Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

AL O. EYANA, Petitioner,	**G.R. No. 193468**
	Present:
- versus -	VELASCO, JR., *J.* *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
PHILIPPINE TRANSMARINE CARRIERS, INC., ALAIN A. GARILLOS, CELEBRITY CRUISES, INC. (U.S.A.), Respondents.	Promulgated: January 28, 2015

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DECISION

REYES, *J*:

The instant petition for review on *certiorari*[1] assails the Decision[2] dated March 22, 2010 and Resolution[3] dated August 13, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108483. The CA affirmed the Decision[4] of the National Labor Relations Commission (NLRC) dated November 28, 2008, which declared that Al O. Eyana (petitioner) is entitled to an award of disability compensation equivalent to Grade Eight under the Philippine Overseas Employment Agency (POEA) Standard Employment Contract (SEC). The NLRC reversed the labor arbiter's (LA) earlier decision,[5] which awarded to the petitioner US$80,000.00 as total and permanent disability

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1 *Rollo*, pp. 10-24.

2 Penned by Associate Justice Ruben C. Ayson, with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro concurring; CA *rollo*, pp. 155-171.

3 Id. at 200-201.

4 Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan concurring; id. at 27-36.

5 Issued by LA Romelita N. Rioflorido; id. at 18-25A.

benefits, and US$8,000.00 as attorney's fees.

Antecedents

Respondent Philippine Transmarine Carriers, Inc. (PTCI) is a local manning agency, with Alain A. Garillos (Garillos) as its crewing manager and official representative.

PTCI, for and on behalf of its foreign principal, Celebrity Cruises, Inc. (CCI), hired the petitioner to assume the position of a utility cleaner on board *M/V Century.* The petitioner then joined the ship on April 15, 2006. His contract covered a period of eight months and his basic monthly salary was US$267.00. His tasks were predominantly manual in nature, which involved lifting, carrying, loading, transporting and arranging food supplies, and floor cleaning.[6]

On August 2, 2006, the petitioner felt a sudden pain in his back after lifting a 30-kilo block of cheese from the freezer shelf. He was no longer able to carry the cheese to the kitchen. He reported the incident to his superior.[7]

The petitioner was confined in a hospital in Oslo, Norway from August 4 to 16, 2006. He was medically repatriated to the Philippines on August 17, 2006.[8]

PTCI immediately referred the petitioner to Dr. Natalio G. Alegre II (Dr. Alegre) for treatment. The initial consultation was on August 18, 2006. Dr. Alegre noted that the petitioner was (a) suffering from severe low back pains, (b) experiencing numbness and weakness in his right lower leg, and (c) having difficulty bending and sitting. The former was, thus, advised to undergo physical therapy thrice a week.[9]

The petitioner thereafter consulted Dr. Alegre eight more times from August 28, 2006 up to January 26, 2007. He continued with physical therapy and was prescribed medications.[10]

On October 23, 2006, Dr. Alegre reported that the Magnetic Resonance Imaging scan of the petitioner's lumbosacral spine showed "disk desiccation L4L5 and L5S1 with left posterolateral disk herniations and

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6 Id. at 156-157; *rollo*, p. 13.
7 CA *rollo*, p. 157.
8 Id. at 18-19.
9 *Rollo*, p. 96.
10 Id. at 97-104.

nerve root compression." Since the petitioner was hesitant to undergo surgery, Dr. Alegre recommended the administration of epidural steroid injection to decrease the pain and swelling, and the continuation of physical therapy.[11]

On January 20, 2007, Dr. Alegre informed PTCI that the petitioner still suffered from persistent back pains and restricted truncal mobility. Since the petitioner was still young, "conservative management with physical therapy" was recommended. The petitioner was then given a "Disability Grade of 8 (Chest-Trunk-Spine # 5, moderate rigidity or 2/3 loss of motion or lifting power of the trunk)."[12]

The petitioner's last consultation with Dr. Alegre was on January 26, 2007. The former manifested his preference for the continuation of physical therapy and once again refused the offer of surgical intervention.[13]

On June 6, 2007, the petitioner sought the opinion of Dr. Venancio P. Garduce, Jr. (Dr. Garduce), an orthopedic surgeon. The medical certificate signed by the latter indicated that the petitioner had (a) nerve root compression at L4-L5 and L5-S1; (b) numbness and sensory deficits of 40% with weakness of the left big toe extension; and (c) limited range of motion of the back. Dr. Garduce concluded that the petitioner had a Disability Grade of One and was thus unfit for sea duty.[14]

On June 7, 2007, the petitioner filed before the NLRC a complaint[15] for disability benefits, medical reimbursements, damages and attorney's fees against PTCI, Garillos and CCI (respondents).

Ruling of the LA

On December 17, 2007, the LA rendered a Decision[16] awarding to the petitioner the amounts of US$80,000.00 as total and permanent disability benefits, and US$8,000.00 as attorney's fees. The LA ruled that the provisions of the FIT-CISL-ITF CBA (CBA) which adopted Article 12 of the ITF Cruise Ship Model Agreement covering the petitioner's vessel of employment were applicable.[17] The said article, in part, provides that:

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11 Id. at 102.
12 Id. at 105.
13 Id. at 104.
14 Id. at 106.
15 CA *rollo*, pp. 17, 158.
16 Id. at 18-25A.
17 Id. at 21.

> Regardless of the degree of disability[,] an injury or illness which results in loss of profession will entitle the Seafarer to the full amount of compensation, USD eighty thousand (80,000) for ratings, (Groups B, C, & D) x x x. For the purposes of this Article, loss of profession means when the physical condition of the Seafarer prevents a return to sea service, under applicable national and international standards or when it is otherwise clear that the Seafarer's condition will adversely prevent the Seafarer's future of comparable employment on board ships.[18]

The LA found Dr. Garduce's opinion as credible. The LA likewise declared that even if the Disability Grade of Eight assessed by Dr. Alegre would be considered instead, it cannot alter the fact that the petitioner's medical condition was permanent thereby resulting in the loss of his profession as a seaman. Further, the petitioner was unable to perform his customary job for more than 120 days, hence, under the law, he should be considered as permanently and totally disabled.[19]

Ruling of the NLRC

The respondents assailed the LA decision before the NLRC. The dispositive portion of the NLRC Decision[20] dated November 28, 2008 reads as follows:

> WHEREFORE, premises considered, the decision under review is hereby, REVERSED and SET ASIDE, and another entered, DISMISSING the cause of action for payment of higher disability benefits.
>
> According[ly], [the petitioner] is declared entitled to an award of disability compensation equivalent to GRADE EIGHT (8) under the [POEA-SEC].
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> SO ORDERED.[21]

The NLRC explained that:

> Records show that [Dr. Alegre] personally examined the [petitioner] starting August 18, 2006. From said date until January 26, 2007, [the petitioner] underwent medical examination for no less than eight (8) times x x x. Notably, on two occasions, Dr. Alegre suggested that [the petitioner] undergo operation. [The petitioner] himself refused but instead opted for epidural steroid injection and physical therapy x x x. Having failed to receive a higher disability rating, [the petitioner] waited [for] over four (4) months before he sought a second opinion which was based on a mere single consultation that, in turn, produced a mere handwritten diagnosis. From these established facts, even granting that

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18 Id. at 22.
19 Id. at 22-23.
20 Id. at 27-36.
21 Id. at 35.

> the disability assessment should have been as what [the petitioner's] private physician had determined, his conduct is considered as a supervening cause that could account for such disability, noting further that the second medical opinion was obtained several months after the company-designated physician had issued a disability rating. These circumstances warrant according to the medical opinion of [the petitioner's] private physician with such nil significance.
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> Attendant facts not only render an inherent weakness in [the petitioner's] evidence. They fail to overcome the corresponding probative weight and credence being ascribed to the declaration of the company-designated physician which had been issued pursuant to the conditions stated in the [POEA SEC]. Thusly, and as ruled in the case of Cadornigara v. Amethyst Shipping Co., Inc., et al., G.R. No. 158073, November 23, 2007, while the certification of the company physician may be contested, the seafarer must indicate facts or evidence on record to contradict such finding. x x x [The petitioner] having entirely missed pointing to any circumstance that would have reasonably established fraud or misrepresentation on the part of the company-designated physician, We are therefore without any other recourse but to render due adherence to his findings and conclusions.[22]

On February 13, 2009, the NLRC denied the respondents' motion for reconsideration.[23]

Ruling of the CA

The respondents thereafter filed a Petition for *Certiorari*,[24] which the CA dismissed through the herein assailed decision and resolution. The CA declared that:

> The Court notes that Section 20(B) of the employment contract states that it is the company-designated physician who determines a seafarer's fitness to work or his degree of disability. Nonetheless, a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.
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> It is noted that petitioner took four (4) months before disputing the finding of Dr. Alegre by consulting a second opinion of his physician of choice, whose only consultation with him is recorded by a handwritten diagnosis dated June 6, 2007, a day before he filed a complaint for disability benefits. x x x.
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> x x x x

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22 Id. at 33-35.
23 Id. at 37-39.
24 Id. at 2-14.

As the Supreme Court observed in *Sarocam v. Interorient Maritime Ent. Inc.*, it makes no sense to compare the certification of a company-designated physician with that of an employee-appointed physician if the former is dated seven to eight months earlier than the latter -- there would be no basis for comparison at all.

In ***Maunlad Transport, Inc. vs. Manigo***, where the Supreme Court took note of the doctrines laid down in ***Cadornigara v. NLRC*** and ***Sarocam v. Interorient Maritime Ent., Inc***., which We hold to be the more applicable rule in the instant case, wherein the Court held that an assessment of a private doctor consulted by the claimant six (6) months after he was declared "fit to work" by the company-designated physician in ***Cadornigara*** and seven (7) to eight (8) months in ***Sarocam***, has no evidentiary value, for the claimant's health condition may have drastically changed in the interregnum.

Following the foregoing analyses in ***Cadornigara*** and ***Sarocam***, the necessary conclusion in this case would have to be that Dr. Alegre's (the company physician) diagnosis and recommendation has more evidentiary weight and should therefore prevail over that of Dr. Garduce. In the absence of bad faith, Dr. Alegre's findings were binding on the petitioner, such findings being based on the petitioner's extensive and actual medical history and treatment.

Moreover, the records lack competent showing of the extent of the medical treatment that the private doctor gave to the petitioner. In contrast, Dr. Alegre's extensive medical treatment that enabled him to make a final diagnosis on the degree of the petitioner's disability was amply demonstrated. Thus, between the certification issued by the company[-]designated physician and the certification issued by the private doctor, We would lend more credence to the certification issued by the company[-]designated physician because it was done in the regular performance of his duties as company physician and who consistently examined complainant's health condition. We cannot simply brush aside said certification in the absence of solid proof that it was issued with grave abuse of authority of the company physician. This was what respondent NLRC precisely considered in coming out with its reversal decision. In doing so, it may not be said that it gravely abused its discretion.

While the Court may agree with the petitioner that the [POEA SEC] for Seamen is designed primarily for the protection and benefit of Filipino seamen in the pursuit of the employment on board ocean-going vessels and its provisions must, therefore be construed and applied fairly, reasonably and liberally in their favor, We must also emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers, nor a means to prevent the court from sustaining the employer when it is in the right.[25] (Citations omitted)

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[25] Id. at 166-170.

Issues

This Court is now called upon to resolve the issues of whether or not the CA and the NLRC erred in not considering the following:

(a) provisions of the CBA which provide full compensation for loss of profession regardless of the degree of disability;[26] and

(b) settled jurisprudence on seafarers' claims declaring that entitlement to full disability compensation is based on the loss of earning capacity and not on medical significance.[27]

The petitioner claims that while the respondents never controverted the existence of the CBA, which was an addendum to the POEA SEC executed between the parties in this case, the NLRC and the CA failed to discuss the provisions therein in their respective decisions. Further, Article 12 of the CBA provides that regardless of the disability grading given to the petitioner, he should be entitled to a compensation of US$80,000.00 as a result of the loss of his profession. The petitioner also points out that from his repatriation on August 18, 2006 up to the time the instant petition was filed in 2009, he had remained unfit to work as a seaman after losing two-thirds of his trunk's lifting power. Anent the petitioner's alleged refusal to undergo surgery, he asserts that he was not solely at fault as Dr. Alegre himself had adopted the orthopedic recommendation of conservative management with physical therapy.[28]

The petitioner also reiterates that permanent and total disability does not mean absolute helplessness, but mere inability to do substantially all material acts necessary for the pursuit of any occupation for remuneration in substantially customary and usual manner. Because of his back injury resulting from the accident, he is rendered permanently unfit for sea service.[29]

In their Comment,[30] the respondents argue that Department Order No. 4 and Memorandum Circular No. 9, series of 2000, otherwise known as the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels, shall apply since the employment contract executed between the parties expressly stipulated so. Under Section 32 of the POEA SEC, Grade 8 disability entitles the seafarer to a compensation equivalent to US$16,795.00 or 33.59% of

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26 *Rollo*, p. 15.
27 Id. at 20.
28 Id. at 16-19.
29 Id. at 20-21.
30 Id. at 84-94.

US$50,000.00.[31]

Further, the petitioner belatedly sought the opinion of Dr. Garduce four months after Dr. Alegre had made a disability assessment. The petitioner did so as a mere afterthought.[32] Besides, while the findings of Dr. Alegre may be contested, the petitioner should have indicated facts or evidence in the records to refute the same. The petitioner failed in this respect. Thus, Dr. Garduce's medical opinion, which was arrived at after a day's observation, cannot override the careful assessment of Dr. Alegre, who had monitored the petitioner's condition in a span of six months.[33]

Ruling of the Court

The instant petition is partially meritorious.

There is no dispute that the petitioner's injury was work-related and that he is entitled to disability compensation. The questions now posed before this Court essentially relate to what are the applicable provisions to determine the (a) petitioner's degree of disability, and (b) amount of compensation he is entitled to.

The CBA's existence and the applicability of its provisions to the instant petition have not been established.

It has been oft-repeated that "a party alleging a critical fact must support his allegation with substantial evidence," and "any decision based on unsubstantiated allegation cannot stand as it will offend due process."[34]

In the case at bar, while the petitioner based his claims for full disability benefits upon the CBA, he presented no more than two unauthenticated pages of the same.[35] Hence, the CBA deserves no evidentiary weight and cannot be made as the basis for the award of disability compensation. Consequently, the first issue[36] raised herein is rendered moot, leaving the Court to resolve the petition in the light of the provisions of the POEA SEC and relevant labor laws.

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31 Id. at 85-86.
32 Id. at 86, 90.
33 Id. at 90.
34 Please *see Oriental Shipmanagement Co., Inc. v. Nazal*, G.R. No. 177103, June 3, 2013, 697 SCRA 51, 61, citing *UST Faculty Union v. University of Sto. Tomas, et al.*, 602 Phil. 1016, 1025 (2009).
35 CA *rollo*, pp. 56-57.
36 *Rollo*, p. 15.

The POEA SEC governs. Under Section 32 thereof, the petitioner is entitled to a total and permanent disability compensation of US$60,000.00.

In *Kestrel Shipping Co., Inc. v. Munar*,[37] likewise involving a seafarer who had sustained a spinal injury and had lost two-thirds of his trunk's lifting power, the Court is emphatic that:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. x x x.
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> Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.
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> x x x x
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> > x x x Section 29 of the 1996 POEA SEC 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. x x x.
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> In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the [Amended Rules on Employee Compensation] in interpreting in holding that: (a) the 120 days provided under Section 20-B(3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may

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37 G.R. No. 198501, January 30, 2013, 689 SCRA 795.

be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties. Quoted below are the relevant portions of this Court's Decision dated October 6, 2008:

> x x x [T]he POEA [SEC] provides its own system of disability compensation that approximates (and even exceeds) the benefits provided under Philippine law. The standard terms agreed upon, as above pointed out, are intended 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.
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> x x x x
>
> 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 [SEC] and by applicable Philippine laws. <u>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</u>. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.
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> x x x x
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> As we outlined above, a temporary total disability only becomes permanent when so declared by the company 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. <u>In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work</u>. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose.

Consequently, if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises. On the other hand, if the company-designated physician declares the seaman fit to work within the said periods, such declaration should be respected unless the physician chosen by the seaman and the doctor selected by both the seaman and his employer declare otherwise. As provided under Section 20-B(3) of the POEA-SEC, a seafarer may consult another doctor and in case the latter's findings differ from those of the company-designated physician, the opinion of a third doctor chosen by both parties may be secured and such shall be final and binding. The same procedure should be observed in case a seafarer, believing that he is totally and permanently disabled, disagrees with the declaration of the company-designated physician that he is partially and permanently disabled.

In *Vergara*, as between the determinations made by the company-designated physician and the doctor appointed by the seaman, the former should prevail absent any indication that the above procedure was complied with:

> The POEA [SEC] and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
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> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x.

In this case, the following are undisputed: (a) when Munar filed a complaint for total and permanent disability benefits on April 17, 2007, 181 days had lapsed from the time he signed-off from M/V Southern Unity on October 18, 2006; (b) Dr. Chua issued a disability grading on May 3, 2007 or after the lapse of 197 days; and (c) Munar secured the opinion of Dr. Chiu on May 21, 2007; (d) no third doctor was consulted by the parties; and (e) Munar did not question the competence and skill of the company-designated physicians and their familiarity with his medical condition.

It may be argued that these provide sufficient grounds for the dismissal of Munar's complaint. Considering that the 240-day period had not yet lapsed when the NLRC was asked to intervene, Munar's complaint is premature and no cause of action for total and permanent disability

benefits had set in. While beyond the 120-day period, Dr. Chua's medical report dated May 3, 2007 was issued within the 240-day period. Moreover, Munar did not contest Dr. Chua's findings using the procedure outlined under Section 20-B(3) of the POEA-SEC. For being Munar's attending physicians from the time he was repatriated and given their specialization in spine injuries, the findings of Dr. Periquet and Dr. Lim constitute sufficient bases for Dr. Chua's disability grading. As Munar did not allege, much less, prove the contrary, there exists no reason why Dr. Chiu's assessment should be preferred over that of Dr. Chua.

It must be noted, however, that when Munar filed his complaint, Dr. Chua had not yet determined the nature and extent of Munar's disability. Also, Munar was still undergoing physical therapy and his spine injury had yet been fully addressed. Furthermore, when Munar filed a claim for total and permanent disability benefits, more than 120 days had gone by and the prevailing rule then was that enunciated by this Court in *Crystal Shipping, Inc. v. Natividad* that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. Particularly:

> **Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body**. As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent.
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> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In 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.
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> x x x x
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> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. **It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability**. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.

> Consequently, that after the expiration of the 120-day period, Dr. Chua had not yet made any declaration as to Munar's fitness to work and Munar had not yet fully recovered and was still incapacitated to work sufficed to entitle the latter to total and permanent disability benefits.
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> In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B(3) of the POEA-SEC. A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.
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> This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.
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> Nonetheless, *Vergara* was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that *Vergara* should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.[38] (Citations omitted, emphases in the original and underscoring ours)

Similar to the circumstances obtained in *Kestrel*, the petitioner failed to assail the competence of the company-designated physicians, and seek the opinion of a third doctor mutually agreed upon by the parties. In *Kestrel* and the instant petition too, the disability assessment was made by the company-designated doctors after the lapse of 120 days from the seafarer's repatriation. Likewise, in both cases, the complaints were filed by the seafarers before October 6, 2008, the date of the promulgation of *Vergara v. Hammonia Maritime Services, Inc., et al.*[39]

Applying the doctrines enunciated in *Kestrel*, the Court finds that the petitioner is entitled to total and permanent disability benefits under the provisions of the POEA SEC. It bears stressing that the Court need not even delve into the merits of the assessments made by Dr. Alegre, on one hand,

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38 Id. at 809-818.

39 588 Phil. 895 (2008).

and Dr. Garduce, on the other. This proceeds from an unalterable fact that Dr. Alegre had made the disability assessment on January 20, 2007, or over five months from the petitioner's repatriation on August 17, 2006. Consequently, the rule on the 120-day period, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*,[40] the doctrine then prevailing before the promulgation of *Vergara* on October 6, 2008, stands. Hence, due to the failure of Dr. Alegre to issue a disability rating within the prescribed period, a conclusive presumption that the petitioner is totally and permanently disabled arose. As a result thereof, the petitioner is not legally compelled to observe the procedure laid down in Section 20-B(3) of the POEA SEC relative to the resort to a third doctor.

As discussed earlier, the Court need not delve into the merits of the disability assessments made by Dr. Alegre and Dr. Garduce. However, it is worth noting that on January 20, 2007, Dr. Alegre informed PTCI that the petitioner was still suffering from persistent back pains. Thus, the Gabapentin dose prescribed to the petitioner was increased to 600 milligrams per day and physical therapy was continued.[41]

Gabapentin tablets are used to treat long lasting pain caused by damage to the nerves. A variety of different diseases can cause peripheral (primarily occurring in the legs and/or arms) neuropathic pain, such as diabetes or shingles. Pain sensations may be described as hot, burning, throbbing, shooting, stabbing, sharp, cramping, aching, tingling, numbness, pins and needles, etc.[42]

In *Seagull Maritime Corporation v. Dee*,[43] the Court declared that:

> *Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform,* or any kind of work which a person of his mentality and attainment can do. It does not mean state of absolute helplessness but *inability to do substantially all material acts necessary to the prosecution of a gainful occupation* <u>*without serious discomfort or pain*</u> and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.
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> Although private respondent's injury was undeniably confined to his left foot only, we cannot close our eyes, as petitioners would like us to, to the inescapable impact of private respondent's injury on his capacity to work as a seaman. In their desire to escape liability from private respondent's rightful claim, petitioners denigrated the fact that even if private respondent insists on continuing to work as a seaman, no profit

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40 510 Phil. 332 (2005).
41 *Rollo*, p. 105.
42 <http://www.drugs.com/uk/pdf/leaflet/359984.pdf> (visited January 22, 2015).
43 548 Phil. 660 (2007).

> minded employer will hire him. His injury erased all these possibilities.[44] (Citation omitted, italics in the original and underscoring ours)

Further, *Wallem Maritime Services, Inc. v. Tanawan*[45] unequivocally reiterated that:

> What clearly determines the seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days. Although the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly (that is, more than 120 days after repatriation).[46] (Citations omitted)

In the instant petition, Dr. Alegre's January 20, 2007 report[47] addressed to PTCI clearly indicated that the petitioner's persistent back pains remained unresolved. Hence, the continuation of physical therapy and an increased Gabapentin dose were recommended. The Court cannot disregard the fact that the petitioner was a utility cleaner before he was injured. His tasks in the ship were predominantly manual in nature involving a lot of moving, lifting and bending. At the time Dr. Alegre belatedly issued the disability assessment, the petitioner could not revert back to his customary gainful occupation without subjecting himself to serious discomfort and pain.

Further, the Court disagrees with the NLRC which found fault on the part of the petitioner in refusing to undergo surgery as recommended by Dr. Alegre. Records show that the petitioner underwent physical therapy. At the time Dr. Alegre made the disability assessment on January 20, 2007, he still presented physical therapy as an option. Again, the Court quotes:

> As [the petitioner] is still young, conservative management with physical therapy has been recommended by Orthopedics.[48]

The petitioner cannot thus be faulted that he opted for physical therapy instead of surgery. If indeed surgery was the only way for the petitioner to be able to fully recover from his injury, he should have been categorically informed of such fact and warned of the consequences of his choice. The petitioner did not refuse treatment. He just availed of an option presented to him. Besides, even if he underwent surgery, there is likewise no assurance of full recovery.

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44 Id. at 671.
45 G.R. No. 160444, August 29, 2012, 679 SCRA 255.
46 Id. at 268.
47 *Rollo*, p. 105.
48 Id.

The Court also notes that nowhere is it shown in the records that the petitioner was re-employed as a utility cleaner by PTCI or by any other manning agency from the time of his repatriation on August 17, 2006 until the filing of the instant petition in 2009. This, to the Court, is an eloquent proof of his permanent disability.[49]

In sum, the Court finds the petitioner entitled to total and permanent disability compensation. As to the amount, the Schedule of Disability Allowances found in Section 32 of the POEA SEC is applicable. Under the said section, a seafarer given a Grade 1 Disability assessment is entitled to US$60,000.00 (US$50,000.00 x 120%).

The petitioner is entitled to attorney's fees.

The petitioner is entitled to attorney's fees pursuant to Article 2208(8)[50] of the Civil Code.[51] The Court, however, notes that the respondents provided the petitioner with medical treatment and offered to pay him disability benefits, albeit in the reduced amount. In other words, the acts of the respondents did not evince bad faith. The respondents did not completely shirk from their duties to the petitioner. Although the petitioner was still thus compelled to litigate to be entitled to total and permanent disability compensation, the Court finds the award of attorney's fees in the amount of US$1,000.00 as reasonable.[52]

Respondent Garillos is not personally liable for the monetary awards granted to the petitioner.

As a general rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties.[53]

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[49] *Maersk Filipinas Crewing, Inc./Maersk Services Ltd. v. Mesina*, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 608.

[50] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x

[51] Please *see Leonis Navigation Co., Inc., et al. v. Villamater and/or The Heirs of the Late Catalino U. Villamater, et al.*, 628 Phil. 81, 100 (2010).

[52] Please *see NFD International Manning Agents, Inc./Barber Ship Mgmt. Ltd. v. Illescas*, 646 Phil. 244, 265 (2010).

[53] *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224*, G.R. No. 194795, June 13, 2012, 672 SCRA 562, 570.

"In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities."[54]

In the instant petition, there was neither an allegation nor a proof offered to establish that Garillos, as PTCI's crewing manager and official representative, had acted beyond the scope of his authority or with malice. The general rule thus applies and there is no ground to hold him personally liable for the monetary awards granted to the petitioner.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The Decision dated March 22, 2010 and Resolution dated August 13, 2010 of the Court of Appeals in CA-G.R. SP No. 108483 are hereby **SET ASIDE**. The respondents, Philippine Transmarine Carriers, Inc. and Celebrity Cruises, Inc. are hereby held jointly and severally liable to the petitioner, **AL O. EYANA,** for the amounts of (a) US$60,000.00 as total and permanent disability allowance, and (b) US$1,000.00 as attorney's fees, at the prevailing rate of exchange at the time of payment. An interest of six percent (6%) *per annum* is likewise imposed upon the total monetary award reckoned from the date of finality of this Decision until full satisfaction thereof.[55]

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[54] Id. at 573, citing *Pantranco Employees Ass'n. (PEA-PTGWO), et al. v. NLRC, et al.*, 600 Phil. 645, 663 (2009).

[55] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

FRANCIS H. JARDELEZA
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

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