Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILASIA SHIPPING AGENCY CORPORATION AND/OR INTERMODAL SHIPPING, INC., Petitioner,	**G.R. No. 181180**
	Present:
	CARPIO,* LEONARDO-DE CASTRO,** Acting Chairperson, BERSAMIN, DEL CASTILLO, and VILLARAMA, JR., *JJ.*
- *versus* -	
ANDRES G. TOMACRUZ, Respondent.	Promulgated: 15 AUG 2012

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DECISION

LEONARDO-DE CASTRO, *J.*:

Challenged in this petition for review on *certiorari*[1] are the June 15, 2007 Decision[2] and January 14, 2009 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 94561, wherein they reversed the National Labor Relations Commission (NLRC) in NLRC CA No. 043129-05/NLRC OFW (M)03-11-2866-00.

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* Per Special Order No. 1284 dated August 6, 2012.

** Per Special Order No. 1226 dated May 30, 2012.

1 Under Rule 45 of the Rules of Court.

2 *Rollo*, pp. 12-30; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Rosmari D. Carandang, concurring.

3 Id. at 32-33.

Andres G. Tomacruz (Tomacruz) was a seafarer, whose services were engaged by PHILASIA Shipping Agency Corp., (PHILASIA) on behalf of Intermodal Shipping Inc. (petitioners) as Oiler #1 on board the vessel M/V Saligna.[4] A twelve-month Philippine Overseas Employment Administration (POEA) Contract of Employment was duly signed by the parties on January 9, 2002.[5]

This was preceded by four similar contracts, which Tomacruz was able to complete for the petitioners, aboard different vessels. For all five contracts, Tomacruz was required to undergo a pre-employment medical examination and obtain a "fit to work" rating before he could be deployed.[6]

Having been issued a clean bill of health, Tomacruz boarded M/V Saligna on January 15, 2002 and performed his duties without any incident. However, sometime in September 2002, during the term of his last contract, Tomacruz noticed blood in his urine. Tomacruz immediately reported this to the Ship Captain, who referred him to a doctor in Japan. Tomacruz was subjected to several check-ups and ultrasounds, which revealed a "stone" in his right kidney. Despite such diagnosis, no medical certificate was issued; thus, he was allowed to continue working.[7]

Eventually, Tomacruz was repatriated to the Philippines and sent to Micah Medical Clinic & Diagnostic Laboratory. The November 19, 2002 KUB Ultrasound report of the clinic revealed that he had stones in both his kidneys.[8]

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4 CA *rollo*, p. 307.
5 Id. at 315.
6 Id. at 307.
7 Id. at 307-308.
8 Id. at 316.

Referred by Micah Medical Clinic to Dr. Nicomedes Cruz, the company-designated physician, Tomacruz went through more tests, medications, and treatments. On July 25, 2003, Dr. Cruz declared Tomacruz fit to work despite a showing that there were stones about 0.4 cm in size found in both his kidneys, and there was the possibility of hematoma.[9]

Intending to get his sixth contract, Tomacruz, armed with the declaration that he was fit to work, proceeded to the office of the petitioners to seek employment. However, he was told by PHILASIA that because of the huge amount that was spent on his treatment, their insurance company did not like his services anymore.[10]

Nagging in Tomacruz's mind was the veracity of his "fit to work" declaration. Thus, he sought the medical opinion of another physician, Dr. Efren R. Vicaldo, who, on September 9, 2003, stated the following findings in a Medical Certificate[11]:

> Nephrolithiasis, bilateral
> S/P ESWL, right 1x
> S/P ESWL, left 3x
> Impediment Grade VII (41.80%)

Accompanying the Medical Certificate was a "Justification of Impediment Grade VII (41.8%) for Seaman Andres G. Tomacruz,"[12] which provided:

- This patient/seaman is a known case of bilateral nephrolithiasis since 1999.
- Sometime in 1999, he underwent right nephrolithotomy at St. Luke's Medical Center.

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9 Id. at 27.
10 Id. at 308.
11 Id. at 317.
12 Id. at 318.

- [I]n September, 2002 he had gross hematuria for which he was seen and evaluated in Japan. Renal ultrasound revealed small right kidney stone.
- Apparently, he had recurrent bilateral renal stones for which he underwent ESWL once for his right kidney stone and ESWL three times for his left kidney stone.
- Latest ultrasound however still revealed bilateral kidney stones; his latest creatinine is also slightly elevated.
- He is now unfit to resume work as seaman in any capacity.
- His illness is considered work aggravated.
- He has to regularly monitor his renal function status to make sure he does not progress to renal failure.
- Worsening of his symptoms may require repeat ESWL procedures.
- Pain is a common accompanying symptom of nephrolithiasis and this patient is expected to have recurrent colicky pains.
- Secondary infection is also common in patients with renal stones. This obviously impairs his quality of life.[13]

Months later, or on November 3, 2003, Tomacruz filed a complaint for disability benefits, sickness wages, damages, and attorney's fees against the petitioners, before the Quezon City Arbitration Branch of the NLRC. This was docketed as OFW Case No. (M) 03-11-2866-00.[14]

After the submission of the parties' respective pleadings, Labor Arbiter Virginia T. Luya-Azarraga dismissed the complaint in a Decision dated November 26, 2004.

Noting that Tomacruz was a seafarer, the Labor Arbiter explained that as such, he was a contractual employee, whose employment was governed by the contract that he signed every time he was hired. Thus, the Labor

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13 Id.

14 *Rollo*, p. 16.

Arbiter held, once the seafarer's employment was terminated either by completion of contract or repatriation due to a medical reason or any other authorized cause under the POEA Standard Employment Contract (SEC), the employer was under no obligation to re-contract the seafarer.[15]

Zeroing in on Tomacruz's medical condition, the Labor Arbiter observed how he was given extensive medical attention by the company-designated physician, and how he was given medication from the time he was repatriated until he was declared fit to work. As such, the Labor Arbiter said that the company-designated physician's assessment of Tomacruz's medical condition should be more accurate than that of the subsequent doctor's second medical opinion, which was not supported by sufficient evidence to warrant consideration.[16]

Aggrieved, Tomacruz appealed this decision to the NLRC, on the grounds that the Labor Arbiter gravely erred in upholding the findings of the company-designated physician's declaration that he was fit to work over his doctor of choice, who was an internal medicine practitioner; thus, was better qualified in determining his health condition.[17]

Not impressed, the NLRC agreed with the Labor Arbiter and declared that the opinion of the company-designated physician, as the one with the sole accreditation by law to determine the fitness or unfitness of a seafarer under POEA SEC, should prevail over the second opinion of Tomacruz's doctor of choice. The NLRC, citing "Vol. II, p. 664 of the book of Francisco on Evidence,"[18] added:

> When expert opinions differ, the care and accuracy with which the experts have determined the data upon which they based their conclusions

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15 Id. at 147-148.
16 Id. at 148.
17 Id. at 139.
18 Id.

> are to be considered. Opinion testimony founded on facts within the knowledge and experience of the witness and supported by good reasons is likely to receive greater credence and carry more weight than a purely speculative theory or one which is rendered by person not qualified in the field about which they testify. Opinion of witnesses of accredited skill and experience who have formed their judgment from personal examination of the subject of controversy are generally more worthy of belief than those illicited by hypothetical questions which may or may not state all the fact necessary to a correct conclusion (20 American Jurisprudence 1056-1058)[19]

On the above premise, the NLRC, on October 28, 2005, affirmed the Labor Arbiter's Decision. Tomacruz's Motion for Reconsideration[20] was likewise dismissed by the NLRC on March 10, 2006 for lack of merit.[21]

Via a Rule 65 petition for *certiorari*,[22] Tomacruz elevated his case to the Court of Appeals based on the sole ground that:

> **PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK [OR] IN EXCESS OF ITS JURISDICTION IN NOT GRANTING THE PETITIONER'S CLAIM FOR DISABILITY BENEFITS**.[23]

In his petition, docketed as CA-G.R. SP No. 94561, Tomacruz outlined the events and correspondences that he believed supported his case. He alleged that the declaration of the company-designated physician that he was fit to work was not worthy of belief as it was self-serving and biased. He also claimed that this was not in accordance with the result of the ultrasound conducted on him on July 24, 2003, the day before he was declared fit to work, which states:

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19 Id. at 139-140.
20 CA *rollo*, pp. 129-142.
21 Id. at 143.
22 Id. at 2-21.
23 Id. at 9.

I N T E R P R E T A T I O N

Follow-up to the previous study dated July 1, 2003 shows the following findings.

The right kidney measures 10.0 x 5.1 x 4.1 cm (LWH) with a cortical thickness of 1.5 cm, while the left kidney measures 11.8 x 5.2 x 6.4 cm (LWH) with a cortical thickness of 1.9 cm.

There is no significant interval change in the status of the previously noted lithiases in the right mid-pericalyceal area, measuring 0.4 cm, and the one in the left lower calyx, likewise measuring 0.4 cm.

A hypoechoic fluid focus is noted outlining the left perirenal area, with an approximate volume of 36cc.

The renal parenchyma demonstrates homogenous echopattern with no focal lesion seen. The central echo complexes are dense and compact with no ectasia or lithiasis seen.

IMPRESSION:

UNCHANGED FINDING OF RIGHT MID-PERICALYCEAL AND LEFT LOWER CACYCEAL LITHIASES SINCE THE PREVIOUS STUDY OF 07-01-03.
MILD LEFT SIDED SUBSCAPSULAR FLUID COLLECTION, PROBABLY A HEMATOMA.
FOLLOW-UP IS SUGGESTED.[24]

Citing this Court's ruling in *Crystal Shipping, Inc. v. Natividad*,[25] Tomacruz averred that since he was unable to perform his customary work as an oiler on board an ocean-going vessel for more than 120 days, he should be considered permanently disabled, and therefore entitled to disability benefits.[26]

Entitlement of Tomacruz to the disability benefits was the issue the Court of Appeals focused on. In arriving at its decision, the Court of Appeals examined Section 20 B in relation to Section 32 of the 2000 POEA SEC on compensation and benefits for injury or illness of seafarers on board ocean-going vessels. The Court of Appeals also looked into the Labor

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24 Id. at 24.
25 510 Phil. 332, 340 (2005).
26 CA *rollo*, pp. 14-15.

Code's concept of permanent total disability and the standards laid down by this Court in previous cases.

Not agreeing with the Labor Arbiter and the NLRC, the Court of Appeals, on June 16, 2007, granted the petition, on the premise that Tomacruz suffered from permanent total disability. The *fallo* of the Decision reads:

> **WHEREFORE**, in light of the foregoing, the instant petition is **GRANTED**. Accordingly, the challenged resolutions of the public respondent National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US$60,000.00 or its peso equivalent at the time of actual payment; and b) attorney's fees of ten percent (10%) of the total monetary award or its peso equivalent at the time of actual payment.[27]

The petitioners moved for the reconsideration of this decision, which was however, denied by the Court of Appeals in a Resolution dated January 14, 2009, for lack of merit.

Espousing their cause, the petitioners are now before us, with the following assignment of errors:

> **A. THE COURT OF APPEALS SERIOUSLY ERRED IN GRANTING THE PETITION DESPITE THE APPARENT ABSENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION IN AFFIRMING THE DISMISSAL BY THE LABOR ARBITER OF RESPONDENT'S COMPLAINT FOR DISABILITY BENEFITS. THE RESOLUTIONS OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION BOTH REFLECT SOUND APPLICATION OF THE POEA STANDARD CONTRACT OF EMPLOYMENT TO FACTS OF THIS CASE AS BORNE OUT BY THE EVIDENCE ON RECORD.**
>
> **1. THE COURT OF APPEALS SERIOUSLY ERRED IN AWARDING DISABILITY BENEFITS DESPITE THE**

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[27] *Rollo*, p. 29.

UNDISPUTED FINDING OF FACT THAT COMPLAINANT IS ALREADY DECLARED FIT TO WORK.

2. THE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING THE PROVISION OF ARTICLE 192 OF THE LABOR CODE (OR 120-DAY RULE) TO THE INSTANT CASE ON ENTITLEMENT OF A SEAFARER TO DISABILITY BENEFITS WHICH IS SPECIFICALLY GOVERNED BY PROVISIONS OF THE POEA STANDARD EMPLOYMENT CONTRACT. APPLYING ARTICLE 192 OF THE LABOR CODE IN A CLAIM FOR DISABILITY BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT IS CLEARLY MISPLACED.

3. THE CRYSTAL SHIPPING DECISION OF THE HONORABLE SUPREME COURT IS NOT APPLICABLE IN THE INSTANT CASE AND THE SAID CASE CANNOT BE RESORTED TO AS BASIS FOR ANY DECISION FOR BEING ERRONEOUS AS WELL.

B. THE COURT OF APPEALS SERIOUSLY ERRED IN AWARDING ATTORNEY'S FEES.[28]

Procedural Issue:
Grave Abuse of Discretion

Petitioners argue that the Court of Appeals erred in granting the Rule 65[29] petition filed by Tomacruz before it since the NLRC committed no grave abuse of discretion when it affirmed the Labor Arbiter's decision, and the petition merely raised possible errors of law and misappreciation of evidence by the NLRC in denying the claim.[30]

The power of the Court of Appeals to review the evidence on record even on a Petition for *Certiorari* under Rule 65[31] has already been confirmed by this Court in several cases, *viz*:

> The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for *Certiorari* has been settled as early as in our

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28 Id. at 49.
29 Rules of Court.
30 Id. at 50.
31 1997 Rules of Civil Procedure.

> decision in *St. Martin Funeral Home v. National Labor Relations Commission.* This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg.* 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg.* 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[32]

In *Culili v. Eastern Telecommunications Philippines, Inc.*,[33] this Court explained:

> While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.[34]

A perusal of the challenged decision before us will reveal that the Court of Appeals actually sustained the factual findings of the tribunals below. However, it found itself unable to affirm their rulings, in light of the applicable law on the matter. Thus, it was compelled to go beyond the issue of grave abuse of discretion.

Main Issue: Entitlement of Tomacruz to Disability Benefits

The core issue in this case is the propriety of the Court of Appeals' award of disability benefits to Tomacruz on the basis of the Labor Code

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32 *PICOP Resources, Incorporated (PRI) v. Tañeca,* G.R. No. 160828, August 9, 2010, 627 SCRA 56, 65-66.

33 G.R. No. 165381, February 9, 2011, 642 SCRA 338.

34 Id. at 353.

provisions on disability, and despite the company-designated physician's declaration of his fitness to work.

The petitioners argue that the Court of Appeals erred in awarding disability benefits despite the findings of the company-designated physician that Tomacruz was already fit to work. Petitioners aver that the company-designated physician's assessment and evaluation of Tomacruz's health condition should prevail over that of his doctor of choice.[35] They cite *Sarocam v. Interorient Maritime Ent., Inc.*[36] to support this contention.[37] Petitioners also asseverate that the Court of Appeals "seriously erred"[38] in applying Article 192 of the Labor Code in this case. They claim that the POEA SEC is the governing law between the parties[39] and the application of the Labor Code provisions on disability is misplaced.[40]

Applicability of the Labor Code
Provisions on disability benefits to seafarers

Entitlement of seafarers to disability benefits is governed not only by medical findings but also by contract and by law.[41] By contract, Department Order No. 4, series of 2000, of the Department of Labor and Employment (POEA SEC) and the parties' Collective Bargaining Agreement bind the seafarer and the employer.[42] By law, the Labor Code provisions on disability apply with equal force to seafarers.[43]

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35 *Rollo*, p. 54.
36 526 Phil. 448 (2006).
37 *Rollo*, pp. 55-56.
38 Id. at 57.
39 Id. at 60.
40 Id. at 57.
41 *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.
42 Id.
43 *Valenzona v. Fair Shipping Corporation*, G.R. No. 176884, October 19, 2011, 659 SCRA 642, 651.

The petitioners are mistaken in their notion that only the POEA SEC should be considered in resolving the issue at hand. The applicability of the Labor Code provisions on permanent disability, particularly Article 192(c)(1), to seafarers, is already a settled matter.[44] This Court, in the recent case of *Magsaysay Maritime Corporation v. Lobusta*,[45] reiterating our ruling in *Remigio v. National Labor Relations Commission*,[46] explained:

> The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Section 29 of the 1996 POEA [Standard Employment Contract] itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to the "special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."
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> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means 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. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[47]

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44 *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 593.
45 G.R. No. 177578, January 25, 2012.
46 521 Phil. 330 (2006).
47 Id. at 346-347.

In *Vergara v. Hammonia Maritime Services, Inc.*[48] this Court, further clarifying the application of the Labor Code, its implementing rules and regulations, and the terms of the POEA SEC with regard to a seafarer's entitlement to disability benefits, held:

> The standard terms [of the POEA SEC] agreed upon, x x x, are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

Award of Disability Benefits

The Labor Code provision material to this case, and the one being challenged, states:

> **ART. 192.** ***PERMANENT TOTAL DISABILITY***
>
> x x x x
>
> (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 for in the Rules.

The rule referred to in the above provision is Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code. It states:

> SEC. 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. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

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[48] Supra note 41 at 626-627.

As we said in *Vergara*, "[t]hese provisions are to be read hand in hand with the POEA [SEC] whose Section 20 [(B)] (3) states"[49]:

> "Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days."

Elucidating on the combination of the Labor Code provisions and the POEA SEC, this Court, in *Vergara* said:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[50]

Upon Tomacruz's return to the country, he underwent medical treatment in accordance with the terms of the POEA SEC. From the time Tomacruz was repatriated on November 18, 2002, until he was declared fit to work on July 25, 2003, he was given extensive medical attention supervised by a company-designated physician. The only time conflict arose was when despite the fit to work declaration, petitioners refused to hire

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49 Id. at 627.
50 Id. at 628.

Tomacruz. This was what prompted Tomacruz to seek a second medical opinion, on which he based his demand for disability and sickness benefits.

As we said in *Vergara*, "[a]s we outlined above, a temporary total disability only becomes permanent when so declared by the company[-designated] physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability."[51]

Applying the foregoing considerations in the case at bar, we affirm the Court of Appeals' ruling. While the Court of Appeals held that Tomacruz's disability was permanent since he was unable to perform his job for more than 120 days,[52] this Court has clarified in *Vergara* and likewise in *Magsaysay*, that this "temporary total disability period may be extended up to a maximum of 240 days."[53] This clarification, however, does not change the judgment.

The sequence of events is undisputed and uncontroverted. From the time Tomacruz was repatriated on November 18, 2002, he submitted himself to the care and treatment of the company-designated physician. When the company-designated physician made a declaration on July 25, 2003 that Tomacruz was already fit to work, 249 days had already lapsed from the time he was repatriated. As such, his temporary total disability should be deemed total and permanent, pursuant to Article 192 (c)(1) of the Labor Code and its implementing rule.

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51 Id. at 629.
52 *Rollo*, p. 28.
53 *Magsaysay Maritime Corporation v. Lobusta*, supra note 45.

Case of Sarocam v. Interorient Maritime Ent., Inc. is not in point

The ruling in *Sarocam v. Interorient Maritime Ent., Inc.*[54] being cited by petitioner cannot be applied in this case as the seafarer therein was declared "fit for duty"[55] only thirteen (13) days from the date of his repatriation. Moreover, he executed a release and quitclaim barely three months from being pronounced fit to work.[56] On top of this, he only filed his complaint for benefits and damages roughly eleven months after he was declared fit for work, based on the medical findings of his doctors of choice, whom he consulted only eight to nine months after he was examined by the company-designated physician.[57]

Neither will petitioners' argument that Tomacruz's illness existed even before his employment with them[58] serve to relieve them of their duty to pay him disability benefits. As the Court of Appeals pronounced, this assertion "deserves scant consideration"[59] since the finding of both the Labor Arbiter and the NLRC that Tomacruz contracted his illness while on board the M/V Salinga was neither disputed nor controverted.[60]

Even the company-designated physician's certification that Tomacruz was already fit to work does not make him ineligible to receive permanent total disability benefits. The fact remains that Tomacruz was unable to work for more than 240 days as he was only certified to work on July 25, 2003. Consequently, Tomacruz's disability is considered permanent and total, and

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54 Supra note 36.
55 Id. at 450.
56 Id.
57 Id. at 450-451.
58 *Rollo*, pp. 56-57.
59 Id. at 27.
60 Id.

the fact that he was declared fit to work by the company-designated physician "does not matter."[61]

On the contention that the opinion of Tomacruz's doctor of choice should not prevail over that of the company-designated physician, this Court deems this issue now irrelevant as Tomacruz's entitlement to disability benefits had been decided on the bases of law and contract, and not on the medical findings of either doctor.

Award of Attorney's Fees

Circumstances show that Tomacruz was forced to file a complaint against the petitioners when they refused to heed his demand for payment of disability benefits and sickness wages. Under Article 2208 of the Civil Code, attorney's fees can be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest."[62] As Tomacruz was compelled to litigate to satisfy his claim, he is entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment.[63]

WHEREFORE, we **DENY** the present petition for review on *certiorari* and **AFFIRM** the June 15, 2007 Decision and January 14, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 94561. We **ORDER** petitioners PHILASIA Shipping Agency Corporation and Intermodal Shipping, Inc. to pay respondent Andres G. Tomacruz US$60,000.00 as disability benefits; and US$6,000.00 as attorney's fees, to be paid in Philippine Peso at the exchange rate prevailing during the time of payment.

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61 *Valenzona v. Fair Shipping Corporation*, supra note 43 at 655.
62 CIVIL CODE, Art. 2208(2).
63 *Valenzona v. Fair Shipping Corporation*, supra note 43 at 657.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, 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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 295,
The Judiciary Act of 1948, as amended)