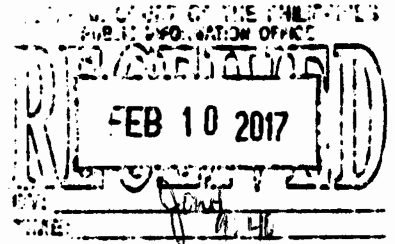

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SCANMAR MARITIME SERVICES, INC., CROWN SHIPMANAGEMENT INC., and VICTORIO Q. ESTA,
Petitioners,

- versus -

WILFREDO T. DE LEON,
Respondent.

G.R. No. 199977

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
JARDELEZA,* and
CAGUIOA, *JJ.*

Promulgated:

JAN 25 2017

x - x

DECISION

SERENO, *CJ*:

We resolve the Petition for Review on Certiorari[1] filed by petitioners Scanmar Maritime Services, Inc., Crown Shipmanagement Inc., and Victorio Q. Esta, assailing the Decision and the Resolution of the Court of Appeals (CA).[2] The CA affirmed the rulings of the National Labor Relations Commission (NLRC)[3] and the Labor Arbiter (LA)[4] finding respondent entitled to disability benefits and attorney's fees.

The antecedent facts are as follows:

Respondent Wilfredo T. de Leon worked for petitioner Scanmar Maritime Services, Inc. (Scanmar) as a seafarer aboard the vessels of its principal, Crown Shipmanagement, Inc. He was repatriated on 13 September 2005 after completing his nine-month Philippine Overseas

* Designated member per raffle dated 16 January 2017_ in lieu of Associate Justice Estela M. Perlas-Bernabe who concurred in the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 112675.
[1] *Rollo*, pp. 29-81; filed on 24 February 2012.
[2] Id. at 83-92, 128-129; the Decision dated 9 August 2011 and Resolution dated 5 January 2012 in CA-G.R. SP No. 112675 were penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Estela M. Perlas-Bernabe (now members of this Court) and Elihu A. Ybañez concurring.
[3] CA *rollo*, pp. 264-274, 311-312; the Decision dated 23 October 2009 and Resolution dated 26 November 2009 in NLRC LAC NO. (OFW-M) 05-000268-09 were penned by Commissioner Nieves E. Vivar-de Castro, with Commissioners Benedicto R. Palacol and Isabel G. Panganiban-Ortiguerra concurring.
[4] Id. at 209-216; the Decision dated 14 April 2009 in NLRC-NCR OFW (M)-01-00597-08 was penned by Labor Arbiter Geobel A. Bartolabac.

Employment Administration-Standard Employment Contract (POEA Contract).[5] For 22 years in the service, there was no account of any ailment he had contracted.

Prior to his next deployment, De Leon reported to Scanmar's office on 17 November 2005 for a pre-employment medical examination. Noticing that respondent dragged his right leg, the company physician referred him to a neurologist for consultation, management, and clearance. In the meantime, the status of respondent in his Medical Examination Certificate[6] was marked "pending."

Thereafter, Scanmar no longer heard from De Leon. Two years later, in December 2007, it received a letter from him asking for disability benefits amounting to USD60,000. It did not reply to the letter, prompting him to file a Complaint with the LA for disability benefits and attorney's fees.

Before the LA, respondent alleged that on his last duty as a Third Mate on board *M/V Thuleland*, he began feeling that something was wrong with his body, and that he experienced lower abdominal pain and saw blood in his stool. He also claimed that after he disembarked in the Philippines on 13 September 2005, he underwent a series of medical check-ups with his private doctors, which revealed that he was suffering from L5-S1 radiculopathy.

As proof of his ailment, respondent submitted before the LA (1) an Electrodiagnostic Laboratory Report dated 5 October 2005 from Dr. Ofelia Reyes stating the impression that there was an electrophysiologic evidence of chronic right L5-S1 radiculopathies in acute exacerbation;[7] (2) a Medical Certification dated 21 November 2005 from Dr. Angel Luna of Seamen's Hospital signifying that respondent was unfit for work, and that the latter's illness was work-related;[8] (3) a Magnetic Resonance Imaging of the Lumbosacral Spine dated 7 December 2005, signed by Dr. Melodia B. Geslani of De Los Santos Medical Center, stating the impression that respondent had a mild central canal stenosis at L5-S1 secondary to a small posterocentral disc protrusion;[9] and (4) a Medical Certification dated 6 October 2006 from Dr. Ricardo Guevara of the Plaridel Country Hospital indicating that respondent was unfit for sea service.[10]

In response, petitioners raised three main contentions. First, they belied the claim of respondent that he experienced an illness aboard *M/V Thuleland,* given the absence of any such entry in the vessel's logbook. Second, petitioners highlighted the fact that when he disembarked, De

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[5] *Rollo*, p. 130.
[6] CA *rollo*, pp. 109-110.
[7] Id. at 52-54.
[8] Id. at 69.
[9] Id. at 56.
[10] Id. at 68.

Leon did not complain of any illness, request medical assistance, or submit himself to a post-employment medical examination within three days from his disembarkation, as required by his POEA Contract. Third, petitioners asserted that he had failed to address his "pending" status and to follow the company physician's advice for him to consult a neurologist.

The LA ruled in favor of De Leon, awarding him USD 60,000 disability benefits and attorney's fees. The former held that, absent any recorded incident after the disembarkation, the causative circumstances leading to the permanent disability of respondent must have transpired during the 22 years of the latter's employment. The LA declared that the three-day post-employment medical examination requirement did not apply, as respondent had not been medically repatriated. The LA also awarded attorney's fees to respondent.

Petitioners appealed to the NLRC, which affirmed the ruling of the LA *in toto.* Thereafter, they lodged an original action for certiorari before the CA, claiming that the NLRC had committed grave abuse of discretion by awarding disability benefits to respondent absent the following: (1) proof that the illness was suffered during the term of his employment; (2) compliance with the three-day post-employment medical examination requirement. Petitioners also questioned the award of attorney's fees.

The CA dismissed the action for certiorari. With respect to the first issue, it echoed the uniform analyses of the LA and the NLRC that the causative circumstances leading to De Leon's permanent disability must have transpired during the 22 years of his employment. The CA declared that seafarers may recover money claims even if their ailment appeared only after their repatriation.

In explaining respondent's injury, the CA referred to *MedicineNet.com* and explained that:[11]

> Medical websites do tend to suggest that the risk factors for the private respondent's illness, radiculopathy, are activities that place an excessive or repetitive load on the spine. Patients involved in heavy labor are more prone to develop radiculopathy than those with a more sedentary lifestyle. This partakes of a nerve irritation caused by damage to the discs between the vertebrae. Damage to the discs occurs because of degeneration ("wear and tear") of the outer ring of the disc, traumatic injury, or both.
>
> It should be noted that the private respondent worked his way from the bottom up, and only acquired Third Mate status in the last five of the twenty two years that he has been working with the company. In any event, it cannot be gainsaid that he was consistently engaged in stressful physical labor all throughout the duration of his employment with petitioner Scanmar.

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[11] *Rollo*, pp. 21-22.

Anent the second issue, the CA agreed with the LA and the NLRC that the three-day post-employment medical examination requirement did not apply to respondent as he had not been medically repatriated. As for the award of attorney's fees, the CA sustained its award in his favor. Petitioners moved for reconsideration, but to no avail.

Before this Court, petitioners contend that the ailment of De Leon was not proven to be a work-related injury contracted at sea. They maintain that, in any case, he is not entitled to permanent and total disability benefits, since he failed to report for a post-medical examination within three days from the time he disembarked, a requirement explicitly stated in the POEA Contract. Petitioners also assail the imposition of attorney's fees, allegedly granted to respondent without basis.

In his Comment,[12] respondent did not explain why he failed to report for post-medical examination within three days from his disembarkation. He nonetheless insists that his various medical certificates prove that his radiculopathy is a work-related injury. Respondent asserts his entitlement to attorney's fees, claiming that petitioners acted in bad faith when they did not immediately treat his injury.

RULING OF THE COURT

To be entitled to disability benefits, this Court refers to the provisions of the POEA Contract, as it sets forth the minimum rights of a seafarer and the concomitant obligations of an employer.[13] Under Section 20 (B) thereof, these are the requirements for compensability: (1) the seafarer must have submitted to a mandatory post-employment medical examination within three working days upon return; (2) the injury must have existed during the term of the seafarer's employment contract; and (3) the injury must be work-related.

De Leon reneged on his obligation to submit to a post-employment medical examination within three days from disembarkation.

It is not disputed that De Leon failed to submit to a post-employment medical examination by a company-designated physician within three working days from disembarkation. The LA, the NLRC, and the CA excused him from complying with this requirement, reasoning that he had not been medically repatriated.

This excuse does not hold water. In the past, we have consistently held that the three-day rule must be observed by all those claiming disability

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[12] Id. at 145-158.

[13] *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010).

benefits, including seafarers who disembarked upon the completion of contract.[14] In *InterOrient Maritime Enterprises, Inc. v. Creer III*[15] the seafarer's repatriation was not due to any medical reasons but because his employment contract had already expired. On that occasion, the Court applied the doctrine in *Wallem Maritime Services, Inc. v. Tanawan,*[16] and held that:

> The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.

Hence, given that respondent had inexplicably breached this requirement, the CA should have barred his claim for disability benefits.

De Leon did not prove that he had suffered his injury during the term of his contract.

In the recital of their rulings, none of the tribunals *a quo* discussed any particular sickness that De Leon suffered while at sea, which was a factual question that should have been for the labor tribunals to resolve.[17] As they have failed to do so, this Court must sift through and reexamine the credibility and probative value of the evidence on record so as to ultimately decide whether or not it would be just to award disability benefits to the seafarer.[18]

Claimants for disability benefits must first discharge the burden of proving, with substantial evidence, that their ailment was acquired during the term of their contract.[19] They must show that they experienced health problems while at sea, the circumstances under which they developed the illness,[20] as well as the symptoms associated with it.[21]

In this case, respondent adduced insufficient proof that he experienced his injury or its symptoms during the term of his contract.

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[14] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, 20 April 2015; *Jebsens Maritime, Inc. v. Undag,* 678 Phil. 938 (2011); *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010).
[15] G.R. No. 181921, 17 September 2014, 735 SCRA 267
[16] G.R. No. 160444, 29 August 2012, 679 SCRA 255, 268-269.
[17] *Andrada v. Agemar Manning Agency, Inc.* 698 Phil. 170 (2012).
[18] Id.
[19] Supra note 15.
[20] *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, G.R. No. 209302, 9 July 2014, 729 SCRA 677.
[21] *Dohle-Philman Manning Agency, Inc. v. Heirs of Gazzingan*, G.R. No. 199568, 17 June 2015.

In his Position Paper before the LA, De Leon allegedly felt something wrong with his body, experienced lower abdominal pain, and saw blood in his stool. To support his claim, he attached several laboratory reports, as well as the medical certifications of Drs. Reyes, Luna, Geslani, and Guevara, indicating that he had been injured and was unfit for sea service.

These pieces of documentary evidence, however, bear dates well past the disembarkation of respondent. Hence, none of the attachments he has adduced prove the symptoms of the radiculopathy he allegedly experienced during the term of his contract.

Furthermore, this Court observes that the narration of De Leon that he felt that something was wrong with his body is too general to be worthy of adjudicative attention. In addition, his claims lack material corroboration.

In contrast, petitioners submitted a Checklist/Interview Sheet for Disembarked Crew[22] indicating that De Leon had no medical check-up in foreign ports; did not report any illness or injury to the master of the vessel or the ship doctor; and did not request a post-medical examination after disembarkation. Also, based on the records, there is no documentation that De Leon had bouts of sickness, injury, or illness associated with radiculopathy in his 22 years at sea. Hence, based on the evidence, it cannot be reasonably concluded that respondent contracted radiculopathy during the term of his contract.

De Leon failed to show that his injury was work-related.

There must be a reasonable causal connection between the ailment of seafarers and the work for which they have been contracted.

The second hurdle for seafarers claiming disability benefits is to prove the positive proposition[23] that there is a reasonable causal connection between their ailment and the work for which they have been contracted.[24] Logically, the labor courts must determine their actual work, the nature of their ailment, and other factors that may lead to the conclusion that they contracted a work-related injury.[25]

To illustrate, in *NYK-Fil Ship Management Inc. v. Talavera,*[26] the labor tribunals first determined the nature of the seafarer's employment based on the established facts of the case:[27]

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[22] CA *rollo*, p. 106.
[23] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, 20 April 2015.
[24] *Repizo v. Senator Crewing (Manila), Inc.*, G.R. No. 214334, 17 November 2014.
[25] *Teekay Shipping Phils., Inc. v. Jarin*, G.R. No. 195598, 25 June 2014, 727 SCRA 242.
[26] 591 Phil. 786 (2008).
[27] Id. at 802.

> Complainant Talavera as Fitter performed repair and maintenance works, like hydraulic line return and other supply lines of the vessel; he did all the welding works and assist[ed] the First and Second Engineer during overhauling works of generators, engines and others [sic] engineering works as directed by lifting, carrying, pushing, pulling and moving heavy equipment and materials and constantly performed overtime works because the ship was old and always repair jobs are almost anywhere inside the vessel. He found himself with very few hours rest period. (Corrections in the original)

Then, the tribunals relied upon the medical certificates on record to characterize the particular radiculopathy of the seafarer: [28]

> Through degeneration, wear and tear or trauma, the annulus fibrosus containing the soft disc material (nucleus pulposus) may tear. This results in protrusion of the disc or even extrusion of disc material into the spinal canal or neural foramen. In addition, the nerve fibers of the affected root are also compressed and this situation leads to radiculopathy in the appropriate muscles. When the nerve roots become compressed, the herniated disc becomes significant. The most common complaint in patients with a herniated disc is that of severe low back pain developing immediately or within a few hours after an injury.

Only after making such assessments did those tribunals find a reasonable connection between the injuries and the seafarer's job. This Court affirmed in that case that repetitive bending and lifting caused the torsional stress on the claimant's back, which led him to develop his L5-S1 radiculopathy.

Applying the same analytical method to the case at bar, this Court observes that all the tribunals below relied on the mere fact of the 22-year employment of De Leon as the causative factor that triggered his radiculopathy. They did not even specify his duties as a seafarer throughout his employment.

At most, respondent merely alleged that in his last stint as a Third Mate, he was a watchstander. His job entailed that he was responsible to the captain for keeping the ship, its crew, and its cargo safe for eight hours a day. Still, he did not particularize the laborious conditions of his work that would cause his injury.

The CA mentioned that De Leon was consistently engaged in stressful physical labor throughout his 22 years of employment. But it did not define these purported stressful physical activities, nor did it point to any piece of evidence detailing his work.

Not only did claimant fail to portray his actual work; he also failed to describe the nature, extent, and treatment of his radiculopathy. Drs. Reyes, Luna, Geslani, and Guevara, who issued medical opinions on his condition, stated that their patient was unfit for sea service without discussing what

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[28] Id. at 797.

caused his injury. Dr. Geslani had an impression that respondent had a mild central canal stenosis, which should have been further explained to depict the gravity and permanence of respondent's injury. Dr. Luna prescribed medicines and physical therapy for two weeks, but no subsequent reports as regards this treatment plan followed her initial certification.

Given the inadequacy of proof pertaining to the radiculopathy of De Leon, the LA and the NLRC provided no discussion on its character. To augment the void, the CA had to refer to a medical website for an explanation. Nonetheless, the records still lack the portrayal of how De Leon contracted the injury, its symptoms, and its aggravating factors. The curability of the injury, in order to determine whether it results in a permanent or temporary disability, was not at all discussed in the proceedings below.

In effect, De Leon failed to show before the labor tribunals his functions as a seafarer, as well as the nature of his ailment. Absent these premises, none of the courts can rightfully deduce any reasonable causal connection between his ailment and the work for which he was contracted.

The proximity of the development of the injury to the time of disembarkation does not automatically prove work causation.

For the LA, the NLRC, and the CA, since there was no reported incident befalling De Leon from the time he disembarked on 13 September 2005 to the time that he underwent medical examination on 21 November 2005, whatever causative circumstances led to his permanent disability must have transpired during his 22 years of employment.

In support of this conclusion, the CA cited *Nisda v. Sea Serve Maritime Agency*[29] and *Seagull Shipmanagement and Transport, Inc. v. NLRC,*[30] in which this Court granted disability benefits to seafarers who developed their ailments within a short period from disembarkation.

In *Nisda*, We found that the seafarer had been hired for 15 years as a Tug Boat Master, who commanded the steering of large vessels into and out of berths during 48-hour work weeks with a maximum of 105 hours of overtime. The records in that case reveal that he had "a medical complaint of pain in his parascapular region of 6 months duration already way unto his consummated employment service of his contract of employment [sic]."[31] This Court concluded that the duties of the seafarer caused his serious cardio-vascular disease, which could not have developed overnight.

[29] *Nisda v. Sea Serve Maritime Agency,* 611 Phil. 291 (2009).
[30] *Seagull Shipmanagement & Transport, Inc. v. National Labor Relations Commission,* 388 Phil. 906 (2000).
[31] Supra note 29, at 314.

In *Seagull Shipmanagement,* the seafarer worked as a radioman. After 10 months of serving his one-year contract, he suffered from bouts of coughing and shortness of breath on board the vessel of his employers. The latter admitted that his work exposed him to different climates and unpredictable weather, which could trigger a heart failure. Based on this admission, and considering the duties of the seafarer, We awarded benefits to his heirs for the payment of his open-heart surgery.

Noticeably, *Nisda* and *Seagull* did not use the proximity of the development of the injury to the time of disembarkation as the basis for compensability. This Court in those cases made an effort to find out the recognized elements in resolving seafarers' claims: the description of the work, the nature of the injury or illness contracted, and the connection between the two.

Here, the courts *a quo* merely speculated that because respondent worked for 22 years, it then follows that his injury was caused by his engagement as a seafarer. This blanket speculation alone will not rise to the level of substantial evidence.[32] Whilst the degree of determining whether the illness is work-related requires only probability,[33] the conclusions of the courts must be still be based on real, and not just apparent, evidence.[34] Especially egregious is the error of the CA when it augmented the speculative conclusions of the LA and the NLRC, by referring to a medical website that has not even been vetted to introduce into the CA Decision a modicum presence of the causality requirement for compensable injuries. The tribunals should have gone beyond their inferences. They should have determined the duties of De Leon as a seafarer and the nature of his injury, so that they could validly draw a conclusion that he labored under conditions that would cause his purported permanent and total disability.

Since De Leon failed to prove all the requirements for compensability, this Court deletes the grant of USD 60,000 for permanent and total disability benefits. The award of attorney's fees is likewise withdrawn, since the circumstances do not show that petitioners acted without justification or with gross and evident bad faith in refusing to satisfy respondent's claim for disability pay.[35]

IN VIEW THEREOF, the Petition for Review filed by petitioners on 24 February 2012 is **GRANTED**. Consequently, the Court of Appeals Decision dated 9 August 2011 and Resolution dated 5 January 2012 in CA-G.R. SP No. 112675 are **REVERSED.**

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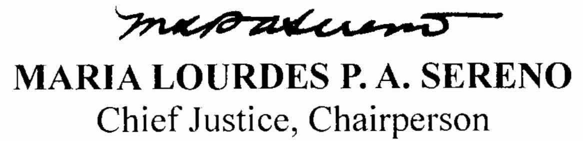
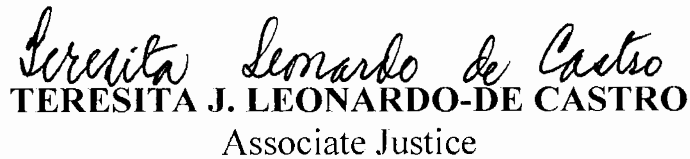
[32] *Lorenzo v. Government Service Insurance System*, 718 Phil. 596 (2013); *Miro v. Vda. de Erederos*, 721 Phil. 772 (2013).
[33] *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, 653 Phil. 457 (2010).
[34] *Masangcay v. Trans-Global Maritime Agency, Inc.*, 590 Phil. 611 (2008).
[35] *Moreno v. San Sebastian College-Recoletos*, 573 Phil. 533 (2008).

SO ORDERED.



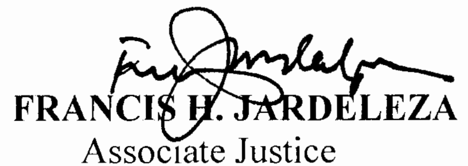
MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

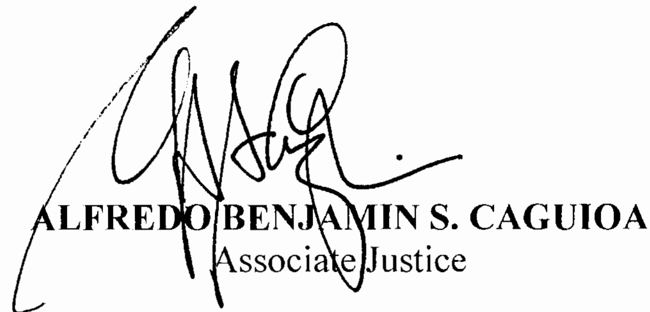


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice



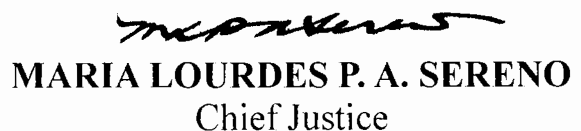
FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
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