Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOEL B. MONANA, Petitioner, -versus- **MEC GLOBAL SHIPMANAGEMENT AND MANNING CORPORATION AND HD HERM DAVELSBERG GMBH,** Respondents.	**G.R. No. 196122** Present: CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.* **Promulgated:** NOV 12 2014

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DECISION

LEONEN, *J.*:

This labor case involves a seafarer's claim for disability benefits. It involves an application of Section 20(B) of the Philippine Overseas Employment Administration Standard Employment Contract (POEA contract). The POEA contract states that for an illness to be compensable, (1) it must be work-related and (2) it must have existed during the term of the seafarer's employment contract.[1]

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[1] *POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels* (2000), sec. 20(B). *See Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 316 (2009) [Per J. Chico-Nazario, Third Division].

Joel B. Monana (Monana) filed this petition for review[2] in relation to his disability benefits claim for hypertension. The Labor Arbiter ruled in favor of Monana and granted US$60,000.00 as disability benefits. The National Labor Relations Commission vacated the Labor Arbiter's decision, but granted US$3,000.00 as financial assistance. The Court of Appeals agreed with the National Labor Relations Commission and dismissed Monana's petition. Monana now seeks to reinstate the Labor Arbiter's judgment.[3]

On September 5, 2006, MEC Global Ship Management and Manning Corporation and its foreign principal, HD Herm Davelsberg GMBH, employed Monana as an ordinary seafarer for a six-month duration on board M/V Bellavia.[4] Monana boarded on September 11, 2006 and performed his tasks that "included cleaning, chipping, painting, and assisting in deck work."[5]

On January 22, 2007, Monana felt dizzy with blurring of vision and body weakness associated with slurred speech and numbness of the right side of the face.[6] The ship doctor prescribed oral anti-hypertensive medication.[7] Monana was airlifted to Honolulu Medical Center the next day where he was treated and diagnosed to have suffered a stroke.[8] He then transferred to a rehabilitation hospital where he underwent physical therapy for two days.[9]

On January 31, 2007, Monana was repatriated to the Philippines and referred to Dr. Susannah Ong-Salvador (Dr. Ong-Salvador), the company-designated physician.[10] He was first confined at the University of Sto. Tomas hospital, then he continued his physical therapy and treatment with company-designated doctors in Iloilo.[11]

On February 19, 2007, Dr. Ong-Salvador wrote respondents a reply to a medical query,[12] stating that "patient's condition is regarded as **non-work related**, as the disease is mainly of a heredofamilial etiology that is enhanced by a number of modifiable and non-modifiable risk factors. . . ."[13] Monana did not dispute this report.[14]

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2 This petition was filed pursuant to Rule 45 of the Rules of Court.
3 *Rollo*, p. 34.
4 Id. at 194.
5 Id.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id. at 195.
11 Id.
12 Id. at 266.
13 Id.
14 Id. at 195.

Nevertheless, respondents continued providing Monana with medical assistance.[15]

On March 3, 2007, Monana was referred to neurologist Dr. Generoso D. Licup, who found that Monana "still experience[d] occasional heaviness and clumsiness of the right upper and lower extremities especially during strenuous and prolonged activities."[16]

On July 18, 2007, Monana was referred to cardiologist Dr. Glenn A. Mana-ay (Dr. Mana-ay), who also diagnosed him with *S/P Stroke secondary to Acute Ischemic Infarct, Left Periventicular Parietal Lobe and Hypertensive Cardiovascular Disease*.[17] Dr. Mana-ay reported that Monana's blood pressure was controlled, and he had minimal weakness on the right side of the body.[18] Monana's condition steadily improved.[19]

On August 23, 2007, Monana sought a second opinion with cardiologist Dr. Efren R. Vicaldo (Dr. Vicaldo) from the Philippine Heart Center. [20] Dr. Vicaldo declared that Monana's illness was work-related/-aggravated, and that Monana was unfit to resume work as a seafarer in any capacity.[21]

Consequently, Monana claimed disability and illness allowance. Respondents refused, prompting Monana to file a complaint with the Regional Arbitration Branch.

The Labor Arbiter, in his decision[22] dated May 30, 2008, ruled in favor of Monana and ordered respondents to pay US$60,000.00 or its peso equivalent as disability benefits:

> **WHEREFORE**, judgment is hereby rendered ordering respondent-entities to pay complainant jointly and severally the sum of US$60,000.00 or its Philippine Peso equivalent at the time of payment, representing his disability benefits.
>
> Further, respondents jointly and severally are hereby ordered to pay complainant 10% of the total judgment award as and [sic] way of attorney's fees.
>
> Other claims are hereby denied for lack of merit.

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15 Id.
16 Id.
17 Id. at 195–196.
18 Id. at 196.
19 Id.
20 Id.
21 Id.
22 Id. at 111–121. The decision was penned by Labor Arbiter Daniel J. Cajilig.

> **SO ORDERED**.[23] (Emphasis in the original)

The National Labor Relations Commission, in its resolution[24] dated January 30, 2009, vacated the Labor Arbiter's decision and instead ordered respondents to grant financial assistance of US$3,000.00 or its peso equivalent:

> WHEREFORE, premises considered, the appeal is **PARTLY GRANTED** and the Decision dated 30 May 2008 is ordered **VACATED** and **SET ASIDE**.
>
> A new decision is hereby promulgated ordering respondents-appellants to grant financial assistance to complainant-appellee in the amount of US$3,000.00 in its Philippine Peso equivalent at the time of payment.
>
> SO ORDERED.[25] (Emphasis in the original)

The Court of Appeals, in its decision[26] dated February 26, 2010, agreed with the National Labor Relations Commission and dismissed Monana's petition.[27] It likewise denied reconsideration.[28]

Hence, Monana filed this petition.

Petitioner argues that hypertension is a compensable illness, and there was a causal relation between his work and his illness.[29]

Pursuant to Section 20(B)(3) of the POEA contract, the right to secure a third doctor's opinion is optional.[30] Petitioner submits that the findings of independent cardiologist Dr. Vicaldo deserves more credence than those of company-designated physician Dr. Ong-Salvador, who is neither a cardiologist nor a neurologist.[31] Petitioner alleged that Dr. Ong-Salvador signed the report as a medical coordinator, and that she is a dermatologist.[32]

Petitioner contends that his disability continued beyond 240 days without any assessment from a company-designated physician on his fitness,

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23 Id. at 120–121.
24 Id. at 149. The resolution was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioners Lourdes C. Javier and Gregorio O. Bilog, III, of the Third Division.
25 Id. at 155.
26 Id. at 193–213. The decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Franchito N. Diamante of the Special Thirteenth Division.
27 Id. at 212.
28 Id. at 230.
29 Id. at 296 and 306.
30 Id. at 308.
31 Id.
32 Id.

thus, his disability must be deemed total and permanent.[33] Petitioner prays for disability benefits and attorney's fees.[34]

Respondents counter that the lower court's factual findings on petitioner's non-entitlement to total and permanent disability benefits are well-supported by evidence, thus, should be deemed final and conclusive upon this court.[35]

Section 20(B) of the POEA contract provides that entitlement to disability benefits requires that the seafarer's disability be work-related and that it occur during the contract's term.[36] Respondents cite the Court of Appeals' decision at length on petitioner's failure to prove that his medical condition is work-related.[37]

Respondents submit that the company-designated physician Dr. Ong-Salvador's extensive assessment based on medical treatments should prevail over Dr. Vicaldo's unsupported medical opinion.[38] Respondents submit that Dr. Vicaldo only saw petitioner once as an outpatient.[39] Respondents also quote at length the 2012 case of *Andrada v. Agemar Manning Agency*[40] where this court gave greater credence to the company-designated physician's extensive assessment over those of Dr. Vicaldo's cryptic and unsupported conclusions since Dr. Vicaldo only examined petitioner once.[41] Respondents also cite *Vergara v. Hammonia Maritime Services, Inc.*[42] in that a company-designated physician's assessment must be sustained unless a third doctor's opinion is obtained.[43]

Respondents quote *Millan v. Wallem Maritime Services, Inc.*[44] in that "[a] seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor."[45]

Lastly, respondents argue that Monana's claim for illness allowance is baseless since this was paid.[46] Monana's claim for attorney's fees also lacks

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33 Id. at 311.
34 Id. at 312–313.
35 Id. at 331.
36 Id. at 333.
37 Id. at 333–338.
38 Id. at 338.
39 Id. at 338–339.
40 G.R. No. 194758, October 24, 2012, 684 SCRA 587 [Per J. Mendoza, Third Division].
41 *Rollo,* pp. 339–342.
42 588 Phil. 895 (2008) [Per J. Brion, Second Division].
43 *Rollo,* p. 344.
44 G.R. No. 195168, November 12, 2012, 685 SCRA 225 [Per J. Perlas-Bernabe, Second Division].
45 *Rollo,* p. 347. *Millan v. Wallem Maritime Services, Inc.*, G.R. No. 195168, November 12, 2012, 685 SCRA 225, 231 [Per J. Perlas-Bernabe, Second Division].
46 *Rollo,* p. 349.

basis as respondents are not in bad faith.[47]

The main issue for this court's resolution is whether petitioner Joel B. Monana is entitled to total and permanent disability benefits.

We affirm the Court of Appeals in dismissing petitioner's petition.

The POEA contract, deemed read and incorporated into petitioner's employment contract,[48] governs petitioner's claims for disability benefits. These guidelines were amended in recent years,[49] but the year 2000 version applies since he was hired in 2006,[50] and he filed his complaint in 2007.[51]

Section 20(B) provides for the two requisites of compensable disability as follows:

> SECTION 20. COMPENSATION AND BENEFITS
>
> . . . .
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers **work-related** injury or illness **during the term of his contract** are as follows: . . .[52]

There is no dispute that petitioner suffered a stroke during the term of his contract.[53] Upon repatriation, he underwent extensive medical treatment and therapy from January 31, 2007 to August 2007. He was provided physical therapy even in his hometown, Iloilo.[54] He was diagnosed with "hypertension Stage ASHD, CAD at risk S/P stroke."[55]

In contention is the other requisite that the illness claimant suffered must be work-related.

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47 Id.

48 *See Vergara v. Hammonia Maritime*, 588 Phil. 895, 908–909 (2008) [Per J. Brion, Second Division]; *See also David v. OSG Shipmanagement*, G.R. No. 197205, September 26, 2012, 682 SCRA 103, 111 [Per J. Velasco, Jr., Third Division].

49 Amended Philippine Overseas Employment Administration contract <http://www.poea.gov.ph/mcs/MC%202010/MC-10-2010.pdf> (visited November 12, 2014).

50 *Rollo*, p. 194.

51 Id. at 51.

52 *POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels* (2000), sec. 20(B).

53 *Rollo*, p. 154.

54 Id.

55 Id.

The POEA contract defines "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[56] The relevant portions of Section 32-A are as follows:

> SECTION 32-A Occupational Diseases
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> (1) The seafarer's work must involve the risks described herein;
>
> (2) The disease was contracted as a result of the seafarer's exposure to the described risks;
>
> (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
>
> (4) There was no notorious negligence on the part of the seafarer.
>
> The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:
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> . . . .
>
> 11. Cardio-Vascular Diseases. Any of the following conditions must be met:
>
> a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
>
> b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.
>
> c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.
>
> 12. Cerebro-Vascular Accidents. All of the following conditions must be met:
>
> a. There must be a history, which should be proved, or trauma at work (to the head specially) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry.
>
> b. There must be a direct connection between the trauma or

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[56] *POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels* (2000).

> exertion in the course of employment and the worker's collapse.
>
> c. If the trauma or exertion then and there caused a brain hemorrhage, the injury may be considered as arising from work.
>
> . . . .
>
> 20. Essential Hypertension
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> Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brains, resulting in permanent disability; Provided, that, the following documents substantiate it: (a) chest x-ray report, (b) ECG re[p]ort (c) blood chemistry report, (d) funduscopy report, and (f) C-T scan.[57]

The POEA contract also states that "illnesses not listed in Section 32 of this contract are disputably presumed as work related."[58]

Petitioner argues that all four conditions for compensability under Section 32-A were satisfied.[59] He discusses the stressful nature of his work considering the changing weather conditions and compounded by being away from loved ones.[60] He mentions that he was declared fit to work after his pre-employment medical examination, thus, he contracted his illness after exposure to the stressful working conditions.[61] Lastly, he alleges that there was no notorious negligence on his part.[62]

Both the National Labor Relations Commission and Court of Appeals[63] found that petitioner failed to prove compliance with the conditions under Section 32 of the POEA contract, thus, failing to show a causal connection between his illness and his work. The National Labor Relations Commission discussed as follows:

> The main issue that would determine complainant-appellee's entitlement to permanent disability is whether his illness is work-related or not. We rule in the negative. For one, complainant-appellee failed to discharge the burden of proving the conditions set forth in Section 32-A particularly, that his work as ordinary seaman involved the risks of having a stroke; that complainant-appellee's hypertension was contracted as a result of his exposure to his work; that the disease was contracted within

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57 *POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels* (2000), sec. 32(A).

58 *POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels* (2000), sec. 20(B)(4).

59 *Rollo*, pp. 296–306.

60 Id. at 296.

61 Id. at 298–299.

62 Id. at 299.

63 Id. at 206–209.

> the period of exposure and such other factors necessary to contract it and that there was no notorious negligence on complainant-appellee's part. For another and on the contrary, complainant-appellee admitted that he had a family history of hypertension and that he smoked about one pack a day for thirty (30) years. Further, complainant-appellee also failed to prove that his hypertension can be classified as primary or essential; that he has suffered impairments in his vital organs; and that he failed to submit documents to substantiate his claim for compensability. Furthermore, we find that despite the non work relatedness of the illness of complainant-appellee, respondents-appellants in good faith exerted efforts and caused complainant-appellee's treatment in a foreign country, shouldered his repatriation expenses and caused his examinations and treatment for more than eight (8) months shouldering the expenses therein.
>
> Under the circumstances, respondents-appellants is not liable for the disability benefits of complainant-appellee considering that his illness of hypertension was not proven by substantial evidence to be work-related.[64]

A petition for review is limited to questions of law.[65] This court does not "re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field."[66] This court has held that "factual findings of the NLRC, when affirmed by the Court of Appeals, are generally conclusive on this court."[67]

Petitioner presents no compelling reason for this court to deviate from this general rule.

Petitioner's reliance on Dr. Vicaldo's medical opinion also fails to convince. Section 20(B)(3) of the POEA contract provides:

> 3. 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.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written

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64 Id. at 154.

65 RULES OF COURT, Rule 45, sec.1.

66 *Career Philippines ShipManagement v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 677, 684 [Per J. Brion, Second Division], *citing Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, 537 Phil. 897 (2006) [Per J. Garcia, Second Division].

67 Id., *citing See Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541 [Per J. Perez, Second Division]; *Gabunas v. Scanmar Maritime Services Inc.*, G.R. No. 188637, December 15, 2010, 638 SCRA 770, 776 [Per J. Sereno, Third Division], *citing Coastal Safeway Marine Services, Inc. v. Leonisa Delgado*, 577 Phil. 459 (2008) [Per J. Quisumbing, Second Division].

> notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> *If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.*[68] (Emphasis supplied)

Petitioner did not consult with a third doctor chosen by both parties. His contention is that the National Labor Relations Commission and Court of Appeals both erred in giving more credence to the assessment of the company-designated physician, Dr. Ong-Salvador, as opposed to the opinion of his private physician, Dr. Vicaldo.[69]

The question of weighing the credibility of two opposing medical opinions involves a factual review beyond the scope of a petition under Rule 45.

There appears to be no reason to overturn the lower court's factual findings giving more weight to the assessment of the company-designated physician.

As discussed by the Court of Appeals, "as between the company-designated doctor who has all the medical records of petitioner for the duration of his treatment and as against the latter's private doctor who merely examined him for a day as an outpatient, the former's finding must prevail."[70]

Several jurisprudence have given more weight to the assessment of the doctor that closely monitored and actually treated the seafarer.

In *Philman Marine v. Cabanban*,[71] this court gave more credence to the company-designated physician's assessment since "records show that the medical certifications issued by Armando's chosen physician were not

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[68] *POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean Going Vessels* (2000), sec. 20(B)(3).

[69] *See Dalusong v. Eagle Clarc Shipping*, G.R. No. 204233, September 3, 2014 < http://sc.judiciary.gov.ph/jurisprudence/2014/september2014/204233.pdf> [Per Acting C.J., Carpio, Second Division], *citing Ison v. Crewserve, Inc.*, G.R. No. 173951, April 16, 2012, 669 SCRA 481 [Per J. Del Castillo, First Division]; *Maunlad Transport, Inc. and/or Nippon Merchant Company, Ltd., Inc. v. Manigo, Jr.*, 577 Phil. 319 (2008) [Per J. Austria-Martinez, Third Division]:

> "In this case, there was no third doctor appointed by both parties whose decision would be binding on the parties. Hence, it is up to the labor tribunal and the courts to evaluate and weigh the merits of the medical reports of the company-designated doctor and the seafarer's doctor[.]"

[70] *Rollo*, p. 211.

[71] G.R. No. 186509, July 29, 2013, 702 SCRA 467 [Per J. Brion, Second Division].

supported by such laboratory tests and/or procedures that would sufficiently controvert the "normal" results of those administered to Armando at the St. Luke's Medical Center. . . [while] the medical certificate of the petitioners' designated physician was issued after three months of closely monitoring Armando's medical condition and progress, and after careful analysis of the results of the diagnostic tests and procedures administered to Armando while in consultation with Dr. Crisostomo, a cardiologist."[72] *Philman* discussed as follows:

> *In several cases, we held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability.* In *Coastal Safeway Marine Services, Inc. v. Esguerra*, the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Ruben D. Andrada v. Agemar Manning Agency, Inc., et al.*, the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report . . . [outlining] the alleged findings and medical history . . . obtained after . . . [one examination]."[73] (Emphasis supplied)

In the recent case of *Dalusong v. Eagle Clarc Shipping Philippines, Inc.*,[74] we ruled that "the findings of the company-designated doctor, who, with his team of specialists . . . periodically treated petitioner for months and monitored his condition, deserve greater evidentiary weight than the single medical report of petitioner's doctor, who appeared to have examined petitioner only once."[75]

Regardless of who the doctor is and his or her relation to the parties, the overriding consideration by both the Labor Arbiter and the National Labor Relations Commission should be that the medical conclusions are based on (a) the symptoms and findings collated with medically acceptable diagnostic tools and methods, (b) reasonable professional inferences anchored on prevailing scientific findings expected to be known to the physician given his or her level of expertise, and (c) the submitted medical findings or synopsis, supported by plain English annotations that will allow the Labor Arbiter and the National Labor Relations Commission to make the proper evaluation. The Court of Appeals in a petition for review should be

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72 Id. at 487.

73 Id. at 487–488.

74 G.R. No. 204233, September 3, 2014 <http://sc.judiciary.gov.ph/jurisprudence/2014/september2014/204233.pdf> [Per Acting C.J., Carpio, Second Division].

75 Id.

limited to determining whether there was grave abuse of discretion committed by the National Labor Relations Commission.

In this case, the company-designated physician and her associated specialists provided petitioner with extensive medical attention and treatment from January 31, 2007 to August 2007.[76] These are supported by medical reports.

In Dr. Ong-Salvador's initial medical report dated January 31, 2007, she provided a chronological history of petitioner's present illness, mentioning that he had a family history of hypertension on his paternal side, and smoked a pack a day for 30 years.[77] She then outlined the results of petitioner's physical examination and neurological examination.[78] Under "Working Impression," the initial medical report states "Hypertension Stage II, ASHD, CAD at risk, S/P Stroke."[79] Under "Plan of Management," the initial medical report states that petitioner was "admitted at the Santo Tomas Hospital today for further evaluation and management" and that he was "under the care of our specialists."[80] These specialists included neurologist Dr. Generoso D. Licup and cardiologist Dr. Glenn A. Mana-ay who both diagnosed petitioner and provided medical reports on their findings.[81]

In Dr. Ong-Salvador's reply to medical query dated February 19, 2007, she discussed that "patient's condition is regarded as non-work related, as the disease is mainly of a heredofamilial etiology that is enhanced by a number of modifiable and non-modifiable risk factors."[82] Dr. Ong-Salvador, having access to all of petitioner's medical records, was in the best position to make this conclusion.

Nevertheless, despite the non-work-related nature of petitioner's condition, respondents continued providing him with medical assistance.

In Dr. Ong-Salvador's medical progress report dated April 30, 2007, she discussed that petitioner "has continued with his medical treatment in his province in Iloilo . . . has been under physical therapy sessions to help him recover muscular functions and strength . . . [and] [c]ontinuous physical improvements were noted."[83]

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76 *Rollo*, p. 154.
77 Id. at 260.
78 Id. at 261.
79 Id.
80 Id.
81 Id. at 44–45.
82 Id. at 266.
83 Id. at 262.

Dr. Ong-Salvador continued to issue progress reports on petitioner's examinations with the company-designated cardiologist in Iloilo, and scheduling him for more re-evaluation by their specialists. The medical progress report dated August 21, 2007 stated that petitioner "underwent blood work-ups today [and] he tolerated the procedure well."[84]

On the other hand, Dr. Vicaldo's medical certificate provides as follow:

> JUSTIFICATION OF IMPEDIMENT GRADE VII (41.80%) FOR SEAMAN Joel B. Monana
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> - This patient/seaman presented with history of sudden weakness of the right upper and lower extremities associated with slurred speech and numbness on the right side of the face noted on January 2007 while on board ship. He was confined in Honolulu, Hawaii on January 24 to January 31, 2007. He underwent cranial CT scan and was diagnosed as cerebrovascular disease, infarct at the left parietal and periventicular area. He was started on medication as well as physical rehabilitation.
>
> - He was repatriated on January 31, 2007 and was subsequently admitted at UST hospital where he was diagnosed and managed as a case of hypertension, coronary artery disease an[d] recent stroke.
>
> - When seen at the clinic his blood pressure was 110/80 mmHg; PE of the heart and lungs were unremarkable. There were no significant motor deficits on the extremities but he complains of numbness on the right side of his body. He claims being forgetful after his stroke.
>
> - He is now unfit to resume work as seaman in any capacity.
>
> - *His illness is considered work aggravated/related.*
>
> - He requires maintenance medication to control his blood pressure to prevent cardiovascular complications such as a repeat stroke, coronary artery disease and renal insufficiency.
>
> - He requires regular follow up with his cardiologist and neurologist as well as regular blood chemistry examination to monitor his lipid profile as well as renal function to anticipate possible other risk factors.
>
> - He has to modify his lifestyle to include low salt diet, regular exercise and nicotine abstinence.
>
> - He is not expected to land a gainful employment given his

[84] Id. at 265.

medical background.[85] (Emphasis supplied)

The above medical certificate reveals that Dr. Vicaldo's findings were not based on results from medical tests and procedures. In fact, Dr. Vicaldo recognizes that petitioner already has a cardiologist and neurologist with whom he should regularly follow up with.

Dr. Ong-Salvador is familiar with petitioner's medical history and condition, thus, her medical opinion on whether his illness is work-aggravated/-related deserves more credence as opposed to Dr. Efren Vicaldo's unsupported conclusions.

This court notes that in several cases filed before this court on seafarer's disability claims, Dr. Vicaldo's findings have not been given due merit due to their unsubstantiated nature.[86]

It, therefore, behooves the National Labor Relations Commission, perhaps, to cause an investigation on why, in spite of the unsupported nature of Dr. Vicaldo's submissions, Labor Arbiters still give him credence. This unnecessarily clogs their administrative dockets, and the dockets of the Court of Appeals and this court. Judicial efficiency requires that Labor Arbiters and the National Labor Relations Commission keep guard against these types of doctors and their medical findings.

Since petitioner's illness is not work-related, this court need not labor on petitioner's argument that his illness must be deemed total and permanent since 240 days had lapsed without any assessment by the company-designated physician on his fitness to work.[87]

We observe that most seafarer complaints for compensation pursue the cause of action petitioner took in this case — breach of contractual obligations by its employer by invoking provisions of the POEA contract. This course follows a procedure that considers a balance of interests in the amount of compensation for the occupational hazards a seafarer suffers, and the process to recover such compensation.[88]

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85 Id. at 47–48.

86 *See Andrada v. Agemar Manning Agency, Inc.,* G.R. No. 194738, October 24, 2012, 684 SCRA 587 [Per J. Mendoza, Third Division]. *See also Jebsen Maritime Inc. v. Undag,* G.R. No. 191491, December 14, 2011, 662 SCRA 670 [Per J. Mendoza, Third Division] and *Sarocam v. Interorient Maritime,* 526 Phil. 448, 451 (2006) [Per J. Callejo, Sr., First Division].

87 *Rollo,* p. 311.

88 J. Leonen, concurring opinion in *Interorient Maritime Enterprises, Inc. v. Creer, III,* G.R. No. 181921, September 17, 2014, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/181921_leonen.pdf> [Per J. Del Castillo, Second Division].

Seafarers who suffer from occupational hazards are not necessarily constrained to contractual breach as cause of action in claiming compensation. Our laws allow seafarers, in a proper case, to seek damages based on tortious violations by their employers by invoking Civil Code provisions, and even special laws such as environmental regulations requiring employers to ensure the reduction of risks to occupational hazards.[89]

Lastly, petitioner failed to substantiate his claim for attorney's fees. Attorney's fees are awarded by way of exception when a defendant acted in evident and gross bad faith.[90]

Quite the opposite, "respondents merely relied on the company-designated physician's finding that petitioner's illness was not work-related [and] [d]espite of [sic] such finding, private respondents still extended to petitioner the required medical assistance and therapy."[91]

Respondents also submit that they already paid petitioner illness allowance.[92] Respondents' comment attached copies of approved illness allowance payments for petitioner in the amounts of US$555.87 for January and February 2007, US$589.29 for February and March 2007, and US$854.84 for April and May 2007.[93]

Petitioner no longer mentioned illness allowance in his memorandum. This court's resolution[94] requiring the filing of memoranda explained that "issues raised in the pleadings but not included in the memorandum shall be deemed waived or abandoned."[95]

This court's commitment to provide full protection to labor "does not prevent us from sustaining the employer when it is in the right."[96] In any event, the lower court has awarded US$3,000.00 as financial assistance in the interest of equity and compassionate justice.

WHEREFORE, the petition is **DENIED**. The Court of Appeals' decision and resolution are **AFFIRMED**.

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89 Id.
90 CIVIL CODE, art. 2208.
91 *Rollo*, p. 212.
92 Id. at 349.
93 Id. at 267–269.
94 Id. at 286.
95 Id. at 287.
96 *Magsaysay Maritime Corporation v. NLRC*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 380 [Per J. Brion, Second Division], *citing Sarocam v. Interorient Maritime Ent., Inc*., 526 Phil. 448, 459 (2006) [Per J. Callejo, Sr., First Division].

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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
Acting Chief Justice