Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RICARDO A. DALUSONG,
Petitioner,

- versus -

EAGLE CLARC SHIPPING PHILIPPINES, INC., NORFIELD OFFSHORE AS, and/or CAPT. LEOPOLDO T. ARCILLAR, and COURT OF APPEALS,
Respondents.

G.R. No. 204233

Present:

CARPIO, *Acting, C.J.*,
Chairperson,
DEL CASTILLO,
VILLARAMA, JR.,*
REYES,** and
LEONEN, *JJ.*

Promulgated:
SEP 03 2014

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D E C I S I O N

CARPIO, ***Acting C.J.*:**

The Case

This petition for review[1] assails the 29 June 2012 Decision[2] and the 26 September 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 123767. The Court of Appeals nullified the Decision[4] dated 12 August 2011 and the Resolution (sic) dated 25 October 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-000397-11, and reinstated the Labor Arbiter's assignment of grade 11 disability to petitioner.

The Facts

Private respondents hired petitioner as Able Seaman on board their vessel *MV Malene Ostervold* with a basic salary of US$800 per month. The

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* Designated Acting Member per Special Order No. 1767 dated 27 August 2014.

** Designated Acting Member per Special Order No. 1763 dated 26 August 2014 in relation to Special Order No. 1776 dated 28 August 2014.

1 Under Rule 45 of the 1997 Rules of Civil Procedure.

2 *Rollo*, pp. 102-115. Penned by Associate Justice Amy C. Lazaro-Javier, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Sesinando E. Villon, concurring.

3 Id. at 36.

4 Id. at 223-231.

duration of the contract of employment was for 2½ months.[5] Petitioner boarded the vessel on 18 November 2009. On 13 December 2009, while petitioner was drilling to attach an overboard safety equipment on the vessel, a sudden swell caused some movement of the vessel. As a result, one of the crew fell directly on petitioner, inflicting injury on petitioner's right foot. Petitioner was brought to the St. Joseph Medical Center in Houston, Texas, where he was diagnosed with fractured ankle and his foot was placed in cast. On 23 December 2009, petitioner was repatriated to the Philippines for further examination and medical treatment.

Upon arrival in Manila, petitioner was referred by private respondents to the NGC Medical Specialist Clinic, Inc. where his cast was removed after a month. Petitioner then underwent physical therapy until April 2010. On 14 May 2010, Dr. Nicomedes Cruz, the company-designated doctor, gave petitioner an interim disability grading based on the Philippine Overseas Employment Administration (POEA) schedule of disability of "grade 8 that is moderate rigidity or one third loss of motion or lifting power of the trunk."[6] Upon further rehabilitation, petitioner's condition improved. On 27 July 2010, the company-designated doctor issued a final disability grading under the POEA schedule of disability of "grade 11 - complete immobility of an ankle joint in normal position."[7] Petitioner disagreed with the disability assessment and consulted Dr. Nicanor Escutin, a physician of his own choice. In his Disability Report[8] dated 2 October 2010, Dr. Escutin found petitioner to be suffering from "PARTIAL PERMANENT DISABILITY." Dr. Escutin concluded that petitioner is "unfit for seaduty in whatever capacity as seaman."

Petitioner filed with the NLRC a complaint against private respondents, claiming disability benefits, sick wages, damages, and attorney's fees. Petitioner maintained that he is entitled to full disability benefits of US$80,000, while private respondents insisted that petitioner is only entitled to US$12,551 based on the disability assessment of the company-designated doctor.

The Labor Arbiter's Ruling

The Labor Arbiter ruled in favor of private respondents. Citing Section 20 B (2) and (6) of the 2000 POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels (also called the "POEA Standard Employment Contract" or "POEA-SEC"), the Labor Arbiter ruled that "the determination of the proper

5 Id. at 273.
6 Id. at 280.
7 Id. at 289.
8 Id. at 131-132.

payment of disability benefits requires two factors: (1) that the assessment is issued by the company-designated physician, and (2) the corresponding equivalent of the assessment as issued by the company-designated physician under the Schedule of Disability Allowances found in the POEA Contract."[9] The Labor Arbiter did not give probative value to the medical report presented by petitioner for the following reasons: (1) the doctor who issued the report is not the company-designated doctor mandated under the POEA-SEC; (2) the medical report does not show the manner by which the examination was conducted; and (3) the medical report dated 2 October 2010 was made almost four months after petitioner had stopped his medical consultations with the company-designated doctor, during which period petitioner could have committed acts which might have aggravated his condition. Besides, the Labor Arbiter stated that both the company-designated doctor and petitioner's doctor found petitioner to be suffering from partial permanent disability.

Furthermore, the Labor Arbiter found no basis for the US$80,000 disability benefits claimed by petitioner under an alleged Collective Bargaining Agreement (CBA), which petitioner failed to present to prove its provisions, especially the amount that he claimed to be entitled to. Under the POEA-SEC, even a grade 1 disability assessment is only entitled to US$60,000 disability benefits, to which petitioner is not entitled for lack of factual and medical basis. Neither the company-designated doctor nor petitioner's doctor has declared petitioner to have grade 1 disability. Both the company-designated doctor and petitioner's doctor found petitioner as suffering from a "partial permanent disability."

Thus, the Labor Arbiter dismissed petitioner's complaint for lack of merit. However, the Labor Arbiter found private respondents jointly and severally liable to petitioner in the amount of US$12,551[10] or its peso equivalent at the time of payment representing disability benefits plus attorney's fees equivalent to 10% of the total award.[11]

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9 Id. at 354.

10 Under the schedule of disability allowances in Section 32 of the POEA-SEC, a grade 11 disability is entitled to US$7,465 (US$50,000 x 14.93%). However, the Labor Arbiter ruled that since private respondents have admitted in their pleadings that under the CBA, petitioner is entitled to US$12,551 for his grade 11 disability, then this is tantamount to an admission against interest. Thus, the Labor Arbiter held that petitioner is entitled to US$12,551 disability benefits plus attorney's fees. In their position paper to the NLRC, respondents stated that since petitioner has disability grade 11, then he is entitled to US$12,551 (i.e. 14.93% multiplied to the maximum allowable benefit of US$70,000 as provided in the CBA). Id. at 263.

11 Id. at 354.

The Ruling of the NLRC

On appeal, the NLRC, in its Decision dated 12 August 2011, modified the Labor Arbiter's decision. The NLRC held that under the POEA-SEC, petitioner is entitled to US$60,000 as permanent and total disability compensation, plus 10% of the judgment award as attorney's fees.

Based on the findings of petitioner's doctor, the NLRC ruled that a grade 1 disability rating is more appropriate considering the injury suffered by petitioner. Permanent disability means the inability of a worker to perform his job for more than 120 days. The NLRC noted that even after the lapse of seven months from the time petitioner was repatriated for injuries sustained, petitioner was still unable to resume his usual duties and responsibilities. Thus, petitioner is considered to be totally and permanently unfit to perform his usual duties and responsibilities. However, the NLRC did not sustain the US$80,000 disability benefits claimed by petitioner in the absence of a CBA supporting such claim. Instead, the NLRC ruled that petitioner is only entitled to the US$60,000 disability benefits provided under the POEA-SEC.

Petitioner filed a Motion for Summary Correction of the NLRC Decision dated 12 August 2011, alleging that he is entitled to US$80,000 disability benefits pursuant to the Norwegian ASO-AMOSUP CBA. The NLRC noted that there is no evidence from the records that petitioner is entitled to US$80,000 disability benefits based on the alleged ASO-AMOSUP CBA. However, the NLRC noted that in their Rejoinder, private respondents admitted that under the applicable CBA, the maximum amount of disability benefits to a seafarer is US$70,000 and not US$80,000. With this admission, the NLRC concluded that petitioner is entitled to an award of permanent disability benefits in the amount of US$70,000 under the provision of the ASO-AMOSUP CBA. Thus, in its 25 October 2011 Decision, NLRC modified its previous decision and directed private respondents to pay petitioner the amount of US$70,000 as disability benefits plus 10% attorney's fees. Petitioner appealed to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals ruled that it is the company-designated doctor who initially determines the degree of disability of petitioner. However, if petitioner disagrees with the company doctor's disability rating, petitioner may consult a doctor of his own choice. The Court of Appeals agreed with the Labor Arbiter's observation that both the company doctor and petitioner's doctor found petitioner to be suffering from partial permanent

disability. However, the Court of Appeals also noted that petitioner's doctor added in his report that petitioner is "unfit for seaduty in whatever capacity as seaman," which in effect diagnosed petitioner with total permanent disability. The Court of Appeals further noted that petitioner's doctor failed to indicate in his report the procedures or tests conducted to properly diagnose petitioner's condition. In contrast, the company-designated doctor conducted several medical tests and examinations in a span of six months, which included: ambulation and squatting test, squatting and ascending stairs test, left ankle flexing test, and weight bearing test. Only after all the tests were conducted did the company-designated doctor finally issue a Medical Certificate giving petitioner a final disability rating of grade 11. Thus, the Court of Appeals ruled that in the absence of adequate tests and examinations to support his medical report, the findings of petitioner's doctor cannot prevail over that of the company-designated doctor, whose thorough findings were supported by multiple tests and examinations on petitioner.

The Court of Appeals cited *Magsaysay Maritime Corporation v. Lobusta*,[12] which held that if the medical treatment lasted more than 120 days with no declaration of the seafarer's permanent disability by the company-designated doctor because further medical attention is still required, 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. In this case, the Court of Appeals observed that petitioner's medical examination and treatment lasted for 180 days, after which the company-designated doctor found petitioner to be suffering from total partial disability with a final disability rating of grade 11. Thus, the Court of Appeals nullified the NLRC Decisions dated 12 August 2011 and 25 October 2011, and reinstated the Labor Arbiter's assignment of grade 11 disability to petitioner. However, the Court of Appeals ruled that the award of attorney's fees is unwarranted since there was no showing that private respondents acted in bad faith.

The Issues

Petitioner maintains that the Court of Appeals erred in ruling that:

1. The degree of petitioner's disability has been established by the company-designated physician;

2. The company-designated doctor and petitioner's doctor came out with the same conclusion that petitioner was suffering from partial permanent disability;

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[12] G.R. No. 177578, 25 January 2012, 664 SCRA 134.

3. Petitioner's medical treatment and examinations, which went beyond 120 days but within the 240-day limit, justified the the partial disability assessment; and

4. Respondents had not acted in bad faith as to warrant the award of attorney's fees.

The Ruling of the Court

We find the petition without merit.

In this case, the company-designated doctor gave petitioner a final disability grading under the POEA schedule of disabilities of "Grade 11-complete immobility of an ankle joint in normal position."[13] Petitioner disagreed with this assessment and consulted a physician of his own choice, Dr. Nicanor Escutin, who found petitioner to be suffering from "PARTIAL PERMANENT DISABILITY," and "is UNFIT FOR SEADUTY in whatever capacity as seaman."[14] Based on Dr. Escutin's assessment, petitioner then claimed that he is entitled to full disability benefits of US$80,000, while private respondents insisted that petitioner is only entitled to US$12,551 based on the disability assessment of the company-designated doctor.

Section 20(B)(3)[15] of the POEA-SEC provides that "[i]f a doctor appointed by the seafarer disagrees with the assessment [of the company-designated doctor], a third doctor may be agreed jointly between the Employer and the seafarer," and "[t]he third doctor's decision shall be final and binding on both parties." In this case, there was no third doctor appointed by both parties whose decision would be binding on the parties. Hence, it is up to the labor tribunal and the courts to evaluate and weigh the merits of the medical reports of the company-designated doctor and the

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13 *Rollo*, p. 289.

14 Id. at 132.

15 Section 20(B)(3) of the 2000 POEA-SEC reads:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
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> For this purpose, the seafarer shall submit himself to a port-employment medical examination by a company designated physician within three working days upon his return except when he is physically incapacitated to do so. In which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

seafarer's doctor.[16] The Labor Arbiter did not give probative value to the medical report issued by petitioner's doctor primarily because there was no evidence of tests and examinations conducted to support his medical report. On the other hand, the NLRC ruled that "[t]he findings of [petitioner's] doctor, who gave him Grade 1 Disability rating is more appropriate and applicable to the injury suffered by [petitioner]."[17] The Court of Appeals gave more credence to the findings of the company-designated doctor, which were supported by multiple tests and examinations on petitioner, compared to the medical report of petitioner's doctor which was not supported by adequate tests and examinations.

We agree with the Court of Appeals' ruling, giving more credence to the medical findings of the company-designated doctor. Contrary to the ruling of the NLRC, petitioner's doctor did not categorically give petitioner a grade 1 disability rating which is equivalent to total and permanent disability.[18] Petitioner's physician found petitioner to be suffering from

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16 *Ison v. Crewserve, Inc.*, G.R. No. 173951, 16 April 2012, 669 SCRA 481; *Maunlad Transport, Inc. and/or Nippon Merchant Marine Company, Ltd., Inc. v. Manigo, Jr.*, 577 Phil. 319 (2008).

17 *Rollo*, pp. 228-229.

18 Section 32 of the POEA-SEC states that any item classified in the Schedule of Disability under Grade 1 is considered total and permanent disability. For injuries affecting the lower extremities, the pertinent provisions under Section 32 read:

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x

LOWER EXTREMITIES

1. Loss of a big toe ----------	Gr. 12
2. Loss of a toe other than the big one ----------	Gr. 14
3. Loss of ten (10) digits of both feet ----------	Gr. 5
4. Loss of a great toe of one foot + one toe ----------	Gr. 10
5. Loss of two toes not including great toe or next to it --------	Gr. 12
6. Loss of three (3) toes excluding great toe of a foot ----------	Gr. 10
7. Loss of four (4) excluding great toe of a foot ----------	Gr. 9
8. Loss of great toe and two (2) other toes of the same foot ---	Gr. 9
9. Loss of five digits of a foot ----------	Gr. 8
10. Loss of both feet at ankle joint or above ----------	**Gr. 1**
11. Loss of one foot at ankle joint or above ----------	Gr. 6
12. Depression of the arch of a foot resulting in weak foot ------	Gr. 12
13. Loss of one half (½) metatarsus of one (1) foot ----------	Gr. 8
14. Loss of whole metatarsus or forepart of foot ----------	Gr. 7
15. Tearing of the achilles tendon resulting in the impairment of active flexion and extension of a foot ----------	Gr. 12
16. Malleolar fracture with displacement of the foot inward or outward ----------	Gr. 10
17. Complete immobility of an ankle joint in abnormal position -	Gr. 10
18. Complete immobility of an ankle joint in normal position - -	*Gr. 11*
19. Total loss of a leg or amputation at or above the knee -------	Gr. 3
20. Stretching leg of the ligaments of a knee resulting in instability of the joint ----------	Gr. 10
21. Ankylosis of a knee in genuvalgum of varum ----------	Gr. 10
22. Pseudoarthrosis of a knee cap ----------	Gr. 10

"PARTIAL PERMANENT DISABILITY," and "is UNFIT FOR SEADUTY in whatever capacity as seaman." Aside from this seemingly inconsistent assessment by petitioner's doctor, there was no evidence submitted of medical procedures, examinations or tests which would support his conclusion that petitioner is unfit for sea duty in whatever capacity as a seaman. In contrast, the company-designated doctor gave petitioner a final disability grading under the POEA schedule of disabilities of "grade 11-complete immobility of an ankle joint in normal position," only after petitioner had undergone a series of medical tests and examinations, and physical therapy over a period of six months, during which the company-designated doctor issued periodic medical reports.[19] As the Court aptly stated in *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*,[20] "the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability."[21] Based on the Disability Report[22] of

23. Complete immobility of a knee joint in full extension -------	Gr. 10
24. Complete immobility of a knee joint in strong flexion ------	Gr. 7
25. Complete immobility of a hip joint in flexion of the thigh ---	Gr. 5
26. Complete immobility of a hip joint in full extension of the thigh --	Gr. 9
27. Slight atrophy of calf of leg muscles without apparent shortening or joint lesion or disturbance of weight-bearing line ---------	Gr.13
28. Shortening of a lower extremity from one to three centimeters with either joint lesion or disturbance of weight-bearing joint -	Gr. 13
29. Shortening of 3 to 6 cm with slight atrophy of calf or thigh muscles ----------	Gr. 12
30. Shortening of 3 to 6 cm with either joint lesion or disturbance of weight-bearing joint ----------	Gr. 11
31. Irregular union of fracture with joint stiffness and with shortening of 6 to 9 cms producing permanent lameness --------	Gr. 9
32. Irregular union of fracture in a thigh or leg with shortening of 6 to 9 cms ----------	Gr. 10
33. Failure of fracture of both hips to unite ----------	**Gr. 1**
34. Failure of fracture of a hip to unite ----------	Gr. 3
35. Paralysis of both lower extremities ----------	**Gr. 1**
36. Paralysis of one lower extremity ----------	Gr. 3
37. Scar the size of a palm or larger left on an extremity ----------	Gr. 14

NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability. (Emphasis supplied)

[19] *Rollo*, pp. 276-296.

[20] G.R. No. 186509, 29 July 2013, 702 SCRA 467.

[21] Id. at 487.

[22] *Rollo*, pp. 318-319. The Disability Report states:

PERTINENT PHYSICAL EXAMINATION
GENERAL SURVEY: Conscious, coherent, ambulatory

RIGHT ANKLE & FOOT EXAMINATIONS:
>Tenderness on the lateral malleolous
>Pain on flexion/extension
>Pain on inversion/eversion
>Cannot tiptoe on his right foot
>Instability on prolong [sic] walking

petitioner's doctor, it appears that he only conducted a physical examination on petitioner before issuing his final diagnosis and disability rating on petitioner's condition. Clearly, the findings of the company-designated doctor, who, with his team of specialists which included an orthopedic surgeon and a physical therapist, periodically treated petitioner for months and monitored his condition, deserve greater evidentiary weight than the single medical report of petitioner's doctor, who appeared to have examined petitioner only once.[23]

Petitioner argues that since his treatment lasted for more than 120 days, then his disability is deemed total and permanent. Petitioner's contention is not entirely correct. Although Article 192(c)(1), Chapter VI, Title II, Book IV of the Labor Code, as amended, states that a disability which lasts continuously for more than 120 days is deemed total and permanent, the law makes a qualification, thus:

> ART. 192. Permanent and total disability.
> x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided for in the Rules**[.] (Emphasis supplied)

FINAL DIAGNOSIS
>FRACTURE, LATERAL MALLEOLOUS, RIGHT FOOT
>STATUS POST CLOSED REDUCTION WITH CASTING
>TRAUMATIC ARTHRITIS, RIGHT ANKLE

DISABILITY RATING:

Based on the physical examination and supported by laboratory examinations, he sustained injury while working. A fellow seaman fell on him while he was drilling some attachment for MOB. He broke his right ankle as a result of the incident. In Houston, Texas, USA, he had x-ray which showed he sustained a broken lateral malleolous, right [foot] which was reduced and fix[ed] with a cast. He was repatriated to Manila for further recuperation. He was in cast for almost 3 months and had therapy for the following months of sick leave. He sustained a broken bone on the ankle which is important in walking and standing. The ankle joint is form[ed] by three bones which has (sic) to be in good alignment to have a good ambulation. In his case, one bone the lateral side of the ankle was broken which was not align[ed] to its former anatomical location. This will result in instability on walking and standing. It will also cause early arthritic changes to the joint that will be manifested by on and off ankle pain. The patient will not be able to sustain prolong standing and carrying heavy weight without feeling of pain on his right ankle. He is not anymore physically fit to do strenuous job of a seaman.

He is given a PARTIAL PERMANENT DISABILITY. He is UNFIT FOR SEADUTY in whatever capacity as a SEAMAN.

[23] See *Magsaysay Maritime Corp. and/or Dela Cruz v. Velasquez* (591 Phil. 839 [2008]), where the Court held that the findings of the company-designated physician, who regularly monitored and treated the seafarer, and outlined his progress over a period of several months in several reports, deserve more credence than the single medical report of the seafarer's doctor, who treated or examined the seafarer only once.

Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, reads:

> SECTION 2. Disability. x x x
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, **except as otherwise provided for in Rule X of these Rules.** (Emphasis supplied)

The provision adverted to is Section 2, Rule X of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, which states:

> SECTION 2. Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. **If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.** (Emphasis supplied)

The Court, in *Vergara v. Hammonia Maritime Services, Inc.*,[24] stated that these provisions should be read in conjunction with Section 20(B)(3) of the POEA-SEC, which reads in part:

> 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.

Interpreting these provisions, the Court held in *Vergara*:

> 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 Standard Employment Contract and by applicable Philippine laws. **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**

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[24] 588 Phil. 895 (2006).

> **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.** The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[25] (Emphasis supplied)

Just because the seafarer is unable to perform his job and is undergoing medical treatment for more than 120 days does not automatically entitle the seafarer to total and permanent disability compensation.[26] In this case, petitioner's medical treatment lasted more than 120 days but less than 240 days, after which the company-designated doctor gave petitioner a final disability grading under the POEA schedule of disabilities of "grade 11 - complete immobility of an ankle joint in normal position." Thus, before the maximum 240-day medical treatment period expired, petitioner was issued a final disability grade 11 which is merely equivalent to a permanent partial disability, since under Section 32 of the POEA-SEC, only those classified under grade 1 are considered total and permanent disability. Clearly, petitioner is only entitled to permanent partial disability compensation, since his condition cannot be considered as permanent total disability.

We likewise agree with the Court of Appeals in deleting the award of attorney's fees. Private respondents were justified in insisting that petitioner is only entitled to US$12,551 compensation for his grade 11 disability. There was no bad faith on the part of private respondents which would warrant the award of attorney's fees.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 29 June 2012 Decision and the 26 September 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 123767.

SO ORDERED.

ANTONIO T. CARPIO
Acting Chief Justice

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25 Id. at 912.

26 *Magsaysay Maritime Corporation v. National Labor Relations Commission*, G.R. No. 191903, 19 June 2013, 699 SCRA 197; *Santiago v. Pacbasin ShipManagement, Inc.*, G.R. No. 194677, 18 April 2012, 670 SCRA 271.

WE CONCUR:

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice