade assessed by the company-designated physician, MMS.[17]

Instead, Roger sought a second opinion from his chosen physician, Dr. Renato Runas (**Dr. Runas**), who after conducting physical examinations, such

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11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.* at 275–276.
15 *Id.* at 276–277.
16 *Id.* at 277.
17 *Id.* at 42.

as Lumbosacral Spine and EMG-NGC tests, declared Roger unfit for sea duty in his Assessment, dated December 14, 2018:[18]

> Seaman Longno is incapacitated due to unrelenting episodes [of] moderate upper and lower back pain, intensity 5-6/10 . . . *Activities of daily living are also affected. Due to these impediments, he is no longer capable to work heavily as a seafarer because of the high probability of progression of his condition. His capacity to work is greatly affected and reduced. He is unfit for sea duty in whatever capacity with a permanent disability.*[19] (Emphasis supplied)

On January 3, 2019, Roger sent Crown Shipmanagement and Skanfil Maritime a letter, signifying his intention to avail of a third doctor opinion, per the 2010 POEA-SEC, to which the latter acceded. During the parties' mandatory conferences, they agreed to refer Roger's medical condition to Dr. David Alagar (**Dr. Alagar**).[20]

After several tests and diagnostic x-rays conducted on Roger, Dr. Alagar issued a Medical Report, dated April 12, 2019, finding Roger "*permanently disabled*" and "*fits the criteria of grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk) under the 2010 POEA-SEC schedule of disability*":[21]

> In my opinion, *with a chronic back pain not responsive to therapy nor medications*, returning to work may be dangerous to himself and to others. Adding to this situation is a beginning symptomatic left knee arthritis that can progress with time, especially in this highly physical job. All these in mind, I find Mr[.] Roger Longno, at present condition, to be *permanently disabled* and *fits the criteria of grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk)* under the 2010 POEA-SEC schedule of disability.
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> This certification is being issued for insurance claim purposes.[22] (Emphasis supplied)

Still, the parties failed to settle as Roger insisted on his claim for permanent and total disability benefits.[23]

According to Roger, despite Dr. Alagar's finding of Grade 11 disability rating, he was also found to be "permanently disabled". Moreover, he maintained that his incapacity to work lasted beyond the 240-day period, thus entitling him to permanent and total disability benefits. Meanwhile, Crown

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18 *Id.*
19 *Id.* at 69.
20 *Id.* at 42.
21 *Id.*
22 *Id.* at 228.
23 *Id.* at 42.

Shipmanagement and Skanfil Maritime posit that Roger can only claim partial disability benefits corresponding to the Grade 11 disability rating given by the third doctor, Dr. Alagar, whose assessment is final and binding between the parties.[24]

The Ruling of the Labor Arbiter

On September 17, 2019, the Labor Arbiter adjudged Crown Shipmanagement and Skanfil Maritime, jointly and severally, liable to pay Roger total permanent disability benefits and attorney's fees:

> **WHEREFORE**, a judgment is hereby rendered directing and ordering [Roger Galon Longno's] local agent against [,] SKANFIL MARITIME SERVICES, INC., and its principal[,] CROWN MANAGEMENT, INC. for Total Permanent Disability Benefits[,] to jointly and severally pay [petitioner] ROGER GALON LONGNO in the amount of [**USD 60,000.00**], or its equivalent in Philippine currency at the exchange rate prevailing at the time of actual payment[,] plus 10% thereof or in the amount of [**USD 6,000.00**,] as and by way of attorney's fees.
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> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[25] (Emphasis in the original)

The Labor Arbiter found that the parties agreed to the appointment of Dr. Alagar for the conduct of the third medical evaluation/opinion on the condition of Roger. However, their dispute only pertains to whether Roger's benefits should be classified as permanent and total, or merely partial. Dr. Alagar's medical assessment proved ambiguous, i.e., while stating the Roger was "permanently disabled," he also indicated that Roger "fits the criteria of grade 11." This ambiguity rendered Dr. Alagar's findings inconclusive and indefinite.[26]

In addition, Dr. Alagar submitted his assessment on April 12, 2019, which is 312 days after the Roger's repatriation on June 4, 2018, establishing a period of incapacity for work exceeding 240 days. Consequently, under Article 192(c)(1) of the Labor Code, Roger's disability ought to be classified as permanent and total, notwithstanding Dr. Alagar's Grade 11 disability grading.[27]

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24 *Id.* at 44.
25 *Id.* at 229.
26 *Id.* at 228.
27 *Id.*

As to Roger's entitlement to moral and exemplary damages, the Labor Arbiter denied the same due to lack of evidence presented to warrant such awards. Attorney's fees was awarded to Roger.[28]

Aggrieved, Crown Shipmanagement and Skanfil Maritime appealed to the NLRC.[29]

The Ruling of the NLRC

On July 22, 2020, the NLRC modified the September 17, 2019 Decision of the Labor Arbiter:

> **WHEREFORE**, premises considered, the appeal is hereby **DISMISSED** for lack of merit. However, the Decision[,] dated [September 17,] 2019 is hereby **MODIFIED** insofar as this Commission's finding that a final and definite assessment of the [Roger Galon Longno's] condition was issued by the third doctor.
>
> **SO ORDERED**.[30] (Emphasis in the original)

The NLRC held that an employer and a seafarer are bound by the disability assessment of the third physician. However, for the assessment to be valid and binding, the third physician must render a definitive and conclusive opinion regarding the seafarer's disability or fitness to return to work.[31]

Contrary to the ruling of the Labor Arbiter, the NLRC held that Dr. Alagar's assessment of Roger's condition was final and definite. It further held that the Grade 11 disability rating given by Dr. Alagar was inconsequential, as Roger's chronic back pain rendered him incapable of gainful employment beyond 240 days.

The NLRC affirmed the award of attorney's fees to Roger.[32]

On November 16, 2020, the NLRC denied Crown Shipmanagement and Skanfil Maritime's motion for reconsideration for lack of merit.[33]

The Ruling of the CA

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28 *Id.* at 228–229.
29 *Id.* at 45.
30 *Id.* at 282.
31 *Id.* at 279.
32 *Id.* at 282.
33 *Id.* at 309.

On September 8, 2022, the CA annulled and set aside the July 22, 2020 Decision and the November 16, 2020 Resolution of the NLRC, ordering Crown Shipmanagement and Skanfil Maritime to, jointly and severally, pay Roger permanent and partial disability benefits as well as attorney's fees:

> **PREMISES CONSIDERED**, the Petition for Certiorari is **GRANTED**. The July 22, 2020 Decision and November 16, 2020 Resolution of the National Labor Relations Commission are hereby **ANNULLED** and **SET ASIDE**[,] and a new one is entered ordering respondents, Skanfil Maritime Services, Inc.[,] and Crown Management, Inc. to jointly and severally **PAY** Rogel Galon Longno, permanent and partial disability benefits corresponding to a Grade 11 disability under the 2010 POEA-SEC in the amount of [USD 7,465.00,] or its peso equivalent at the time of payment, as well [as 10%] attorney's fees.
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> **SO ORDERED.**[34] (Emphasis in the original)

The CA ruled that Roger had a Grade 11 disability (slight rigidity or 1/3 loss of motion or lifting power of the trunk), qualifying it as a partial permanent disability under the 2010 POEA-SEC.[35] The CA affirmed the award of attorney's fees to Roger.[36]

On March 17, 2023, the CA denied Roger's motion for reconsideration.[37]

Undeterred, Roger filed before this Court a Petition for Review on *Certiorari*.

The Issue

Did the CA commit any reversible error in reversing the findings of the NLRC, which awarded permanent and total disability benefits to Roger?

The Ruling of the Court

The Court resolves to grant the Petition.

Factual findings in a Rule 45 petition

At the outset, it is established by the records of the case that the parties are not disputing whether Roger suffered an injury while working on board

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34 *Id.* at 50–51.
35 *Id.* at 49.
36 *Id.* at 51.
37 *Id.* at 54.

the ship of Crown Shipmanagement.[38] The issue raised by the parties pertain to the extent of Roger's disability, whether partial, as argued by the Crown Shipmanagement and Skanfil Maritime, or total and permanent, as asserted by Roger, and the corresponding attorney's fees.

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 re-examine and calibrate the evidence on record.[39]

In this case, however, the findings of the CA are contradictory with that of the NLRC and the Labor Arbiter, which is an exception to the general rule.[40] Moreover, the Court deems it wise to resolve the case on the merits as it presents a novel issue, i.e., the extent of the disability of the seafarer, whether partial or total and permanent, as found by the third doctor who gave a medical finding that is vague. Hence, this Court gives due course to the Petition.

Entitlement of the seafarer to disability benefits, as provided under the law, employment contract, and medical findings

In *Jebsen Maritime, Inc. v. Ravena*,[41] the Court held that the entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract, and the medical findings:

> By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.
>
> By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.
>
> Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually agreed third physician, pursuant to the POEA-SEC, govern.[42] (Citation omitted)

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38 *Id.* at 228.
39 *Benhur Shipping Corporation v. Riego*, 921 Phil. 962, 975 (2022) [Per C.J. Gesmundo, First Division].
40 *Id.*
41 743 Phil. 371 (2014) [Per J. Brion, Second Division].
42 *Id.* at 385.

The overseas seafarer's employment is governed by the contracts they signed at the time of engagement so long as the stipulations therein are not contrary to law, morals, public order, or public policy. Nonetheless, while the seafarer and his employer are governed by their respective contract, the POEA rules and regulations require that the POEA-SEC be integrated into every seafarer's contract.[43]

As such, when an overseas seafarer seeks disability compensation and benefits under Section 20-B of the 2010 POEA-SEC, the law requires the seafarer to prove the following:

> (1) he [or she] suffered an illness;
> (2) he [or she] suffered this illness during the term of his [or her] employment contract;
> (3) he [or she] complied with the procedures prescribed under Section 20-B;
> (4) his [or her] illness is one of the enumerated occupational disease or that his [or her] illness or injury is otherwise work-related; and
> (5) he [or she] complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[44]

Aside from the POEA-SEC, an overseas seafarer's entitlement to disability benefits is also governed by medical findings.

In *Sunit v. OSM Maritime Services, Inc.*,[45] citing *Hanseatic Shipping Philippines, Inc. v. Ballon*,[46] the Court held that disability may be classified as partial, total, temporary, or permanent:

> Permanent disability is defined as the inability of a worker to perform his [or her] job for more than 120 days (or 240 days, as the case may be), regardless of whether [] he [or she] loses the use of any part of his [or her] body. Total disability, meanwhile, means the disablement of an employee to earn wages in the same kind of 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 attainments could do.[47]

In relation thereto, *Kestrel Shipping Co., Inc. v. Munar*[48] also instructs that an overseas seafarer's disability may be classified as total and permanent

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43 *See Calera v. Hoegh Fleer Services Philippines, Incorporated*, 903 Phil. 894, 912 (2021) [Per J. Lazaro-Javier, Second Division].
44 *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 388–389 (2014) [Per J. Brion, Second Division].
45 806 Phil. 505 (2017) [Per J. Velasco, Jr., Third Division].
46 769 Phil. 567 (2015) [Per J. Mendoza, Second Division].
47 *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 514 (2017) [Per J. Velasco, Jr., Third Division].
48 702 Phil. 717 (2013) [Per J. Reyes, First Division].

if it would incapacitate them to perform their usual work for a period more than 120/240 days:

> [U]nder Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. *However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his [or her] usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he [or she] is, under legal contemplation, totally and permanently disabled.* In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code.[49] (Emphasis supplied)

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

> ART. 192. Permanent Total Disability.
>
> . . . .
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for *more than one hundred twenty days,* except as otherwise provided in the Rules; (Emphasis supplied)

The rule referred to in Article 192 (c) (1) is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

> Section. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days *except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days* from onset of disability in which case benefit for temporary total disability shall be paid. (Emphasis supplied)

In *Elburg Shipmanagement Phils., Inc. v. Quiogue,*[50] the Court provided a clear picture of the process that must be observed when there is a claim for total and permanent disability by an overseas 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 [or her];

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49 *Id.* at 730–731.

50 765 Phil. 341 (2015) [Per J. Mendoza, Second Division].

> (2) If the company-designated physician fails to give his [or her] 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 [or her] assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> (4) If the company-designated physician still fails to give his [or her] assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[51]

In *Bunayog v. Foscon Shipmanagement, Inc.*,[52] the Court held that after medical repatriation, the company-designated physician must assess the seafarer's fitness to work or the degree of his disability. If the seafarer disagrees with the findings of the company designated physician, the seafarer may choose his own doctor to dispute such findings. If the findings of the company-designated physician and the seafarer's doctor of choice are conflicting, the matter is then referred to a third doctor, whose findings shall be binding on both parties.[53]

Such mechanism clearly gives the parties the opportunity to settle, without the aid of the labor tribunals and/or the courts, the conflicting medical findings of the company-designated physician and the seafarer's physician of choice through the findings of a third doctor, mutually agreed upon by the parties.[54]

Bunayog also laid down the following guidelines in case the seafarer requests for a third doctor referral:

> *First, a seafarer who receives a contrary medical finding from his or her doctor must send to the employer, within a reasonable period of time, a written request or demand to refer the conflicting medical findings of the company-designated physician and the seafarer's doctor of choice to a third doctor, to be mutually agreed upon by the parties, and whose findings shall be final and binding between the parties.*
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> Second, the written request must be accompanied by, or at the very least, must indicate the contents of the medical report or medical abstract from his or her doctor, to be considered a valid request. Otherwise, the

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51 *Id.* at 362–363.
52 941 Phil. 383, 388 (2023) [Per J. Gaerlan, *En Banc*].
53 *Id.*
54 *Id.*

written request shall be considered invalid and as if none had been requested.

Third, in case where there was no request for a third doctor referral from the seafarer or there was such a request but is deemed invalid, the employer may opt to ignore the request or demand or refuse to assent, either verbal or written, to such request or demand without violating the pertinent provisions of the POEA-SEC. Accordingly, if a complaint is subsequently filed by the seafarer against the employer before the labor tribunal, and the parties, after a directive from the [Labor Arbiter] pursuant to NLRC [*En Banc*] Resolution No. 008-14, fail to secure the services of a third doctor, the labor tribunals shall hold the findings of the company-designated physician final and binding, unless the same is found to be biased, i.e., lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings shall be considered by the tribunals or court.

If, however, the parties were able to secure the services of a third doctor during mandatory conference, the latter's assessment of the seafarer's medical condition should be considered final and binding.

Fourth, in case of a valid written request from the seafarer for a third doctor referral, the employer must, within 10 days from receipt of the written request or demand, send a written reply stating that the procedure shall be initiated by the employer. After a positive response from the employer, the parties are given a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her assessment. The assessment of the third doctor shall be final and binding. In case, however, where the parties fail to mutually agree as to the third doctor who will make a reassessment, a complaint for disability benefits may be filed by the seafarer against the employer. The labor tribunals shall then consider and peruse the inherent merits of the respective medical findings of the parties' doctors before making a conclusion as to the condition of the seafarer.

Fifth, if, however, the employer ignores the written request or demand of the seafarer, or sends a written reply to the seafarer refusing to initiate the referral to a third doctor procedure, or sends a written reply giving its assent to the request beyond 10 days from receipt of the written request or demand of the seafarer, the employer is considered in violation of the POEA-SEC. The seafarer may now institute a complaint against his or her employer.

Sixth, upon the filing of the complaint and during the mandatory conference, the [Labor Arbiter] shall give the parties a period of 15 days within which to secure the services of a third doctor and an additional period of 30 days for the third doctor to submit his/her reassessment.

Seventh, if the services of a third doctor were not secured on account of the employer's refusal to give heed to the [Labor Arbiter]'s request or due to the failure of the parties to mutually agree as to the third doctor who will make a reassessment, the labor tribunals should make conclusive between the parties the findings of the seafarer's physician of choice, unless the same is clearly biased, i.e., lacking in scientific basis or unsupported by the medical records of the seafarer. In such a case, the inherent merits of the respective medical findings and the totality of evidence shall be considered

> by the labor tribunals or courts. This is in conjunction with Our earlier ruling that the employer's failure to respond to the seafarer's valid request or demand for a third doctor referral should be taken against the employer.
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> If, however, the failure to refer the seafarer's condition to a third doctor after directive from the [Labor Arbiter] was due to the fault of the seafarer, that is, the seafarer refuses to comply therewith, then the labor tribunals and the courts should make conclusive between the parties the findings of the company-designated physician, subject to the exception in Dionio.
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> Eighth, if, despite the employer's failure to respond to the seafarer's valid request or demand to refer his or her condition to a third doctor, the parties, during mandatory conference, were able to secure the services of a third doctor, and the latter was able to make a reassessment on the seafarer's condition, the third doctor's findings should be final and binding between the parties. In such a case, the employer's refusal to respond to the seafarer's valid request for a third doctor referral should be considered immaterial.[55] (Emphasis supplied, citation omitted)

In this case, the records reveal and the parties do not dispute that: (1) Roger suffered an illness as proven by the medical findings of company-designated physician, MMS, Roger's choice of doctor, Dr. Runas, and the third-party doctor agreed upon by the parties, Dr. Alagar; (2) Roger suffered the illness during the term of his employment contract as a Boatswain, sometime in February 2018; (3) Roger complied with the procedures prescribed in *Elburg*; and (4) Roger 's illness was found to be work-related.

Having shown that Roger's injury is compensable as it has a causal connection with his work as a Boatswain, and that he suffered the same during the term of his employment contract, the next question is: should Roger be entitled to total and permanent disability benefits?

Roger claims that he is entitled to full disability benefits and not a mere partial disability of Grade 11,[56] while Crown Shipmanagement and Skanfil Maritime rely on the findings of Dr. Alagar that Roger's illness fits the criteria of Grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk) under the 2010 POEA-SEC schedule of disability, a partial disability.

Roger is entitled to permanent and total disability benefits

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55 *Id.* at 406–409.

56 *Rollo*, p. 23.

In *Sunit v. OSM Maritime Services, Inc.*,[57] the Court ruled that the third doctor's assessment of the extent of disability must be definite and conclusive to be binding between the parties:

> 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.[58] (Emphasis supplied)

A final and definite disability assessment is necessary to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[59]

In *Sunit*, the Court found the seafarer's disability to be permanent and total despite the Grade 9 partial disability given by the third doctor since his incapacity to work lasted for more than 240 days from his repatriation:

> *Both parties then consulted a third doctor to assess petitioner's degree of disability, who assessed petitioner with a Grade 9 partial disability* on February 17, 2014, 499 days from his repatriation. *In addition to the partial disability grading, Dr. Bathan likewise assessed petitioner as unfit to work and recommended him to undergo further rehabilitation.*
>
> While We have ruled that Dr. Bathan is not bound to render his assessment within the 120/240 day period, and that the said period is inconsequential and has no application on the third doctor, *petitioner's disability and incapacity to resume working clearly continued for more than 240 days. Applying Article 192 (c) (1) of the Labor Code, petitioner's disability should be considered permanent and total despite the Grade 9 disability grading.*
>
> This conclusion is in accordance with *Kestrel*, wherein this Court underscored that *if partial and permanent injuries or disabilities would incapacitate a seafarer from performing his [or her] usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he [or she] is, under legal contemplation, totally and permanently disabled.*[60] (Emphasis supplied)

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57 806 Phil. 505 (2017) [Per J. Velasco, Jr., Third Division].
58 *Id.* at 517.
59 *Id.* at 519.
60 *Id.* at 520.

Here, despite the disability grading that Dr. Alagar issued, he also stated that Roger is permanently disabled. Dr. Alagar's Medical Report, dated April 12, 2019, is reproduced as follows:

> In my opinion, *with a chronic back pain not responsive to therapy nor medications*, returning to work may be dangerous to himself and to others. Adding to this situation is a beginning symptomatic left knee arthritis that can progress with time, especially in this highly physical job. All these in mind, I find Mr[.] Roger Longno, at present condition, to be *permanently disabled* and *fits the criteria of grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk)* under the 2010 POEA-SEC schedule of disability.
>
> This certification is being issued for insurance claim purposes.[61] (Emphasis supplied)

Perusing the language of Dr. Alagar's medical assessment, it appears equivocal that the words used by Dr. Alagar, i.e., "permanently disabled" and "grade 11 (slight rigidity or 1/3 loss of motion or lifting power of the trunk)" leave room for varied interpretations whether it qualifies as total and permanent, or partial.

However, beyond these words, Dr. Alagar did say that the chronic back pain was not responsive to therapy or medications, and that it would be dangerous for Roger and others if he returned to work, meaning, he is not fit to return to work anymore. Moreover, Roger's inability to work persisted beyond the 240-day period. To recall, Roger was repatriated on June 4, 2018. Eventually, the parties referred the Roger's medical condition to Dr. Alagar, the third physician, whose assessment was rendered on April 12, 2019, 312 days after the Roger's repatriation. Although the Court ruled in *Sunit* that the third doctor, Dr. Alagar, is not bound to render his medical assessment within the 240-day period, Roger's disability and incapacity to resume work clearly continued beyond 240 days following his repatriation. Following the Court's pronouncement in *Sunit* and Section 32 of the POEA-SEC, Roger's disability should be considered permanent and total.

Dr. Alagar's medical assessment underscores the progressive nature of Roger's condition and suggests that his disability has reached a level where continued employment is neither feasible nor safe for him and other people. Thus, applying Article 192 (c) (1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employees' Compensation, Roger's disability should be considered permanent and total despite the Grade 11 disability grading given by Dr. Alagar.

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[61] *Id.* at 228.

As held by the Court in *Seacrest Maritime Management, Inc. v. Bernarte*,[62] 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.

After all, our labor laws afford more protection to labor, an interpretation favored by no less than the Constitution. Article II, Section 18 of the Constitution "affirms labor as a primary social economic force" and mandates that the state "protect the rights of workers and promote their welfare." In relation thereto, Article XIII, Section 3 states that "[t]he State shall afford full protection to labor, local and overseas."

Indeed, the law looks tenderly on the laborer. Thus, where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.[63]

In view of the foregoing circumstances, Roger is considered permanently and totally disabled and should be awarded the corresponding permanent and total disability benefits.

Lastly, considering that Roger was forced to litigate and incur expenses to protect his right and interest under law and contract, this Court deems it proper to award attorney's fees in favor of Roger at 10% of the total monetary awards following Art. 2208 of the New Civil Code, "which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws."

However, the Court also observed that Crown Shipmanagement and Skanfil Maritime have not demonstrated any indicia of bad faith in denying Roger's demands, even offering to pay the latter the amount corresponding to total and partial disability benefits. Therefore, the Court finds the award of attorney's fees of 10% of the total monetary award, or USD 6,000.00 as reasonable.

ACCORDINGLY, the Petition for Review on *Certiorari* filed by Roger Galon Longno is **GRANTED**. The Decision, dated September 8, 2022, and the Resolution, dated March 17, 2023 of the Court of Appeals in CA G.R. SP No. 167823 are **REVERSED.** Respondents Skanfil Maritime Services, Inc. and Crown Shipmanagement, Inc. are **JOINTLY and SEVERALLY LIABLE to PAY** Roger Galon Longno the amount of USD 60,000.00, or its peso equivalent at the time of payment, representing permanent and total

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62 901 Phil. 366 (2021) [Per J. Delos Santos, Third Division].

63 *See Nazareno v. Maersk Filipinas Crewing, Inc.*, 704 Phil. 625, 637 (2013) [Per J. Peralta, *En Banc*].

disability benefits, plus USD 6,000.00, or its peso equivalent at the time of payment, as attorney's fees.

Respondents are likewise liable for legal interest at 6% per annum of the foregoing monetary awards, computed from the date of the finality of this Decision until full satisfaction.

SO ORDERED."

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official business
HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice