Republic of the Philippines
Supreme Court
Bacolod City

FIRST DIVISION

CAREER PHILIPPINES SHIPMANAGEMENT INC., COLUMBIA SHIPMANAGEMENT AND/OR VERLOU R. CARMELINO,
Petitioners,

- *versus* -

ARDEL S. GARCIA,
Respondent.

G.R. No. 230352

Present:

GESMUNDO, *C.J.*,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ,* *JJ.*

Promulgated:

NOV 29 2022

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to set aside the June 17, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 136369 which affirmed the April 16, 2014 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC-LAC Case No. 02-000148-14 (M); NLRC NCR Case No. OFW (M)-06-08883-13, and awarded respondent Ardel S. Garcia (Garcia) total permanent disability benefits and attorney's fees.

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* On official business.

[1] *Rollo*, pp. 39-60.

[2] Id. at 14-28. Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios.

[3] CA *rollo*, pp. 31-44. Penned by Commissioner Numeriano D. Villena and concurred in by Commissioner Angelo Ang Palañana and Presiding Commissioner Herminio V. Suelo.

The factual antecedents are well-synthesized in the CA Decision, *viz.*:

On June 19, 2013, Garcia filed a complaint for the payment of total and permanent disability benefits as well as damages. The complaint was docketed as NLRC NCR Case No. OFW (M)-06-08883-13.

In his Position Paper, Garcia averred that he had undergone a series of tests and was declared fit to work. Verlou Carmelino [Carmelino] of [Career Philippines Shipmanagement, Inc.] hired Garcia as a *bosun* for the vessel *Cape Bastia* for its foreign employer, Columbia Shipmanagement. Garcia had a basic salary of six hundred ninety U.S. Dollars (USD690.00). His tour of duty was for a period of nine (9) months plus an additional one (1) month upon mutual consent of the parties, starting February 19, 2011.

Garcia alleged that his principal duties and responsibilities as *bosun* were: (1) that he is responsible for efficient deck operations and maintenance; (2) he operates and maintains the "paint airless sprayer" as well as pneumatic and electric tools; (3) he is in charge of the inventory and requisition of deck stores, paint, and anti-pollution materials; (4) he supervises: (a) the preparation of cargo holds or tanks for loading and cleaning bilges, (b) taking of fresh water, stores, and other provisions, (c) the opening, closing, and securing of hatch covers and tanks, (d) crane operation particularly the handling and securing of cargo; (5) he inspects all cargo gear and reports to the Chief Officer; (6) he takes care of the safety of the cargo gear, equipment, and pilot ladder; (7) he prepares the vessel for sea, during heavy weather, and for docking at the port; (8) he is assigned to do anchor handling; (9) he is tasked with the issuance of ratings for safe-working procedures and punctuality; (10) he is required to report to the Chief Officer problems related to work or his crew; and (11) he is mandated to observe quality and to maintain cost effectiveness.

According to Garcia, he was on duty for 8 to 16 hours a day. Even when he was not on duty, Garcia was always on call to ensure that the vessel was always seaworthy in its every voyage. As a *bosun*, Garcia was always exposed to harsh conditions such as pollutants and other intoxicating chemicals found in the engine room. Apart from managing the severe stress of being away from his family, Garcia was also suffering from over fatigue due to the long and strenuous hours of work.

Garcia narrated that on November 19, 2011, the vessel was in Lexum, Portugal when it encountered rough seas due to stormy weather. The master of the vessel instructed Garcia to arrange the twelve (12) shackles to avoid damage to the cargo. He was able to finish seven (7) shackles when suddenly the vessel was hit by successive giant waves. The force of the waves thrust Garcia against the railings causing him to plunge into the sea. The other members of the crew were also thrown overboard. Thereafter, Garcia felt pain on his right chest which persisted for more than one (1) week.

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On November 23, 2011, the vessel docked at the nearest port of entry. The master of the vessel sent Garcia to the Hospital Privado da Boa Nova in Portugal. He underwent a chest x-ray which revealed: "right side, pneumothorax and possible lung contusion of the lower lobe." On even date, a chest tube was inserted to improve oxygenation. On November 25, 2011, the chest tube was removed. The attending doctor recommended the immediate repatriation of Garcia. On December 2, 2011, CPSI referred Garcia to the NGC Medical Clinic in Manila. At said clinic, company-designated physician Dr. Nicomedes Cruz [Dr. Cruz] attended to Garcia giving medication and therapy from December 2, 2011 to April 2, 2012. Afterwards, the company-designated physician discontinued the treatment of Garcia. However, at that time, Garcia was still suffering from chest pains and difficulty in breathing.

Still hopeful to fully recuperate, Garcia consulted his personal physician named Dr. May S. Donato-Tan [Dr. Donato-Tan] of the Philippine Heart Center. His personal physician requested Garcia to undergo laboratory tests and to continue his medication and check-up. After a year of treatment, the personal physician of Garcia concluded that the nature and extent of his illness permanently and totally prohibit him from working as a [seafarer] in whatever capacity. Consequently, Garcia lost the possibility of being employed as a [seafarer], a profession he is accustomed to, as he could not tolerate the pain caused by his illness. Meanwhile, petitioners did not pay Garcia his total and permanent disability benefits. Said refusal to pay disability benefits and the indifference of petitioners gave rise to the recovery of damages as well as attorney's fees.

In their Position Paper, petitioners countered that Garcia is not entitled to disability benefits in any amount since the company-designated physician determined that [Garcia] was fit to work. The company-designated physician personally attended to Garcia, treated him, and monitored his condition for a period of time. There was no showing that the findings of the company-designated physician were arrived at arbitrarily or fraudulently. Accordingly, Garcia is bound by the declaration of the company-designated physician, as stipulated in the Philippine Overseas Employment Administration (POEA) Contract. As a result thereof, Garcia is not entitled to his monetary claims.

As for the inclusion of [Carmelino] as party-respondent in the case *a quo*, petitioners argue that Carmelino should not have been impleaded since corporate officers are not personally liable for the money claims of the company's employees. Considering that Garcia did not allege that Carmelino acted with malice and bad faith in handling the disability benefits claim of Garcia, Carmelino should be dropped as party-respondent.

Garcia filed 'Complainant's Reply", pointing out the premature findings of the company-designated physician. As of April 2, 2012, the company-designated physician advised Garcia to continue with physical therapy because there was still pain and tenderness on his right chest. On April 16, 2012, the company-designated physician found that there was no more pain in the right lateral chest area of Garcia. However, Garcia still continued

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to suffer chest pains, compelling him to seek a second opinion from a personal physician. Consequently, Garcia argued that the assessment of his personal physician should be given credence considering that the latter was able to diagnose why Garcia was still suffering chest pains despite the "fit to work" assessment of the company-designated physician.

On the other hand, petitioners filed "Respondent's Reply", insisting that the assessment of the company-designated physician should prevail. It was also stressed that the medical findings of the personal physician were biased in favor of Garcia. In addition, there was no evidence showing that the personal physician treated Garcia for more than one (1) year. In the meantime, Garcia had not shown any proof that he applied for sea service and was found to be unfit.[4]

Ruling of the Labor Arbiter (LA)

In a Decision[5] dated December 20, 2013, the arbiter dismissed the complaint for lack of merit, finding no legal basis to Garcia's claim for total and permanent disability benefits. Section 20(A) of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (POEA-SEC) specifically provides that for purposes of determining the seafarer's degree of disability, it is the company-designated physician who must proclaim that he sustained a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment.

In this case, Garcia has been declared fit to resume work by the company-designated physician on April 16, 2012 as shown by the medical reports. Moreover, the findings of Dr. May S. Donato-Tan (Dr. Tan), Garcia's personal physician, were without basis and unsupported by any proof as compared to the findings of the company-designated physician who had personal knowledge of the actual condition and who actually treated Garcia's illness.

Aggrieved, Garcia appealed before the NLRC.

Ruling of the National Labor Relations Commission

The NLRC, in its Decision[6] dated April 16, 2014, reversed and set aside the LA Decision. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, the Appeal is GRANTED. The Decision [a quo] is REVERSED and SET ASIDE and a NEW ONE rendered finding complainant to have suffered a total permanent disability entitling him to a Grade 1 disability in the sum of US$60,000.00 payable in peso equivalent at the time

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[4] *Rollo*, pp. 15-18.
[5] Id. at 105-112. Penned by Labor Arbiter Rommel R. Veluz.
[6] CA *rollo*, pp. 31-44.

> of payment plus ten (10%) percent attorney's fees for having prosecuted his claims.
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> SO ORDERED.[7]

The labor tribunal held that the findings of Garcia's own physician can serve as basis for determining entitlement to disability benefits. Sec. 20(B)(3) of the POEA-SEC does not preclude the seafarer from consulting a physician of his choice. The said provision should not be construed that only a company-designated physician can assess the condition of the seafarer and declare his or her disability.

The NLRC noted that Garcia's disability is considered as permanent and total. A total disability is considered permanent if it lasts for more than 120 days. Here, Garcia has not been hired from December 2, 2011 up to present.

Aggrieved, petitioners filed a Motion for Reconsideration[8] seeking the reversal of the NLRC Decision but it was denied by the NLRC in its Resolution[9] dated May 23, 2014. Hence, petitioners filed a Petition for *Certiorari*[10] under Rule 65 of the Rules of Court before the CA.

Ruling of the Court of Appeals

The CA, in its Decision[11] dated June 17, 2016, affirmed with modification the NLRC Decision and absolved Carmelino from any personal liability to respondent Garcia.

It reiterated that the 120-day period provided under Sec. 20(B)(3) of the POEA-SEC is for the employer to determine the fitness to work or the total or temporary disability of the seafarer. The said 120-day period may be extended up to 240 days should the seafarer require further medical treatment. Thus, in case the 120 or 240-day period elapsed without any declaration as to the condition of the seafarer, the latter may be considered to be suffering from permanent and total disability. In this case, the fit to work order was issued by the company-designated physician after 133 days which is within the 240-day extension period provided by law.

Further, the CA upheld the ruling of the NLRC that Garcia is deemed to be totally and permanently disabled. The CA noted that despite the medical report dated April 16, 2012 declaring Garcia fit to work, he continued to suffer

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[7] Id. at 40.
[8] Id. at 43.
[9] Id. at 43-44.
[10] Id. at 3-29.
[11] *Rollo*, pp. 14-28.

chest pains and difficulty of breathing. This prompted Garcia to seek a second opinion from his own physician. Despite the conflicting assessments of the company-designated physician and Garcia's personal physician, Garcia did not resort to the third-doctor opinion. The appellate court opined that "the resort to a third doctor is merely discretionary."[12] Confronted with the two conflicting opinion, the CA gave full credence to the permanent disability assessment of Garcia's personal doctor as "he normally would not make a false certification."[13] The CA found that Garcia was still suffering from pneumothorax despite being declared fit to work by the company-designated doctor.

Issue

Whether the CA erred in affirming the NLRC Decision which found Garcia entitled to total and permanent disability benefits.

Our Ruling

The Court finds merit in the petition.

In case of work-related injury or illness sustained by a seafarer, the POEA-SEC, as amended by POEA Memorandum Circular No. 10, Series of 2010 governs the procedure for disability claims, to wit:

SECTION 20. Compensation and Benefits. —

A. Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**

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[12] Id. at 25.

[13] Id.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

For this purpose, the seafarer shall submit himself to a post-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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. **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 (e)mployer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphases supplied)

As observed by the CA, the company-designated physician's report was issued on April 16, 2012 or 133 days after his repatriation. The case of *Elburg Shipmanagement Phils. Inc. v. Quiogue*[14] summarized the rules governing claims for total and permanent disability benefits as follows:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules shall govern:

1. The company-designated physician must issue a final medical assessment on the *seafarer's disability grading* within a period of 120 days from the time the seafarer reported to him [or her];

2. If the company-designated physician fails to give his [or her] assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his [or her] assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

[14] 765 Phil. 341 (2015).

> 4. If the company-designated physician still fails to give his [or her] assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[15]

In this case, records show that on April 2, 2012, or on the 120th day of is treatment, "the company designated physician advised Garcia to continue with physical therapy because there was still pain and tenderness on his right chest."[16] Clearly, this more than justifies the extension of the treatment period beyond 120 days.

We held in *Tradephil Shipping Agencies, Inc. v. Dela Cruz*[17]

> [T]here must be a sufficient justification to extend the initial 120-day period to the exceptional 240 days. In this regard, **the Court has considered as sufficient justification the fact that the seafarer was still undergoing treatment and evaluation by the company-designated physician.**
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> **x x x [In this case, the seafarer] was still undergoing medical treatment and evaluation by Dr. Lim after the lapse of the 120-day period.** In fact, he agreed to a further medical evaluation on January 4, 2011, when he himself complained of the on-and-off pains in his scrotal area. Verily, these circumstances justified the allowance of the extension of the temporary disability period, and consequently of the period to treat and assess his medical condition, to the exceptional 240 days.[18] (Emphasis supplied)

In fine, We hold that the extension of the 120-day treatment period was justified.

The law is explicit and clear that the company-designated physician is the person entrusted with the task of determining the seafarer's degree of disability. However, this Court has, time and again, held that should the seafarer disagree with the assessment of the company-designated physician, the seafarer has the prerogative to consult with his or her own physician to seek a second opinion. In case of conflicting assessments, the third doctor's decision shall be final and binding on both parties.

This is reiterated in *Silagan v. Southfield Agencies, Inc.*,[19] wherein the Court has held that referral to a third doctor is a mandatory procedure and whose assessment shall prevail. "In other words, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor

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[15] Id. at 362-363.
[16] *Rollo*, p. 18.
[17] 806 Phil. 338 (2017).
[18] Id. at 353-354.
[19] 793 Phil. 751, 764 (2016).

who shall make his or her determination and whose decision is final and binding on the parties."[20]

In the recent case of *Destriza v. Fair Shipping Corporation*,[21] which likewise involved the conflicting medical opinions of Dr. Nicomedes G. Cruz (Dr. Cruz) as the company-designated physician, and Dr. Tan as the seafarer's doctor, the Court ruled thus:

> In addition, Destriza's failure to resort to a third-doctor opinion proved fatal to his cause. It is settled that in case of disagreements between the findings of the company-designated physician and the seafarer's doctor of choice, resort to a third-doctor opinion is mandatory. The third-doctor opinion is final and binding between the parties. The opinion of the company-designated physician prevails over that of the seafarer's personal doctor in case there is no third-doctor opinion. Thus, Dr. Cruz's declaration that Destriza is fit to resume sea duties prevails over the medical opinion issued by Dr. Donato-Tan.[22]

It is uncontroverted that the assessments issued by the company-designated physician and Garcia's own physician with regard to Garcia's condition were conflicting. The company-designated physician diagnosed Garcia to be suffering from pneumothorax, but the latter was still declared fit to work. Whereas, Garcia's own physician certified that Garcia had become "permanently disabled as a [seafarer]."[23]

This should have prompted Garcia to initiate the mandatory procedure of referring the case to a third doctor for resolution. It was explicit in the abovementioned provision that in case of contradictory findings of the company-designated physician and the seafarer's own physician, the third doctor can rule with finality on the disputed medical condition of the seafarer and thus, shall be binding on both the employer and seafarer. Since Garcia failed to abide with the said mandatory procedure, such constitutes a breach of the POEA-SEC, making the assessment of the company-designated physician final and binding.

In fine, as between the disability assessment issued by Garcia's own physician vis-à-vis the assessment issued by the company-designated physician, the latter's assessment is controlling on the matter of Garcia's fitness to work. The Court has reiterated that the findings of the company designated physician who has an unfettered opportunity to track the physical condition of the seafarer in prolonged period of time versus the medical report of the seafarer's personal

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[20] Id.
[21] G.R. No. 203539, February 10, 2021.
[22] Id.
[23] *Rollo*, pp. 24-25.

doctor who only examined him once and who based his assessment solely on the medical records adduced by his patient. [24] On this point, *Formerly INC Shipmanagement, Incorporated v. Rosales*,[25] states:

> Even granting that the complaint should be given due course, we hold that the company-designated physician's assessment should prevail over that of the private physician. The company-designated physician had thoroughly
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> examined and treated Rosales from the time of his repatriation until his disability grading was issued, which was from February 20, 2006 until October 10, 2006. In contrast, the private physician only attended to Rosales once, on November 9, 2006. This is not the first time that this Court met this situation. Under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.[26]

The records show that Garcia was repatriated on December 5, 2011. He reported to Dr. Cruz two days thereafter or on December 7, 2011. After undergoing a series of treatment, procedures, and consultations, the company-designated physician declared Garcia fit to resume work on April 16, 2012. For emphasis, the medical opinion of the company-designated physician is reproduced below:

> **Report:**
> Medical Report
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> The patient was seen today in our clinic.
>
> At present, there is resolution of pain on his right lateral chest. There is full and functional chest and shoulder motion. Auscultaton of the chest revealed clear breath sounds on both lungs fields.
>
> **Diagnosis:**
> Pneumothorax
>
> **Recommendation:**
> He is FIT TO WORK effective April 16, 2012.
>
> **Next Appointment:**
> **N/A**

On the other hand, Garcia's claim that his personal doctor treated him for more than a year remained self-serving and unsubstantiated. There was no showing as to the duration of Garcia's treatment under the supervision of

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[24] *Silagan v. SouthField Agencies, Inc.*, supra at 763-764.
[25] 744 Phil. 774 (2014).
[26] Id. at 789.

Dr. Tan. A close perusal of Dr. Tan's undated medical certificate[27] would reveal that it is bereft of any citation of procedures undertaken or medications prescribed. As correctly observed by the petitioners, Garcia's apprehensions and anxiety served as bases for Dr. Tan's finding of permanent total disability. This is not in accordance with the requirements of the law.

For comparison, below is the reproduction of the medical certificate of Garcia's personal doctor:

MEDICAL CERTIFICATE

ARDEL S. GARCIA

History of Present Illness:

Present condition was noted 22 months PTC as trauma over his right thoracic area while working on board their sea vessel last November 23, 2011 after the trauma, that is when they were pulling the ship anchor, he experience easy fatigue and shortness of breath and accompanied with pain especially on deep breathing.

Because of the above symptoms, Seaman Garcia was admitted at Lexum Portugal for 12 days and a Physical Examination, breath sounds was about on the right side of the lung. Chest Xray revealed a right side pneumothorax and possible contusion of the lower lobe.

Due to the above findings of the chest xray a chest tube was inserted and improvement of oxygenation was noted.

A repeat chest xray on the 3rd day of tube insertion showed a complete expansion of the lungs, no opacities noted and no air bubbling on the chest drain so his physician decided to removed the chest tube. Repeat chest xray on November 26, 2012 showed normal film.

From November 26-December 1, 2011 he stayed in Portugal and on December 2, 2011, Seaman arrived in the Philippines. He immediately reported at NG Cruz Clinic and was placed under physical therapy. He had also 2 chest xrays dated December 6, 2011 and December 10, 2011which shown normal findings.

Last January 25, 2012, Seaman Garcia had cough with fever and chest xray revealed Pneumonia. He was again seen at NG Cruz and was given Co-amoxiclav 625mg BID for 5 days.

He had therapy for 4 months (December 2, 2011-April 2, 2012) and on April 16, 2012, he was informed that he will no longer given any financial and medical support at the moment, Searman Garcia still complain of an on/off pain over his chest wall especially on deep inspiration.

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[27] Id. at 109.

Physical Examination:

General Survey: Conscious, coherent, pain on deep inspiration

Vital Signs	: BP: 130/70 CR: 78/in
HEENT	: no icteric sclerae, pink palpebral conjunctive
Heart	: no murmur noted
Lungs	: clear bs, no rals noted
Abdomen	: no masses palpable
Extremities	: no limitation of motion

Impression:

Pneumothorax right secondary to chest trauma
s/p Tuber Insertion
Pneumonia, resolved
Nodular density r/o mass/blood vessel

Reason for Permanent Disability:

Despite his being assured by his previous physician that there is nothing wrong with him, he is very apprehensive because he feels something specially on day's inspiration. His apprehension was increase more when he read his present chest xray result. He was advised further work up like chest CT scan or MRI but due to financial constrain he was not able to do it. He has sleepless night and severe apprehension that he can not concentrate with his work and because of this he will not be able to perform his job effectively, efficiently and productively he is therefore given a permanent disability as a seaman.[28]

Clearly, the assessment issued by Dr. Cruz as the company-designated physician is more credible as against the medical certificate issued by Dr. Tan who had no hand in the respondent's case from the very beginning.

While it is the policy of the State to give full protection to labor, the law nonetheless authorizes neither injustice nor oppression of the employer. Hence, on the basis of the fit to work assessment issued by the company-designated physician, Garcia should be considered able and fit to work, and therefore not entitled to total and permanent disability benefits.

WHEREFORE, the instant appeal is **GRANTED**. The June 17, 2016 Decision of the Court of Appeals in CA-G.R. SP No. 136369 is **REVERSED** and **SET ASIDE**. The Decision dated December 20, 2013 of the Labor Arbiter in NLRC NCR Case No. OFW(M)-06-08883-13 dismissing the complaint for lack of merit is **REINSTATED**.

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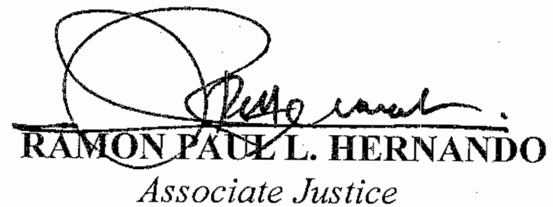
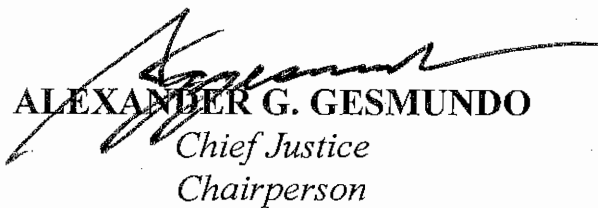
[28] *Rollo*, pp. 24-25.

SO ORDERED.

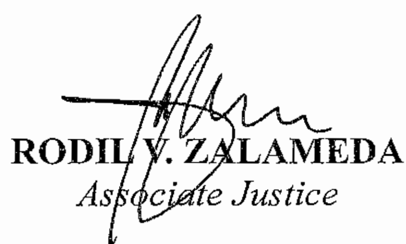


RAMON PAUL L. HERNANDO
Associate Justice

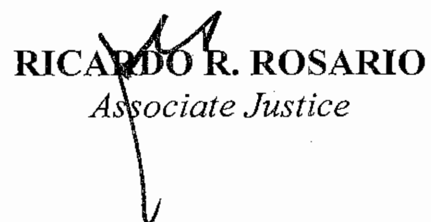
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice

On official business
JOSE MIDAS P. MARQUEZ
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.

ALEXANDER G. GESMUNDO
Chief Justice