Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NORIEL R. MONTIERRO, Petitioner,	**G. R. No. 210634**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DECASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
RICKMERS MARINE AGENCY PHILS., INC., Respondent.	Promulgated: **JAN 14 2015**

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DECISION

SERENO, *CJ:*

Before this Court is a Petition for Review on *certiorari*[1] seeking to nullify the Decision dated 8 August 2013[2] and the Resolution dated 6 January 2014[3] issued by the Court of Appeals (CA) in CA-G.R. SP No. 126618.

FACTS

On 26 February 2010, respondent Rickmers Marine Agency Phils., Inc. (Rickmers), on behalf of its foreign principal, Global Management Limited, hired petitioner Noriel Montierro as Ordinary Seaman with a basic monthly salary of USD420. He was assigned to work on board the vessel *M/V CSAV Maresias*.[4]

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[1] *Rollo*, pp. 3-31; Under Rule 45 of the Rules of Court.
[2] Id. at 36-49; Penned by Rebecca De Guia-Salvador, Associate Justice and Chairperson, Third Division, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan.
[3] Id. at 51-52.
[4] Id. at 37; CA Decision, p. 2.

Sometime in May 2010, while on board the vessel and going down from a crane ladder, Montierro lost his balance and twisted his legs, thus injuring his right knee.[5] Thereafter, on 31 May 2010, he was examined in Livorno, Spain by Dr. Roberto Santini, who recommended surgical treatment at home and found him unfit for duty.[6] Thus, on 2 June 2010, Montierro was repatriated to the Philippines for further medical treatment.[7]

On 4 June 2010, two days after his repatriation, Montierro reported to Dr. Natalio G. Alegre II, the company-designated physician. He underwent a magnetic resonance imaging (MRI) scan of his right knee. The MRI showed he had "meniscal tear, posterior horn of the medical meniscus, and minimal joint fluid." Upon the recommendation of Dr. Alegre, Montiero underwent arthroscopic partial medical meniscectomy of his right knee on 29 July 2010 at St. Luke's Medical Center.[8]

On 20 August 2010, Montierro had his second check-up with Dr. Alegre, who noted that the former's surgical wounds had healed, but that there was still pain and limitation of motion on his right knee on gaits and squats. The doctor advised him to undergo rehabilitation medicine and continue physical therapy.[9]

On 3 September 2010, **the 91st day of Montierro's treatment**, Dr. Alegre issued an *interim* disability grade of 10 for "stretching leg of ligaments of a knee resulting in instability of the joint." He advised Montierro to continue with the latter's physical therapy and oral medications.[10]

Montierro further underwent sessions of treatment and evaluation between 17 September 2010 and 28 December 2010.[11]

On 3 January 2011, **the 213th day of Montierro's treatment**, Dr. Alegre issued a final assessment as follows:

> Subjective Complaints:
> Cannot flex the knee to 100%
> No swelling noted
> Limited range of motion of right knee
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> Assessment:
> Medial Meniscal Tear, Knee Right
> S/P Arthroscopic Meniscectomy

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[5] Id.
[6] Id.
[7] Id.
[8] Id. at 37.
[9] Id.
[10] Id.
[11] Id. at 38; CA Decision, p. 3.

Plan:

> Disability Grade of 10 is given based on section 32 of the POEA contract. Lower Extremities #20, stretching leg of the ligaments of a knee resulting in instability of the joint. x x x[12]

Meanwhile, on 3 December 2010, *one month before Dr. Alegre's issuance of the final disability grading*, Montierro filed with the labor arbiter a complaint for recovery of permanent disability compensation in the amount of USD89,000, USD2,100 as sickness allowance, plus moral and exemplary damages and attorney's fees.[13] To support his claim for total permanent disability benefits, Montierro relied on a Medical Certificate dated 3 December 2010 issued by his physician of choice, Dr. Manuel C. Jacinto, recommending total permanent disability grading, and explaining the former's medical condition as follows:

> Patient's condition started at work when he accidentally fell from a ladder causing his (R) knee to be twisted. Patient's symptoms of pain and limited flexion of (R) knee persisted, thus he was assessed to be physically unfit to go back to work.[14]

LA AND NLRC RULINGS

In a Decision dated 29 June 2011, the LA held that Montierro was entitled to permanent **total** disability benefits under the Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). The LA relied on the 120-day rule introduced by the 2005 case *Crystal Shipping, Inc. v. Natividad.*[15] The rule equates the inability of the seafarer to perform work for more than 120 days to permanent total disability, which entitles a seafarer to full disability benefits.[16] The LA also awarded one-month sickness allowance and attorney's fees.

On 26 October 2011, Rickmers elevated the case to the National Labor Relations Commission (NLRC),[17] which affirmed the Decision of the LA on 5 June 2012. Rickmers filed a Motion for Reconsideration, which the NLRC denied.[18] This denial prompted Rickmers to file a Rule 65 Petition with the CA.[19]

CA RULING

On 8 August 2013, the CA rendered a Decision partially granting the Petition. It affirmed the NLRC ruling insofar as the latter awarded

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[12] Id.
[13] Id.
[14] Id. at 39.
[15] 510 Phil. 332 (2005)
[16] The rule was lifted from the provisions of the Labor Code on employees' compensation program.
[17] Id at 40-41; CA Decision, pp. 5-6.
[18] In a Resolution dated 31 July 2012.
[19] Id. at 41; CA Decision, p. 6.

Montierro one-month sickness allowance.[20] The CA held, however, that he was entitled merely to "Grade 10" permanent *partial* disability benefits.[21] It also dropped the award of attorney's fees granted to him earlier.[22]

In its Decision downgrading the claim of Montierro to "Grade 10" permanent *partial* disability benefits only, the CA ruled that his disability could not be deemed total and permanent under the 240-day rule established by the 2008 case *Vergara v. Hammonia Maritime Services, Inc.*[23] *Vergara* extends the period to 240 days when, within the first 120-day period (reckoned from the first day of treatment), a final assessment cannot be made because the seafarer requires further medical attention, provided a declaration has been made to this effect.[24]

The CA pointed out that only 215 days had lapsed from the time of Montierro's medical repatriation on 2 June 2010 until 3 January 2011, when the company-designated physician issued a "Grade 10" final disability assessment. It justified the extension of the period to 240 days on the ground that Dr. Alegre issued an *interim* disability grade of "10" on 3 September 2010, the 91st day of Montierro's treatment, which was within the initial 120-day period.

Further, the CA upheld the jurisprudential rule that, in case of conflict, it is the recommendation issued by the company-designated physician that prevails over the recommendation of the claimant's physician of choice.

On the deletion of the award of attorney's fees, the CA reasoned that there was no sufficient showing of bad faith in Rickmer's persistence in the case other than an erroneous conviction of the righteousness of its cause based on the recommendation of the company-designated physician.

RULE 45 PETITION

Hence, Montierro filed a Rule 45 Petition with this Court. He contends in the main that he is entitled to full disability benefits. To support this thesis, he raises two arguments.

First, Montierro insists that the 120-day rule laid down in the 2005 case *Crystal Shipping*, and not the 240-day rule introduced by the 2008 case *Vergara*, applies to this case. Montierro cites the more recent cases *Wallem Maritime Services, Inc., v. Tanawan*,[25] *Maersk Filipinas Crewing, Inc. v.*

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[20] For the period beginning 5 September 2010 and ending 5 October 2010; id. at 48-49.
[21] In the amount of USD 10,075 or its peso equivalent.
[22] Id.
[23] 588 Phil. 895 (2008)
[24] The legal basis for the extension is found under the standard terms of the POEA Standard Employment Contract, in relation to Articles 191 to 193 of the Labor Code, as amended; and Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.
[25] G.R. No. 160444, 29 August 2012; 679 SCRA 255.

Mesina,[26] and *Valenzona v. Fair Shipping Corp.*,[27] all of which applied the *Crystal Shipping* doctrine despite the fact that they were promulgated **after** *Vergara*.

Second, he claims that the medical assessment of his personal physician, to the effect that the former's disability is permanent and total, should be accorded more weight than that issued by the company-designated physician.[28]

Montierro also raises in his petition the issue of attorney's fees, which he believes he is entitled to as he was compelled to litigate.

ISSUES

The issues to be resolved are the following: (1) whether it is the 120-day rule or the 240-day rule that should apply to this case; (2) whether it is the opinion of the company doctor or of the personal doctor of the seafarer that should prevail; and (3) whether Montierro is entitled to attorney's fees.

OUR RULING

120 day rule vs. 240 day rule

The Court has already delineated the effectivity of the *Crystal Shipping* and *Vergara* rulings in the 2013 case *Kestrel Shipping Co. Inc. v. Munar*,[29] by explaining as follows:

> 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.

Thus, based on *Kestrel*, **if the maritime compensation complaint was filed prior to 6 October 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from 6 October 2008 onwards, the 240-day rule applies.**

In this case, Montierro filed his Complaint on 3 December 2010, which was after the promulgation of *Vergara* on 6 October 2008. Hence, it is the 240-day rule that applies to this case, and not the 120-day rule.

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[26] G.R. No. 200837, 5 June 2013; 679 SCRA 601.
[27] G.R. No. 176884, 19 October 2011; 659 SCRA 642.
[28] *Rollo*, p. 39; CA Decision, p. 4.
[29] G.R. No. 198501, 30 January 2013; 689 SCRA 795.

Montierro cannot rely on the cases that he cited, a survey of which reveals that all of them involved Complaints filed **before** 6 October 2008. *Wallem Maritime Services*[30] involved a Complaint for disability benefits filed on 26 November 1998. In *Maersk Filipinas Crewing,*[31] while the Decision did not mention the date the Complaint was filed, the LA's Decision was rendered on 14 April 2008. Lastly, in *Valenzona*,[32] the Complaint was filed sometime before 31 January 2003. It thus comes as no surprise that the cases Montierro banks on followed the 120-day rule.

Applying the 240-day rule to this case, we arrive at the same conclusion reached by the CA. Montierro's treatment by the company doctor began on 4 June 2010. It ended on 3 January 2011, when the company doctor issued a "Grade 10" final disability assessment. Counting the days from 4 June 2010 to 3 January 2011, the assessment by the company doctor was made on the 213th day, well within the 240-day period. The extension of the period to 240 days is justified by the fact that Dr. Alegre issued an *interim* disability grade of "10" on 3 September 2010, the 91st day of Montierro's treatment, which was within the 120-day period.

Thus, the CA correctly ruled that Montierro's condition cannot be deemed a permanent total disability.

Company doctor vs. personal doctor

Vergara also definitively settled the question how a conflict between two disability assessments — *the assessment of the company-designated physician and that of the seafarer's chosen physician* — should be resolved.[33] In that case, the Court held that there is a procedure to be followed regarding the determination of liability for work-related death, illness or injury in the case of overseas Filipino seafarers. The procedure is spelled out in the 2000 POEA-SEC, the execution of which is a *sine qua non* requirement in deployments for overseas work.[34]

The procedure is as follows: when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them.[35]

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[30] Supra note 27.
[31] Supra note 28.
[32] Supra note 29.
[33] Reiterated in *Philman Marine Agency, Inc. v. Cabanban,* G.R. No. 186509, 29 July 2013, 702 SCRA 467; and *Philippine Hammonia Ship Agency, Inc. v. Dumadag,* G.R. No. 194362, 26 June 2013.
[34] Supra note 21.
[35] Id.

Vergara ruled that the procedure in the 2000 POEA-SEC must be strictly followed; otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.[36]

In this case, Montierro and Rickmers are covered by the provisions of the same 2000 POEA-SEC. It is the law between them. Hence, they are bound by the mechanism for determining liability for a disability benefits claim. Montierro, however, **preempted** the procedure when he filed on 3 December 2010 a Complaint for permanent disability benefits based on his chosen physician's assessment, which was made one month **before** the company-designated doctor issued the final disability grading on 3 January 2011, **the 213th day of Montierro's treatment**.

Hence, for failure of Montierro to observe the procedure provided by the POEA-SEC, the assessment of the company doctor should prevail.

Moreover, Rickmers exerted **real efforts** to provide Montierro with medical assistance. The company-designated physician monitored Montierro's case from beginning to end. Upon the former's recommendation, Montierro even underwent arthroscopic partial medical meniscectomy of his right knee. The company-doctor likewise gave him physical therapy. Lastly, he issued his certification on the basis of the medical records available and the results obtained.

Further, a juxtaposition of the two conflicting assessments reveals that the certification of Montierro's doctor of choice pales in comparison with that of the company-designated physician. Fitting is the following discussion of the CA:

> To contest the company-designated physician's disability assessment of "Grade 10", Montierro relied on the total permanent disability assessment of his physician of choice. In contrast to his physician's assessment **embodied in a one-page medical certificate dated December 3, 2010 which did not even indicate any test or procedure that may have been performed or conducted when he examined and determined Montierro's disability**, however, the company-designated physician's finding is entitled to greater weight and respect because it was arrived at after Montierro was regularly examined in coordination with other doctors, prescribed with medications, and given physical therapy and rehabilitation sessions from June 4, 2010 until January 3, 2011. In the face of these well-defined facts, We find it only reasonable, if not logical, to give credence to the company physician's finding rather than that of Montierro's physician of choice.
>
> Having extensive personal knowledge of the seafarer's actual medical condition, and having closely, meticulously and regularly monitored and treated his injury for an extended period, the company-designated physician is certainly in a better position to give a more accurate evaluation of Montierro's health condition. The disability grading

[36] Id.

> given by him should therefore be given more weight than the assessment of Montierro's physician of choice.[37]

Attorney's fees

On the premise that there was no showing of bad faith on the part of the employer, forcing Montierro to litigate, the CA dropped the award of attorney's fees. We arrive at the same conclusion by using another route.

Indeed, the general rule is that attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of one's cause.[38] The rule, however, takes a turn when it comes to labor cases.

The established rule in labor law is that the withholding of wages need not be coupled with malice or bad faith to warrant the grant of attorney's fees under Article 111 of the Labor Code.[39] All that is required is that lawful wages be not paid without justification, thus compelling the employee to litigate.[40]

The CA thus relied on a wrong consideration in resolving the issue of attorney's fees. Be that as it may, Montierro is not entitled to attorney's fees, even if we apply the correct rule to this case.

Montierro, as earlier mentioned, jumped the gun when he filed his complaint one month **before** the company-designated doctor issued the final disability grading. Hence, there was no unlawful withholding of benefits to speak of. Precisely because Montierro was still under treatment and awaiting the final assessment of the company-designated physician, the former's act was premature.

WHEREFORE, premises considered, the Petition is **DENIED**. The CA Decision dated 8 August 2013 and Resolution dated 6 January 2014 are **AFFIRMED** *in toto*.

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[37] *Rollo*, p. 47; CA Decision, p. 12.

[38] *Car Cool Philippines, Inc. v. Ushio Realty & Development Corp*., 515 Phil. 376 (2006).

[39] Labor Code, Article 111 states:

> Art. 111.*Attorney's fees.* — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
>
> (b)It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[40] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.* G.R. No. 174179, 16 November 2011, 660 SCRA 263, citing *PCL Shipping Phil., Inc. v. NLRC*, 540 Phil. 65. Cited in *Tangga-an v. Philippine Transmarine Carriers, Inc.*, G.R. No. 180636, 13 March 2013, 693 SCRA 340; See also *San Miguel Corporation v. Del Rosario*, 513 Phil. 740 (2005).

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chaiperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

MARIA LOURDES P. A. SERENO
Chief Justice