



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
**RECEIVED**  
SEP 11 2020  
BY: *[Signature]*  
TIME: \_\_\_\_\_

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 1, 2020**, which reads as follows:

“G.R. No. 240599 (*Dolphin Ship Management, Inc., and/or Vroon Ship Management BV v. Eulogio Malazarte*); G.R. No. 241440 (*Eulogio T. Malazarte v. Dolphin Ship Management, Inc., and/or Vroon Ship Management BV*). – These are separate appeals by *certiorari* filed by Dolphin Ship Management, Inc. (*Dolphin Ship*) and/or Vroon Ship Management BV and Eulogio T. Malazarte (*Malazarte*) on the Court of Appeals’ (*CA*) ruling in CA-G.R. SP No. 09485. In G.R. No. 240599, Dolphin Ship assails the June 29, 2018 Resolution<sup>1</sup> of the CA denying its Motion<sup>2</sup> for the inclusion of an Express Order of Restitution in the May 31, 2017 CA Decision.<sup>3</sup> In G.R. No. 241440, Malazarte assails the May 31, 2017 CA Decision and the June 29, 2018 CA Resolution denying his claim for total and permanent disability benefits.

The Antecedents

Dolphin Ship is a manning agency engaged in the recruitment and placement of Filipino seafarers for its foreign principal, Vroon Ship Management BV.

On August 30, 2013, Malazarte signed an eight-month employment contract with Dolphin Ship as a pumpman on board *M/T Iver Exact*, for a basic monthly salary of US\$800.00. With Malazarte being a registered member of the Associated Marine Officers’ and Seamen’s Union of the Philippines (*AMOSUP*), his Philippine Overseas Employment Agency-Standard Employment Contract (*POEA-SEC*) was covered by a Collective Bargaining Agreement (*CBA*), the IBF-JSU/AMOSUP-IMMAJ CBA. On October 13,

<sup>1</sup> *Rollo*(G.R. No. 240599),pp. 20-27; penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring.

<sup>2</sup> *Id.* at 28-33.

<sup>3</sup> *Id.* at 62-85; penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring.

2013, after undergoing and passing the required pre-employment medical examination, Malazarte boarded the vessel.<sup>4</sup>

On October 26, 2013, Malazarte tripped over a pipe and fell on the floor. He suffered pain in his left middle finger, left elbow, left shoulder and lower back. He took pain relievers to get temporary relief but the pain persisted. The master of the vessel brought Malazarte to a medical institution in Qatar where he was found to have suffered *myalgia* and was recommended for repatriation. On November 1, 2013, he was medically repatriated.<sup>5</sup>

Upon arrival, Malazarte was referred to the company-designated physician, Dr. Nicomedes G. Cruz (*Dr. Cruz*), who had him undergo an x-ray on the lumbosacral spine. The result showed that he had *mild lumbar spondylosis* and *dextroscoliosis, Grade 1 anterior spondylosisthesis, L4 over L5 vertebral body and post-cholecystectomy changes*.<sup>6</sup>

After further consultation with an orthopedic surgeon and a rehabilitation specialist, Malazarte was recommended for Magnetic Resonance Imaging (*MRI*) examination. His test results showed *lumbosacral spondyloarthropathy with multilevel degenerative disc disease*. Immediately, respondent underwent medication and physical therapy sessions to address his medical condition.<sup>7</sup>

Despite the lapse of four (4) months of medication and physical therapy sessions, Malazarte still suffered persistent low back pain. Dr. Cruz prescribed further medication and required him to continue rehabilitation.<sup>8</sup>

On February 24, 2014, Dr. Cruz gave Malazarte an interim disability rating of Grade 8 and recommended further treatment for about 30 days.

On March 19, 2014, Dr. Cruz opined that Malazarte's condition was degenerative in nature and could not be considered as work-related. Notwithstanding this finding, Dr. Cruz continued Malazarte's treatment and rehabilitation.<sup>9</sup>

On April 2, 2014, during his consultation with Dr. Cruz, Malazarte was told to continue with his treatment and to return for his next appointment on April 11, 2014. He never came back. As it turned out, Malazarte sought a second opinion from an independent physician, Dr. Misael Jonathan A. Ticman (*Dr. Ticman*), who diagnosed him with *multilevel degenerative disc disease*

---

<sup>4</sup> Id. at 63.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id. at 64.

<sup>8</sup> Id.

<sup>9</sup> Id.

with spinal canal and neuroforaminal stenoses, L4 L5, annular tear L4L5, L5S, and certified him to have permanent disability. On May 5, 2014, Dr. Ticman issued a certification declaring Malazarte unfit to work as a seaman in whatever capacity.<sup>10</sup>

On the same day, Malazarte filed a Complaint<sup>11</sup> before the Arbitration Branch of the National Labor Relations Commission (NLRC), seeking payment of total and permanent disability benefits, sickness allowance, damages and attorney's fees. Malazarte claimed that his work-related injury rendered him incapable of returning to his customary work as a seafarer and entitled him to total and permanent disability benefits of US\$93,154.00 under the CBA. He further demanded entitlement to sickness allowance pursuant to the POEA-SEC.<sup>12</sup>

For its part, Dolphin Ship contended that the filing of the Complaint was premature because Malazarte was guilty of medical abandonment when he did not appear for his scheduled appointment. It argued that Malazarte's medical condition was not work-related, thus not compensable. However, even if it were compensable, he was entitled only to the compensation corresponding a Grade 8 disability as recommended by Dr. Cruz.<sup>13</sup>

#### ***Ruling of the Labor Arbiter:***

In its November 28, 2014 Decision, the LA awarded Malazarte with total and permanent disability benefits in the amount of US\$93,154 under the CBA plus 10% attorney's fees. The LA ruled that Malazarte's medical condition was compensable because there existed a reasonable work-connection between his condition and his employment as shown by his inability to work as a seafarer for more than 120 days. It held that while Malazarte's condition may be degenerative, it was his accident on board *M/T Iver Exact* which aggravated his condition, making him incapable of doing his customary work.

Aggrieved by the LA Decision, Dolphin Ship interposed an appeal with the NLRC.

---

<sup>10</sup> Id. at 64-65.

<sup>11</sup> Not attached to the *rollo*; as cited in CA Decision, id. at 65.

<sup>12</sup> Id.

<sup>13</sup> Id.

***Ruling of the NLRC:***

In its February 27, 2015 Decision, the NLRC sustained the award of total disability benefits to Malazarte. It affirmed the compensability of Malazarte's illness because of the presumption of work-relatedness and the theory of work aggravation. It held that his inability to work as a seafarer for more than 120 days from the time of his repatriation entitled him to the benefits. It added that the instant case fell under the recognized exception to non-referral to a third physician in view of the principle of social justice.

Dolphin Ship filed a Motion for Reconsideration which the NLRC denied in its April 30, 2015 Resolution.

On July 15, 2015, the NLRC Decision attained finality. Thus, an Entry of Judgment<sup>14</sup> was ordered on July 16, 2015 pursuant to Sec. 14, Rule VII of the 2011 NLRC Rules of Procedure.

On August 3, 2015, Malazarte filed a Motion to Issue Writ of Execution/Garnishment (*Motion*).<sup>15</sup>

On August 6, 2015, without resolving Malazarte's Motion and in the absence of a temporary restraining order, the LA issued an Order<sup>16</sup> scheduling the pre-execution conference on August 25, 2015.

On August 17, 2015, Dolphin Ship filed its Opposition<sup>17</sup> to Malazarte's Motion, alleging that it had a pending Petition for *Certiorari* with the CA assailing the NLRC rulings.

On September 3, 2015, the parties jointly filed a Conditional Satisfaction of Judgment Award with Urgent Motion to Cancel and Release Appeal Bond (*Joint Manifestation*)<sup>18</sup> with the LA. In compliance with the Writ of Execution issued by the LA, Dolphin Ship paid ₱4,681,724.42, or the peso equivalent of US\$102,469.40, to Malazarte, who acknowledged receipt<sup>19</sup> thereof. The parties acknowledged that the Joint Manifestation was filed without prejudice to Dolphin Ship's pending petition with the CA or any available remedy available to the parties.

---

<sup>14</sup> Id. at 37.

<sup>15</sup> Id. at 34-36.

<sup>16</sup> Id. at 46.

<sup>17</sup> Id. at 38-45.

<sup>18</sup> Id. at 47-49.

<sup>19</sup> Id. at 54.

***Ruling of the CA:***

In its May 31, 2017 Decision, the CA, without knowledge of the parties' Joint Manifestation, upheld the compensability of Malazarte's injury, but declared that he was only entitled to the corresponding benefits of a Grade 8 disability. The CA ruled that Malazarte's claim was premature since Dr. Cruz had yet to issue a definitive assessment on his condition. The CA held that his condition could not be considered permanent since the 240-day period had not yet lapsed when the Complaint was filed. Further, Dr. Cruz had recommended the continuation of his rehabilitation warranting the extension of another 120 days to determine whether Malazarte could be fit to work again. The CA also found that Malazarte failed to observe the conflict resolution procedure in the POEA-SEC and the CBA, which was the referral to a third independent physician whose findings would have bound both parties. The CA added that Dr. Ticman's findings were unacceptable since he examined Malazarte only once and his findings were not supported by any diagnostic test or procedure. The CA ruled that Malazarte was entitled only to the benefits of a Grade 8 disability rating or US\$16,795.00. The CA deleted the award of attorney's fees for lack of legal and factual basis.

Both parties filed their respective Motions for Reconsideration. Dolphin Ship prayed that the judgment be modified to expressly include a stipulation on restitution. Malazarte, on the other hand, asked for the reinstatement of the LA Decision.

Both motions were denied. The CA held that it cannot modify the Decision since Dolphin Ship failed to prove its satisfaction of the Writ of Execution during the pendency of the case. Nevertheless, the CA assured Dolphin Ship that it was not without recourse as Malazarte expressly guaranteed, through the Joint Manifestation and his Affidavit,<sup>20</sup> that he would return the excess amount when the CA Decision attains finality. Malazarte's motion was denied for his failure to raise arguments not already passed upon.

Undeterred, Dolphin Ship and Malazarte filed separate appeals by *certiorari* against each other, docketed as G.R. No. 240599 and G.R. No. 241440, respectively.

In G.R. No. 241440, Malazarte argues that the CA erred in not finding him qualified to receive the benefits for permanent and total disability since the company-designated physicians failed to 1) sufficiently justify the need to extend the treatment, and 2) give a final disability assessment. Further, the filing of the Complaint is an express showing that he was not agreeable to the referral of the case to a third physician.

---

<sup>20</sup> Id. at 50-53.

In G.R. No. 240599, Dolphin Ship points out that the NLRC Rules of Procedure expressly allow the restitution of monetary awards. However, Dolphin Ship believes that an express order from this Court is necessary to effectuate the refund.

### The Court's Ruling

This Court denies both petitions.

### G.R. No. 241440

Malazarte's claim for permanent and total disability benefits should be denied since he committed medical abandonment. As held by the CA, he is entitled to receive the disability benefits corresponding to a Grade 8 disability rating only.

This Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows:

- “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;
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;
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
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.”<sup>21</sup>

To recall, from his repatriation on November 1, 2013, Malazarte received extensive medical attention from the company-designated physician, who recommended an x-ray examination on his lumbosacral spine and thereafter, an MRI. Accordingly, Malazarte underwent medication and physical therapy sessions to address his medical condition.

---

<sup>21</sup> *Jebsens Maritime, Inc. v. Mirasol*, G.R. No. 213874, June 19, 2019, citing *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362-363(2015).

On February 24, 2014, the 115<sup>th</sup> day, the company-designated physician issued a Medical Report giving Malazarte an interim disability rating of Grade 8 and recommended that he undergo further treatment for about 30 days.

On March 19, 2014, the 138<sup>th</sup> day, the company-designated physician opined that Malazarte's condition is degenerative in nature and cannot be considered as work-related. However, he recommended that Malazarte's treatment and rehabilitation be continued.

On April 2, 2014, the 159<sup>th</sup> day, Malazarte was told to continue his treatment and return the following week for his next appointment. Unfortunately, Malazarte no longer returned.

On May 5, 2014, the 185<sup>th</sup> day, Malazarte filed his claim for total and permanent disability benefits.

From the foregoing, it is apparent that Malazarte's treatment still continued after the lapse of 120 days from the date of his repatriation. Aside from the recommendation embodied in the February 24, 2014 Medical Report, which, by itself, is already sufficient justification, his presence in the succeeding sessions further justifies the need to extend his treatment.

Consequently, at the time Malazarte filed his Complaint on May 5, 2014, or 185 days after repatriation and with only an interim disability assessment from the company-designated physician, Malazarte's condition cannot be considered permanent and total. Temporary and total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of said period, he fails to make such declaration.<sup>22</sup> It would be unfair to expect the company-designated physician to come up with a final and definitive assessment since Malazarte did not come back for his next appointment even though his treatment was not yet over. It is evident, therefore, that Malazarte's Complaint was prematurely filed. His cause of action for total and permanent disability benefits has not yet accrued. Nonetheless, he was given an interim disability assessment of Grade 8, which entitled him to receive disability benefits of only US\$16,795.00 or its Philippine Peso equivalent.

Moreover, Malazarte failed to comply with the provisions of the POEA-SEC. Under Sec. 20 B(3) thereof, the claimant is allowed to secure the services of a physician of his choice should he disagree with the final assessment of the company-designated physician. Further, if the findings of his personal physician are incompatible with those of the company-designated physicians, then the matter should be referred to a third independent physician.

---

<sup>22</sup>*Scanmar Maritime Services, Inc. v. Hernandez, Jr.*, G.R. No. 211187, April 16, 2018, 861 SCRA 241, 255.

Here, Malazarte secured the services of Dr. Ticman even before the company-designated physician could issue a final and definitive assessment. Thus, Malazarte breached the provisions of the POEA-SEC.

### G.R. No. 240599

In cases involving restitution,<sup>23</sup> this Court has relied upon the validity of agreements to satisfy judgment awards pending resolution of the case in determining whether restitution is proper. This Court based its pronouncements primarily on whether the stipulations are fair and not prejudicial to both parties.

Here, the parties executed the Joint Manifestation where Malazarte agreed to receive ₱4,681,742.42, or the peso equivalent of US\$102,469.40, without prejudice to the result of Dolphin Ship's Petition for *Certiorari* before the CA and any remedy available to both parties. In case of a ruling favorable to Dolphin Ship, Malazarte undertook to return whatever is due and owed to the former without further demand. This Court finds these provisions to be fair for both parties as they can still pursue legal remedies available to them whatever the outcome.

Nevertheless, while this Court upholds the validity of their agreement and sustains Malazarte's entitlement to benefits corresponding to a Grade 8 disability only, it finds that Dolphin Ship's prayer for restitution is premature.

Sec. 18 Rule XI of the 2011 NLRC Rules of Procedure states:

**SEC. 18. RESTITUTION.** – Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court with finality and restitution is so ordered, the Labor Arbiter shall, on motion, issue such order of restitution of the executed award, except reinstatement wages paid pending appeal. (emphasis ours)

For obvious reasons, the CA Decision awarding a Grade 8 disability rating to Malazarte has yet to attain finality. This Court understands Dolphin Ship's sentiments and its fear of not being able to recover the excess of the amount it already paid. However, as correctly pointed out by the CA, Dolphin Ship is not without recourse since it can still move for the execution of the CA Decision once it attains finality.

**WHEREFORE**, the separate appeals by *certiorari* are **DENIED**.

<sup>23</sup> See *Seacrest Maritime Management Inc. v. Picar, Jr.*, 755 Phil. 901(2015); *Hernandez v. Crossworld Marine Services, Inc.*, 799 Phil. 539 (2016); *Magsaysay Maritime Corp. v. De Jesus*, 817 Phil. 533 (2017).



In G.R. No. 241440, this Court denies the petition of Eulogio T. Malazarte for failure to show that the Court of Appeals committed reversible error in its May 31, 2017 Decision and June 29, 2018 Resolution in CA-G.R. SP No. 09485.

In G.R. No. 240599, this Court denies the petition of Dolphin Ship Management, Inc., and/or Vroon Ship Management BV because the May 31, 2017 Decision of the Court of Appeals in CA-G.R. SP No. 09485 has yet to attain finality.

**SO ORDERED.”**

Very truly yours,

**MISAEEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*  
GER  
9/1/20

Atty. Ralph Julious L. Villamor  
Counsel for Petitioners  
DEL ROSARIO & DEL ROSARIO  
14th Floor, Del Rosario Law Building  
21st Drive corner 20th Drive  
Bonifacio Global City  
1630 Taguig City

PUBLIC INFORMATION OFFICE  
Supreme Court, Manila  
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES  
Supreme Court, Manila

COURT OF APPEALS  
CA G.R. CEB SP No. 09485  
6000 Cebu City

Judgment Division  
JUDICIAL RECORDS OFFICE  
Supreme Court, Manila

Atty. Justiniano Panambo, Jr.  
Counsel for Respondent  
Unit 607 Integrated Professional  
Offices Building  
No. 14 Quezon Avenue,  
1100 Quezon City

NATIONAL LABOR RELATIONS  
COMMISSION  
Seventh Division  
5/F, DOLE VII Bldg.  
Corner Gen. Maxilom & Gorordo Avenues  
6000 Cebu City

(81)  
URES

G.R. Nos. 240599 & 241440  
*len/*

(81)  
*gale*

