Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JEBSENS MARITIME, INC., ESTANISLAO SANTIAGO, and/or HAPAG-LLOYD AKTIENGESELL SCHAFT, Petitioners,	**G.R. No. 204076** Present:
- versus -	VELASCO, JR., *J., Chairperson.* PERALTA, ABAD, MENDOZA, and LEONEN, *JJ.*
ELENO A. BABOL, Respondent.	Promulgated: **December 4, 2013**

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DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 15, 2012 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No.114966 and its October 8, 2012 Resolution,[2] which affirmed the October 27, 2009 Decision[3] of the National Labor Relations Commission *(NLRC)* and the May 7, 2008 Decision[4] of the Labor Arbiter *(LA)*, granting permanent and total disability benefits to Eleno A. Babol *(respondent)*.

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[1] *Rollo*, pp. 29-33. Penned by Associate Justice Manuel M. Barrios, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Apolinario D. Bruselas, Jr., concurring.
[2] Id. at 37-38
[3] Id. at 205-211.
[4] Id. at 141-149. Penned by Labor Arbiter Napoleon M. Menese.

The Facts

On September 21, 2006, respondent was rehired by Hapag Lloyd Aktiengesell Schaft *(Hapag Lloyd)* through its local manning agent, Jebsens Maritime, Incorporated *(Jebsens)* as a reefer fitter for a term of six months. Before joining his vessel of assignment, respondent was subjected to the rigid mandatory Pre-Employment Medical Examination *(PEME)* and was cleared as fit for sea duty. On October 23, 2006, he boarded MV Glasgow Express (formerly named as Maersk Dayton), an ocean-going vessel flying the German flag.

Sometime in February 2007, respondent noticed the swelling of his neck. On March 8, 2007, he was sent to Health Watch Clinics in Fremantle, West Australia, to undergo medical evaluation. With the discovery of a large recurrent left neck mass, a recommendation was issued for his repatriation.

On March 14, 2007, respondent arrived in the Philippines. He was then placed at the Metropolitan Medical Center for treatment and management under the care of Dr. Robert D. Lim, the company-designated physician. There, a biopsy of two soft tissue fragments taken from his swelling neck indicated *Metastatic Undifferentiated Carcinoma*. On April 11, 2007, respondent was diagnosed with *Nasopharyngeal Carcinoma (NPC)*.

The doctors then recommended that respondent undergo six (6) cycles of chemotherapy and thirty nine (39) sessions of radiotherapy for palliative management with a total cost of ₱828,500.00. This recommendation was acted upon by the petitioners who, in good faith, shouldered all the expenses.

On May 18, 2007, the petitioners requested from the company-designated physicians the determination of whether respondent's condition could be considered as work-related or not. Responding to the request, Dr. Christopher Co Peña *(Dr. Co Peña)*, the company-designated oncologist, made a report addressed to Dr. Robert Lim, stating respondent's cancer as "likely not work-related." The report also indicated the risk factors that could have contributed to respondent's condition, as follows:

(1) Diet – salt cured fish;

(2) Viral agents – Epstein Barr Virus (EBV); and

(3) Genetic susceptibility – H2 locus antigens, Singapore Antigen BW46 and B17 Antigen.

Despite having received an expensive company-sponsored treatment, respondent still demanded the payment of disability benefits from the petitioners. His demands being unheeded, respondent filed a claim before the LA, docketed as NLRC NCR OFW Case No. (M) 01-00452-08, for the payment of permanent disability benefits, sickness allowance and medical reimbursement.

The petitioners opposed the work-relation argument of respondent in light of a contrary finding made by the company-designated oncologist that NPC was caused by genetic factors; and that full and expensive medical assistance had been generously extended, on top of the medical attention provided to respondent.

The Labor Arbiter's Decision

On May 7, 2008, the LA rendered a decision awarding respondent the sum of US$60,000.00 as total disability benefits, plus 10% thereof as attorney's fees. It ruled that there existed a causal relationship between respondent's cancer and his diet on board the vessel; and that the petitioners failed to overcome the presumption of the work-relatedness of respondent's disease. The LA disposed as follows:

> **WHEREFORE,** all foregoing premises considered, judgment is hereby rendered finding complainant **ELENO A. BABOL** to have suffered work-related illness resulting to [sic] his total permanent disability and thus ordering respondents **ABOITIZ JEBSENS MARITIME, INC., HAPAG-LLOYD AKTIENGESELL SCHAFT** and **ESTANISLAO SANTIAGO** to jointly and severally pay him the amount of US$60,000.00 plus Ten Percent (10%) thereof as Attorney's Fees or in the total amount of US$66,000.00 or its Philippine Peso equivalent at the time of actual payment.
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> All other claims are dismissed for lack of merit.
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> **SO ORDERED.**[5]

[5] Id. at 149.

The NLRC Ruling

On appeal, the NLRC, in its October 27, 2009 Decision, affirmed the LA ruling but deleted the award for attorney's fees. It held that the petitioners failed to substantially disprove the disputable presumption of work-relation under the Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC).* It further noted that respondent, being a seafarer, had no choice but to eat the food prepared by the kitchen staff and correlatively his diet was limited to salt-cured foods such as salted fish, dried meat, salted egg, frozen meat, and other preserved goods, all of which allegedly increased the risk of contracting NPC. The dispositive portion of its decision reads:

> **WHEREFORE,** the Decision of the Labor Arbiter is AFFIRMED with MODIFICATION in that the award of attorney's fees is DELETED.
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> **SO ORDERED.**[6]

Both parties moved for reconsideration. On March 26, 2010, the NLRC issued a resolution[7] denying it.

Via a petition for *certiorari* under Rule 65 of the Rules of Court filed before the CA, the petitioners argued that the NLRC committed grave abuse of discretion in ruling for respondent.

The CA's Decision

On May 15, 2012, the CA dismissed the petition. Echoing the findings of the NLRC and the LA, it held that the nature and circumstances of respondent's work caused his illness or at least aggravated any pre-existing condition he might have, hence compensable.[8] It gave weight to the findings of the NLRC and the LA that the risk factors as relayed by the company-designated physician were attendant in respondent's case, such as: (1) his diet while on board which was high in salt-cured fish and preserved foods; (2) and his exposure to toxic materials, smoke, and diesel fumes while working for the petitioners in various capacities for almost two decades. Having found a link between respondent's working conditions and the disease, it concluded that the claims deserved merit in accordance with this

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[6] Id. at 210.
[7] Id. at 286.
[8] Id. at 34.

Court's ruling in *Magsaysay Maritime Corporation v. National Labor Relations Commission*[9] where it was recognized as sufficient, in order to successfully claim the benefits under the contract, that the work has been proven as contributory, even in a small degree, to the development of a worker's disease.

Unfazed with the adverse ruling, the petitioners moved for reconsideration. In its resolution, dated October 8, 2012, the CA denied the said motion for reconsideration.

Hence, this petition.

ISSUES

A. Whether or not the Court of Appeals gravely erred in ruling that respondent's condition, Nasopharyngeal Cancer, is work-related.

B. Whether or not the Court of Appeals gravely erred in considering respondent's supposed prior employments with petitioners as relevant in determining entitlement to disability benefits.

C. Whether or not the Court of Appeals gravely erred in ruling that petitioners failed to present substantial evidence that respondent's condition is not work-related. [10]

According to the petitioners, the CA blindly adopted NLRC's conclusion that the risk factors could be attributed, even in a lesser degree, to respondent's working conditions on board the petitioners' vessel; and that the said risks, especially the alleged dietary cause involving salt-cured fish, were not sufficiently proven by respondent, being the party tasked with the burden of proof. To bolster their case, the petitioners reiterate their submission of evidence showing that the dietary factors could not have been true as varied and fresh provisions were available for the seafarer's consumption.

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[9] G.R. No. 186180, March 22, 2010, 616 SCRA 362.
[10] Id. at 11.

Moreover, they claim that the CA erred in adopting the concept of work-aggravation because the POEA-SEC does not recognize it; and that respondent's prior employment history with the petitioners should not have been considered since only the period specified in the contract could be used as basis for compensability claims under the POEA-SEC.

In sum, the petitioners are of the position that no connection whatsoever between respondent's work and the cancer was sufficiently established.

Respondent's Position

In his Comment,[11] respondent submits that the CA was correct in awarding him permanent disability benefits considering that this conclusion was substantially supported by facts and evidence on record; that the "likely not work-related" assessment by Dr. Co Peña did not preclude the finding that the cancer was attributable to work because it merely presupposed probability and not certainty; that the dietary risk factor for the development of his cancer was sufficiently established since it was common knowledge that seamen were not at liberty to prepare their own food to suit specific health needs; and that his diet was proven as limited only to or at least involved existing salt-cured supplies. By these submissions, respondent avers that a reasonable connection has been ascertained to prove his entitlement to the claims prayed for.

The Court's Ruling

The well-entrenched rule in this jurisdiction is that only questions of law may be entertained by this Court in a petition for review on certiorari under Rule 45. This rule, however, is not absolute and admits certain exceptions, such as when the petitioner persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or *court a quo*,[12] as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.[13]

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[11] Id. at 452.
[12] *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541-542.
[13] *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, 537 Phil. 897, 911-912 (2006).

Here, the petitioners question the conlusion that the disease subject of this petition is a work-related illness or at least aggravated by the working conditions onboard the vessel. They argue that respondent failed to present substantial evidence in support of his claims for compensability.

The Court is not persuaded.

The Principle of Work-relation

The 2000 POEA-SEC contract governs the claims for disability benefits by respondent as he was employed by the petitioners in September of 2006.

Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise.[14] Work-relation must, therefore, be established.

As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in nature, Section 20 (B) paragraph 4 of the POEA-SEC[15] provides that such diseases are disputably presumed as work-related.

In this case, it is undisputed that NPC afflicted respondent while on board the petitioners' vessel. As a non-occupational disease, it has the disputable presumption of being work-related. This presumption obviously works in the seafarer's favor.[16] Hence, unless contrary evidence is presented by the employers, the work-relatedness of the disease must be sustained.[17]

In this wise, the petitioners, as employers, failed to disprove the presumption of NPC's work-relatedness. They primarily relied on the medical report issued by Dr. Co Peña. The report, however, failed to make a categorical statement confirming the total absence of work relation. Thus:

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[14] *Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Earlwin Meinrad Antero F. Laurer*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, citing *Jebsens Maritime Inc., v. Undag* G.R. No. 191491, December 14, 2011, 662 SCRA 670, 677.

[15] Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

[16] *Jessie V. David v. OSG Shipmanagement Manila, Inc. and/or Michaelmar Shipping Services*, G.R. No. 197205, September 26, 2012, 682 SCRA 103, 112.

[17] *Fil-Star Maritime Corporation v. Rosete*, G.R. No. 192686, November 23, 2011, 661 SCRA 247, 255.

Dear Dr. Lim,

This is with regards [sic] to Mr. Eleno Babol, 45 y/o male, diagnosed case of Nasopharyngeal Carcinoma; S/P Incisional Biopsy of Left Neck Mass on April 2, 2007. Risk factors include:

Diet – salt cured fish

Viral agents – Epstein Barr Virus (EBV)

Genetic Susceptibility – H2 locus antigens, Singapore Antigen BW46 and B17 Antigen

His condition is likely not work-related.

(Underscoring supplied)

Black's Law Dictionary defines **likely** as "probable"[18] and **likelihood** as "probability."[19] The use of the word **likely** indicates a hesitant and an uncertain tone in the stated medical opinion and does not foreclose the possibility that respondent's NPC could be work-related. In other words, as the doctor opined only a probability, there was no certainty that his condition was not work related.

There being no certainty, the Court will lean in favor of the seafarer consistent with the mandate of POEA-SEC to secure the best terms and conditions of employment for Filipino workers. [20] Hence, the presumption of NPC's work-relatedness stays.

The Principle of Work-aggravation

Assuming for the sake of argument that the presumption of work-relation was refuted by petitioners, compensability may still be established on the basis of the theory of work aggravation if, by substantial evidence,[21] it can be demonstrated that the working conditions aggravated or at least contributed in the advancement of respondent's cancer.[22] As held in *Rosario*

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[18] Fifth Edition, p. 534.
[19] Id.
[20] EO 247, Sec. 3(i).
[21] As held in *Reyes v. Employees' Compensation Commission, et al.*, G.R. No. 93003, March 3, 1992, 206 SCRA 726, 732; citing *Magistrado v. Employees' Compensation Commission, et al.*, G.R. No. 62641, 30, June 30, 1989, 174 SCRA 605, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
[22] *Government Service Insurance System v. Emmanuel P. Cuntapay*, 576 Phil. 482, 492 (2008).

v. Denklav Marine,[23] "the burden is on the beneficiaries to show a reasonable connection between the causative circumstances in the employment of the deceased employee and his death or permanent total disability."

To determine if indeed respondent sufficiently established the link between his cancer and the working conditions on board MV Glasgow Express, understanding the disease is of utmost importance.

Respondent's cancer is by far, the most common malignant tumor of the nasopharynx.[24] Risk factors for this cancer, as derived from the position paper filed by the petitioners and consistent with many medical literatures[25] on the matter, include (1) salt-cured foods; (2) preserved meats, (3) Epstein-Barr virus, and (4) family history.[26] In every detail, it is clear that the dietary factor plays a vital role in increasing the risk of acquiring the disease. For medical purposes, salt-cured fish and preserved meat can, thus, be considered as high risk food that can contribute in the growth of this type of cancer.

Respondent is of the theory that such high risk dietary factor persisted on board the vessel, thus, increasing the probability that the disease was aggravated by his working conditions:

> ...On the food he took while on board, Complainant is exposed to the risk of contracting his illness. The Supreme Court has taken judicial notice of the fact that seamen are required to stay on board their vessel by the very nature of their duties. It is also of common knowledge that while on board, seamen have no choice but to eat the food prepared by the kitchen staff of the vessel. They are also not at liberty to prepare/cook their own food to suit their health needs. Their day-to-day "diet" therefore depends on the kind of food served on the vessel for the consumption of the entire crew. Thus, the long voyage on the high seas, the vessel's menu is limited to salt- cured foods (such as salted fish, dried fish, anchovies, dried meat, salted eggs, etc.), frozen meat, processed meat, canned goods, and other preserved foods, thus the diet is mostly salt-cured foods, hence, the increased risk of contracting nasopharyngeal cancer.
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> Complainant had no other alternative or option but to eat whatever is served at the mess hall, and considering further that his "diet" or sustenance while on board the vessel had presumably contributed to, if not caused by, his present health condition, there

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[23] Resolution, G.R. No. 166906, March 16, 2005.
[24] http://www.cancer.org/acs/groups/cid/documents/webcontent/003124-pdf.pdf.
[25] http://www.webmd.com/cancer/nasopharyngeal-cancer; and http://www.macmillan.org.uk/Cancerinformation/Cancertypes/Headneck/Typesofheadneckcancers/Nasopharynx.aspx.
[26] *Rollo*, pp. 146-147.

> is good reason to conclude that his ailment or affliction is work related or, otherwise stated, reasonably connected/aggravated by his work. [27]

The above assertions of respondent do not constitute as substantial evidence that a reasonable mind might accept as adequate to support the conclusion that there is a causal relationship between his illness and the working conditions on board the petitioners' vessel. Although the Court has recognized as sufficient that work conditions are proven to have contributed even to a small degree,[28] such must, however, be reasonable, and anchored on credible information.[29] The claimant must, therefore, prove a convincing proposition other than by his mere allegations.[30] This he failed to do.

The Court refuses to take judicial notice of said assertions on the basis of an allegation of mere common knowledge. This is in light of the changing global landscape affecting international maritime labor practices. The Court notes the acceptance, albeit steadily, of the minimum standards governing food and catering on board ocean-going vessels as provided in the 2006 Maritime Labor Convention of which the Philippines[31] and MV Glasgow's flag country Germany[32] have signed, to wit:

> (a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, **shall be suitable in respect of quantity, nutritional value, quality and variety**;
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> (b) the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and
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> (c) catering staff shall be properly trained or instructed for their positions.[33]

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[27] Id. at 146.

[28] *Government Service Insurance System v. Jean E. Raoet*, G.R. No. 157038 December 23, 2009, 609 SCRA 32, 47.

[29] *Government Service Insurance System v. Emmanuel P. Cuntapay*, G.R. No. 168862, April 30, 2008, 553 SCRA 520.

[30] *Riño v. Employees' Compensation Commission, et al.*, 387 Phil. 612, 620 (2000); citing *Kirit, Sr. v. Government Service Insurance System, et al.*, G.R. No. 48580, July 6, 1990, 187 SCRA 224.

[31] Based on the ILO Website, the MLC 2006 has entered into force in the Philippines. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:80001:0

[32] Based on the ILO Website, the MLC 2006 will enter into force in Germany on August 14, 2016. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:80001:0

[33] Standard A3.2, Regulation 3.1, Title 3 of the 2006 Maritime Labor Convention. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLC_A3

Although not yet fully implemented, this International Labor Organization *(ILO)* Convention merely underscores that food on board an ocean-going vessel may not necessarily be limited as alleged by respondent. In this respect, the petitioners submitted documents[34] showing that fresh and varied provisions were provided on board. Respondent, on the other hand, countered that even if there were such provisions, salt-cured fish and diet such as *bagoong dilis, bagoong alamang,* anchovies, etc.[35] were still included as victuals. The Court treats both submissions as equal in their respects and, thus, cannot be the sole determinant of whether respondent is entitled to his claims.

The State of Permanent Total Disability

Based on the foregoing, both parties failed to discharge their respective burdens to prove the non-work-relatedness of the disease for the petitioners *(theory of work-relation)* and the substantiation of claims for respondent *(theory of work-aggravation)*. With this, the Court is confronted with the question as to whom it should rule in favor then.

In *ECC v. Sanico,*[36] *GSIS v. CA,*[37] and *Bejerano v. ECC,*[38] the Court held that disability should be understood not 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. Evidence of this condition can be found in a certification of fitness/unfitness to work issued by the company-designated physician.

In this case, records reveal that the medical report issued by the company-designated oncologist was bereft of any certification that respondent remained fit to work as a seafarer despite his cancer. This is important since the certification is the document that contains the assessment of his disability which can be questioned in case of disagreement as provided for under Section 20 (B) (3).of the POEA-SEC.[39]

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[34] *Rollo,* pp. 233-281.
[35] Id. at 469.
[36] 378 Phil. 900 (1999).
[37] 349 Phil. 357 (1998).
[38] G.R. No. 84777, January 30, 1992, 205 SCRA 598.
[39] If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between he employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In the absence of any certification, the law presumes that the employee remains in a state of temporary disability. Should no certification be issued within the 240 day maximum period,[40] as in this case, the pertinent disability becomes permanent in nature.

Considering that respondent has suffered for more than the maximum period of 240 days in light of the uncompleted process of evaluation, and the fact that he has never been certified to work again or otherwise, the Court affirms his entitlement to the permanent total disability benefits awarded him by the CA, the NLRC and the LA.

In the same way that the seafarer has the duty to faithfully comply with and observe the terms and conditions of the POEA-SEC, including the provisions governing the procedure for claiming disability benefit,[41] the employer also has the duty to provide proof that the procedures were also complied with, including the issuance of the fit/unfit to work certification. Failure to do so will necessarily cast doubt on the true nature of the seafarer's condition.

When such doubts exist, the scales of justice must tilt in his favor.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[40] Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code provides:

> 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.

[41] *Pacific Ocean Manning Inc. and Celtic Pacific Ship Management Co., Ltd. v. Benjamin D. Penales*, G.R. No. 162809, September 5, 2012, 680 SCRA 95.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

MARIA LOURDES P. A. SERENO
Chief Justice