Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE HAMMONIA SHIP AGENCY, INC. (now known as BSM CREW SERVICE CENTRE PHILIPPINES, INC.) and DORCHESTER MARINE LTD., Petitioners,	**G.R. No. 194362**
	Present:
- versus -	CARPIO, *J.*, *Chairperson,* BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
EULOGIO V. DUMADAG, Respondent.	Promulgated: JUN 26 2013

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] seeking to nullify the decision[2] dated August 31, 2010 and the resolution[3] dated November 2, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 111582.

The Antecedents

On February 12, 2007, the Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), in behalf of its principal, Dorchester Marine Ltd. (*petitioners*), hired respondent Eulogio V. Dumadag for four months as Able Bodied Seaman for the vessel *Al Hamra*, pursuant to the Philippine Overseas Employment Administration Standard

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1 *Rollo*, pp. 28-67; filed pursuant to Rule 45 of the Rules of Court.

2 Penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino; id. at 13-23.

3 Id. at 25-26.

Employment Contract (*POEA-SEC*). Dumadag was to receive a monthly salary of US$558.00, plus other benefits. Before he boarded the vessel *Al Hamra*, Dumadag underwent a pre-employment medical examination and was declared fit to work.

Sometime in May 2007, while on board the vessel, Dumadag complained of difficulty in sleeping and changes in his body temperature. On May 18, 2007, a physician at the Honmoku Hospital in Yokohama, Japan examined him. He also underwent ultra-sonographic, blood and ECG examinations and was found to be normal and "fit for duty," but was advised to have bed rest for two to three days.[4] Thereafter, Dumadag complained of muscle stiffness in his entire body. On June 20, 2007, he was again subjected to blood tests, urinalysis and uric laboratory procedures in Japan. He was found "fit for light duty for 5-7 days."[5]

On July 19, 2007, his contract completed, Dumadag returned to the Philippines. Allegedly, upon his request, the agency referred him to the company-designated physician, Dr. Wilanie Romero-Dacanay of the Metropolitan Medical Center (*MMC*), for medical examination. At the MMC, Dumadag underwent baseline laboratory tests revealing "normal complete blood count, creatinine, sodium, potassium, calcium and elevated creatinine kinase."[6] He was also subjected to thyroid function tests that likewise showed normal results. Further, he underwent psychological tests and treatment. He was assessed on August 6, 2007 to have "Adjustment Disorder with Mixed Anxiety and Depressed Mood," "Hypercreatinine Phospokinase," and "right Carpal Tunnel Syndrome."[7] He was subsequently declared "fit to resume sea duties as of November 6, 2007" by the company-designated specialist.[8] The petitioners shouldered Dumadag's medical expenses, professional fees and physical therapy sessions with the company-designated physician.

Dumadag was not rehired by the petitioners. He claimed that he applied for employment with other manning agencies, but was unsuccessful.

On December 5, 2007, Dumadag consulted Dr. Frederic F. Diyco, an orthopedic surgeon at the Philippine Orthopedic Center, who certified that he was suffering from Carpal Tunnel Syndrome of the right wrist. Dr. Diyco gave him a temporary partial disability assessment.[9] On January 8, 2008,

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4 Id. at 156.
5 Id. at 157.
6 Id. at 160.
7 Id. at 161.
8 Id. at 166; Dr. Dacanay's report citing the opinion of a neurologist and physiatrist.
9 Id. at 205.

Dumadag saw Dr. Ma. Ciedelle M.N. Paez-Rogacion, specializing in family medicine and psychiatry. Dr. Rogacion evaluated him to be suffering from minor depression.[10]

On March 8, 2008, Dumadag again sought medical advice from Dr. Ariel C. Domingo, a family health and acupuncture physician. Dr. Domingo found him to be still suffering from adjustment disorder, with mixed anxiety and in a depressed mood, hypercreatinine phospokinase and carpal tunnel syndrome. He assessed Dumadag to be "unfit to work."[11] Further, or on April 13, 2008, Dumadag consulted Dr. Nicanor F. Escutin, an orthopedic surgeon, who certified that he had generalized muscular weakness and that "he cannot perform nor function fully all his previous activities."[12] Dr. Escutin declared Dumadag unfit for sea duty in whatever capacity and gave him a permanent total disability assessment.[13]

After his consultations with the four physicians, Dumadag filed a claim for permanent total disability benefits, reimbursement of medical expenses, sickness allowance and attorney's fees against the petitioners.

The Compulsory Arbitration Decisions

In a decision dated February 27, 2009,[14] Labor Arbiter (*LA*) Eduardo J. Carpio found merit in the complaint and ordered the petitioners, jointly and severally, to pay Dumadag US$82,500.00 in permanent total disability benefits, plus 10% attorney's fees. LA Carpio declared:

> The assessment of the company physician is highly doubtful in the face of the continuing inability of complainant to work for more than a year already, coupled with the fact that his own designated physicians have found that complainant was far from being "fit" to return to his work as Able-bodied seaman. Despite the company doctor's claim, complainant was found by his physicians to be still suffering from depression and had muscle damage on his upper and lower extremities, resulting in pain in his right hand and generalized muscle weakness, for which reason he was declared unfit for sea duty. In contrast to the said findings, the company doctor failed to substantiate her conclusion that complainant is "fit to work."[15]

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10 Id. at 206.
11 Id. at 207.
12 Id. at 208.
13 Ibid.
14 Id. at 313-322.
15 Id. at 321.

LA Carpio noted that the petitioners suddenly stopped rehiring Dumadag despite the fact that they had continuously employed him for at least fifteen (15) times for the last 15 years. He viewed this as the most convincing proof that Dumadag's inability to work was due to the illness he contracted in the course of his last employment.

On appeal by the petitioners, the National Labor Relations Commission (*NLRC*), in a resolution dated July 30, 2009, affirmed LA Carpio's decision.[16] On September 28, 2009, it denied the petitioners' motion for reconsideration.[17] The petitioners then elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court, contending that the NLRC gravely abused its discretion in disregarding the "fit-to-work" assessment of the company-designated physician.

The Assailed CA Decision

The CA denied the petition in its decision of August 31, 2010.[18] It upheld the NLRC rulings *in toto*. It **found no grave abuse of discretion** on the part of the NLRC when it sustained LA Carpio's award of permanent total disability benefits to Dumadag on the basis of the findings of the physicians of his choice. Also, as LA Carpio and the NLRC did, it noted that Dumadag was not rehired by the petitioners after he was declared fit to work by the company-designated physician and neither was he able to secure employment through other manning agencies.

The petitioners moved for reconsideration, but the CA denied the motion in its resolution of November 2, 2010.[19] Hence, the petition.

The Petition

The petitioners contend that the CA committed serious errors and grave abuse of discretion in: (1) ruling that Dumadag is entitled to permanent total disability benefits based solely on the findings of his personal physicians; (2) disregarding the procedure in the POEA-SEC in disputing the assessment of the company-designated physician; (3) adopting the NLRC ruling that the non-rehiring of Dumadag is proof that his inability to work was due to the illness he contracted during his last employment; and (4) affirming the award of attorney's fees despite the fact that their denial of his claim was in good faith and based on just and valid grounds.

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16 Id. at 129-134.
17 Id. at 136-137.
18 *Supra* note 2.
19 *Supra* note 3.

The petitioners stress, with respect to the first assignment of error, that under Section 20(B)(2) of the POEA-SEC and under the parties' Collective Bargaining Agreement (*CBA*), it is the company-designated physician who determines the seafarer's degree of disability or his fitness to work. They point out in this respect that not only is the company-designated physician entrusted with the task of assessing the seafarer's fitness to work or the degree of his disability, but more importantly, he or she is the one who examines and treats the seafarer, thus lending accuracy to his or her evaluation.

The petitioners question the CA's reliance on *HFS Philippines, Inc. v. Pilar*[20] in affirming Dumadag's award based solely on the findings of his physicians. They maintain that although the Court's ruling in *HFS Philippines* recognized the prerogative of the seafarer to dispute the company-designated physician's report by seasonably consulting another doctor, the contrary medical report shall be evaluated first by the labor tribunal and the court based on its inherent merit. The CA, the petitioners point out, failed to evaluate the merit of the reports of Dumadag's physicians.

The petitioners argue that a careful analysis of the reports presented by both parties would readily show that the company-designated physician's report deserves more credence as these physicians arrived at their results after extensive examination and treatment of Dumadag. On the other hand, an evaluation of the reports of Dumadag's doctors reveals that they were inaccurate and unreliable as they were mere reiterations of the company-designated doctor's diagnoses.

On a related matter, the petitioners fault the CA in disregarding the procedure in the POEA-SEC in the resolution of disability claims *vis-a-vis* the seafarer's disability rating or fitness to work. Citing *Vergara v. Hammonia Maritime Services, Inc.*,[21] they posit that although Dumadag has the right to contest the assessment of the company-designated physician, the findings of his doctors are not binding as the POEA-SEC and even the parties' CBA expressly provide that the parties may agree to consult a third doctor whose opinion shall be binding on them. They submit that since Dumadag failed to observe the procedure, the finding of the company specialist that he is fit to work should be upheld.

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[20] G.R. No. 168716, April 16, 2009, 585 SCRA 315.

[21] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

With respect to Dumadag's non-hiring, the petitioners submit that the CA gravely abused its discretion when it held that the fact that they did not rehire him is the most convincing proof that his inability to work was due to his illness. They contend that being a seafarer, Dumadag is a contractual employee whose employment is terminated upon the contract's expiration; his non-rehiring should not be taken against them as it is their prerogative to hire or not to hire him. Moreover, Dumadag did not present any evidence to establish his allegation that he was not rehired because of his illness; neither was there a showing that he was deprived of the opportunity to work.

Finally, the petitioners lament the CA's award of attorney's fees to Dumadag, arguing that the denial of his claim was in good faith and based on valid grounds.

The Case for Dumadag

As required by the Court,[22] Dumadag filed his Comment on the petition on April 25, 2011,[23] praying that the petition be dismissed on the following grounds: (1) it raises only questions of fact, in violation of Rule 45 of the Rules of Court; and (2) the CA's award of disability benefits to him is in accord with the evidence.

Dumadag submits that inasmuch as the petition involves an inquiry into the findings of four independent physicians which formed the basis of the rulings of the LA, the NLRC and the CA, it is clear that the petitioners are raising solely factual issues which is not allowed in an appeal by *certiorari*. He avers that should the Court review the facts of the case nonetheless, the petition must fail for lack of merit. He argues that the CA committed no error in upholding the medical opinions of his chosen physicians over the biased and erroneous certification of the company-designated physician.

He bewails the petitioners' attempt to discredit the medical certificates issued by the physicians he consulted. He stresses that the real test that should be applied in his case is whether he had lost his earning capacity due to his injury while employed with the petitioners. He laments that while the company doctor peremptorily declared that he was fit to resume sea duties as of November 6, 2007, he was never again able to have himself employed as a seaman in any capacity.

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22 *Rollo*, p. 621; Resolution dated January 26, 2011.

23 Id. at 625-677.

Dumadag argues that the opinion of the company doctor is not binding and cannot be the sole basis of whether he is entitled to disability benefits or not, especially considering that the opinions of company physicians are generally self-serving and biased in favor of the company. Further, he maintains that the mere fact that there is no "third opinion" from a doctor appointed by the parties does not automatically mean that the opinion of the company doctor will prevail over that of his chosen physicians. He insists that in case of discrepancy between the certification of the company-designated physician and that of the seaman's doctor, the finding favorable to the seaman should be followed as the Court emphasized in *HFS Philippines, Inc. v. Pilar.*[24] He adds that as a result of his injury, he has become disabled, such that he could not find gainful employment almost four years after his last disembarkation.

Lastly, Dumadag argues that he is entitled to attorney's fees as he was compelled to litigate because of the petitioners' refusal to heed his demand for disability benefits.

Our Ruling

The procedural issue

Dumadag asks that the petition be dismissed outright for raising only questions of fact and not of law, in violation of the rules.[25]

We find Dumadag's position untenable. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the parties or any of them. Otherwise stated, there is a question of law when the issue arises as to what the law is on a certain state of facts; there is a question of fact when the issue involves the truth or falsehood of alleged facts.[26] In the present case, the controversy arises not from the findings made by Dumadag's physicians which contradict the fit-to-work certification of the company-designated physician; it arises from the application of the law and jurisprudence on the conflicting assessments of the two sets of physicians. We thus find no procedural obstacle in our review of the case.

The merits of the case

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24 *Supra* note 20.

25 RULES OF COURT, Rule 45, Section 1.

26 *Tamondong v. Court of Appeals*, 486 Phil. 729, 739 (2004).

Fit-to-work assessment of the company-designated physician versus unfit-to-work certification of the seafarer's chosen physicians

We are confronted, once again, with the question of whose disability assessment should prevail in a maritime disability claim – the fit-to-work assessment of the company-designated physician or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work. A related question immediately follows – how are the conflicting assessments to be resolved?

In Vergara *v. Hammonia Maritime Services, Inc.*,[27] the Court said: "the Department of Labor and Employment (DOLE), through the POEA, has simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working on foreign ocean-going vessels. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the POEA Standard Employment Contract as a condition *sine qua non* prior to the deployment for overseas work. The POEA Standard Employment Contract is supplemented by the CBA between the owner of the vessel and the covered seaman."[28]

In this case, Dumadag and the petitioners entered into a contract in accordance with the POEA-SEC. They also had a CBA. Dumadag's claim for disability compensation could have been resolved bilaterally had the parties observed the procedure laid down in the POEA-SEC and in their CBA.

Section 20(B)(3) of the POEA-SEC provides:

> 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.
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> x x x x
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> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the**

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27 *Supra* note 21.

28 Id. at 623-625.

> **Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** [emphasis ours]

On the other hand, the CBA between the Associated Marine Officers' and Seamen's Union of the Philippines and Dumadag's employer, the Dorchester Marine Ltd.,[29] states:

> The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. **If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties.**[30] (emphasis ours)

The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In *Magsaysay Maritime Corp. v. Velasquez,*[31] the Court said: "The POEA Contract, of which the parties are both signatories, **is the law between them and as such, its provisions bind both of them**." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued her fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination.

Dumadag's non-compliance with the mandated procedure under the POEA-SEC and the CBA militates against his claim

The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his

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29 *Rollo*, pp. 191-196.
30 Id. at 193.
31 G.R. No. 179802, November 14, 2008, 571 SCRA 239, 248; emphasis ours.

disability. Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands, pursuant to the POEA-SEC and the CBA. As it turned out, however, the LA and the NLRC relied on the assessments of Dumadag's physicians that he was unfit for sea duty, and awarded him permanent total disability benefits.

We find the rulings of the labor authorities seriously flawed as they were rendered **in total disregard of the law between the parties** – the POEA-SEC and the CBA – on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.**

As we earlier stressed, Dumadag failed to comply with the requirement under the POEA-SEC and the CBA to have the conflicting assessments of his disability determined by a third doctor **as was his duty**.[32] He offered no reason that could have prevented him from following the procedure. Before he filed his complaint, or between July 19, 2007, when he came home *upon completion of his contract*, and November 6, 2007, when Dr. Dacanay declared him fit to work, he had been under examination and treatment (with the necessary medical procedures) by the company specialists. All the while, the petitioners shouldered his medical expenses, professional fees and costs of his therapy sessions. In short, the petitioners attended to his health condition despite the expiration of his contract. We, therefore, find it puzzling why Dumadag did not bring to the petitioners' attention the contrary opinions of his doctors and suggest that they seek a third opinion.

Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. We stress in this respect that we have yet to come across a case where the parties referred conflicting assessments of a seafarer's disability to a third doctor since the procedure was introduced by the POEA-SEC in 2000 – whether the Court's ruling in a particular case upheld the assessment of the company-designated physician, as in *Magsaysay Maritime Corporation v.*

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[32] POEA-SEC, Section 1(B.1).

National Labor Relations Commission (Second Division)[33] and similar other cases, or sustained the opinion of the seafarer's chosen physician as in *HFS Philippines, Inc. v. Pilar*,[34] cited by the CA, and other cases similarly resolved. The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld. In *Santiago v. Pacbasin Ship Management, Inc.*,[35] the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x [T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability."

On a different plane, Dumadag cannot insist that the "favorable" reports of his physicians be chosen over the certification of the company-designated physician, especially if we were to consider that the physicians he consulted examined him for only a day (or shorter) on four different dates between December 5, 2007 and April 13, 2008. Moreover, we point out that they merely relied on the same medical history, diagnoses and analyses provided by the company-designated specialists. Under the circumstances, we cannot simply say that their findings are more reliable than the conclusions of the company-designated physicians.

Finally, we find the pronouncement that Dumadag's non-hiring by the petitioners as the most convincing proof of his illness or disability without basis. There is no evidence on record showing that he sought re-employment with the petitioners or that it was a matter of course for the petitioners to re-hire him after the expiration of his contract. Neither is there evidence on Dumadag's claim that he applied with other manning agencies, but was turned down due to his illness.

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33 G.R. No. 186180, March 22, 2010, 616 SCRA 362.

34 *Supra* note 20.

35 G.R. No. 194677, April 18, 2012, 670 SCRA 271, 284.

All told, we find the petition meritorious.

WHEREFORE, premises considered, we hereby **GRANT** the petition and **SET ASIDE** the assailed decision and resolution of the Court of Appeals. The complaint is hereby **DISMISSED**. Costs against respondent Eulogio V. Dumadag.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice