



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CHRISTOPHER C. CALERA,
Petitioner,

G.R. No. 250584

Members:

-versus-

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
LAZARO-JAVIER,
M. LOPEZ,
ROSARIO, and
J. LOPEZ,* *JJ.*

HOEGH FLEET SERVICES
PHILIPPINES, INCORPORATED,
Respondent.

Promulgated:

JUN 14 2021

x ----- x

DECISION

LAZARO-JAVIER, *J.*:

The Case

Petitioner Christopher C. Calera assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 159963 entitled “*Hoegh Fleet Services, Inc. v. Christopher C. Calera*.”

- 1) Decision¹ dated July 12, 2019 holding that petitioner’s illness was neither accident nor work-related; and
- 2) Resolution² dated November 22, 2019 denying reconsideration.

* Designated as additional member per Special Order No. 2822 dated April 7, 2021.

¹ Penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Maria Filomena D. Singh, *rollo*, pp. 52-64.

² *Id.* at 40-42.

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Antecedents

In his Notice to Arbitrate³ dated July 24, 2017, petitioner submitted to the Regional Conciliation and Mediation Board (RCMB) – National Capital Region his claim for total and permanent disability benefits and damages for the lower back injury he sustained at Cartagena, Colombia. He essentially alleged:⁴

Respondent Hoegh Fleet Services Philippines, Inc. initially hired him as ordinary seaman⁵ in 2014. In September 2016, respondent directed him anew to undergo Pre-Employment Medical Examination at SuperCare Medical Services, Inc. for his upcoming December 2016 deployment. By Medical Certificate for Service at Sea⁶ dated November 3, 2016, he was declared fit for sea duties.

On November 14, 2016, respondent officially engaged him as ordinary seaman on behalf of its foreign principal, Hoegh LNG Colombia SAS. His employment was covered by a Philippine Overseas Employment Administration (POEA) approved contract and PHIL Model LNG 2016 Collective Bargaining Agreement (CBA).

On December 5, 2016, he left the country for Cartagena, Colombia where he would board *Hoegh Grace*. Upon his arrival, respondent billeted him at the Holiday Inn Hotel while awaiting embarkation on December 7, 2016.

Unfortunately, on the day of his embarkation, he slipped while taking a shower at Holiday Inn and fell on his buttocks. He felt excruciating pain and recurring numbness in his lower back and extremity. The incident, however, did not hinder him from boarding the vessel. Upon embarkation, he reported the accident to the Bosun (ship's officer) and requested for pain reliever. The latter relayed the incident to the chief mate. Instead of compassionately acting on his request, he was ordered to immediately go to work. He was made to carry heavy baggage and cans of grease the whole day.

Due to the strenuous work on the first day and lack of medical attention, his back pain worsened and he had difficulty getting out of bed the next day. Thus, he was sent to a hospital in Cartagena, Colombia where he was diagnosed with *mechanical lumbago* by the company-designated physician Dr. Marlon de Ávila (Dr. Ávila). He was given medication and ordered to rest for five (5) days.

³ *Id.* at 259.

⁴ *Id.* at 156-183.

⁵ Tasks: (a) Main deck maintenance; (b) Rigging and unrigging of pilot ladder; (c) Mooring and unmooring operations; (d) Bridge stand on watch; (e) Chipping and painting of the vessel; (f) Securing chain and car lashing; and (g) Performing other deck maintenance work and strenuous duties as instructed by his superior.

⁶ *Rollo*, p. 184.

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Because of his persistent back pain, he returned for a follow up check-up on December 13, 2016 where he was diagnosed, this time, with *perianal* abscess. He was also advised to continue his medication for his *mechanical lumbago*.

In his Medical Report dated December 20, 2016,⁷ Dr. Ávila prescribed antibiotic and advised him to take a rest for another seven (7) days, *viz.* :

Patient who consults because two weeks ago[,] he suffered a fall from his own weight while bathing, later[,] he [h]as generated lumbar pain and today[,] refers appearance of anal lesion and fever for 24 hours.

During the medical examination, the doctor observes perianal abscess without signs of a systemic inflammatory response.

It was applied [sic] intravenous medication to relieve the pain and recommendations and warning signs are indicated.

It is important to take Antibiotic treatment, anti-inflammatory analgesics, baths with warm water and rest for 7 days.

Best regards,

Dr. Marlon de Ávila
Medicos y Auditores

But his condition did not improve. Consequently, he was medically repatriated on January 2, 2017 and arrived in the Philippines on January 4, 2017. He immediately reported to respondent's office the following day and was referred to Shiphealth, Inc. (Shiphealth) for evaluation. Shiphealth advised him to undergo medication and physical therapy which commenced on January 17, 2017. On April 15, 2017, respondent discontinued petitioner's physical therapy despite lack of any improvement on his condition.

Later, he was **verbally** assessed to be fit for work. Respondent tried to force him to sign a certificate of fitness to work but he refused. He patiently waited for a copy of the medical assessment instead, but to no avail. Thereafter, he repeatedly demanded for respondent to issue any medical assessment but the latter did not.

As he could no longer tolerate his back pain, he consulted orthopedic specialist Dr. Renato P. Runas (Dr. Runas) on June 6, 2017. He was advised to undergo Magnetic Resonance Imaging (MRI), the result of which showed *disk desiccation and mild posterior disk bulge L4-L5*⁸ so he underwent further monitoring under Dr. Runas' care. In his Medical Evaluation Report⁹ dated

⁷ *Id.* at 208.

⁸ *Id.* at 209.

⁹ *Id.* at 210-211.

June 21, 2017, Dr. Runas assessed him to be suffering from total and permanent disability and declared him unfit for sea duty in whatever capacity, thus:

MEDICAL EVALUATION REPORT

June 21, 2017

This is the case of **Seaman Christopher C. Calera**, 32 years old, male, single, Filipino, and presently residing at 2509 Magsaysay, Tubao, La Union with a chief complaint of low back pain.

Present condition apparently started on December 7, 2016 after he accidentally slipped in the shower room and landed on his buttocks. He experienced lower back pain with numbness. He was able to stand after more than a minute. While walking, he felt pain associated with numbness at the right lower back and lower extremity. He reported the incident to the Bosun who relayed it to the Chief Mate but no immediate response was given. He later joined fellow seafarers in loading baggage and heavy cans of grease. The pain intensity increased while carrying heavy object. On the next day, (December 8, 2016) he was unable to get up because of severe low back pain. He was advised to rest by the CM and given medications. He was brought to a hospital in Cartagena, Colombia for evaluation. He was diagnosed [with] *mechanical lumbago* and given pain reliever which afforded mil[d] relief. He was also declared unfit to work for 5 days and given pain medications. He went back for follow-up on December 13, 2016 since no improvement was noted. X-ray of the lumbosacral spine was done. Result showed muscle spasm. He was given steroid injection, oral pain medications and topical analgesic. He consulted again on December 20, 2016 still complaining of low back pain. On examination, he was noted to be febrile. Perianal abscess was noted. He was given antibiotics and oral medications for pain. He was advised to rest for 7 days. After 1 week, he returned to work and given light duties. He was eventually repatriated for further evaluation and management on January 2, 2017.

Upon arrival, he was referred at Shiphealth Clinic for evaluation, X-ray, MRI of the lumbosacral spine, EMG-NCV [,] was done but results were unknown to patient. He was given oral medications and referred to rehabilitation department. He underwent physical therapy for 4 sessions. The treatment was later terminated by the company.

At present, Seaman Calera is still complaining of nagging pain on the lower back. Pain is very intense in the morning and with varying degrees of intensity during the whole day. Lower extremity numbness is experienced during prolonged standing and walking and relieved by rest.

On physical examination, no gross abnormality was noted. He was ambulatory with no limp. Tenderness was elicited at the lumbar area. Muscle spasm was noted at the lower paraspinal muscles. Trunk flexion was limited due to pain from the mid to lower back. SLR is equivocal due to hamstring muscles and Achilles tendon tightness. Low back pain is aggravated by Valsalva's maneuver (coughing and straining).

Seaman Calera is incapacitated due to persistent moderate lower back pain. The clinical manifestation is suggestive of a lumbar disc disease and confirmed by MRI by the presence of a posterior disc bulge. It is worthy

to mention that Seaman Calera is asymptomatic and very active prior to the accident. The fall resulted in the development of a disc bulge which is causing the chronic low back pain. Due to this impediment, he is no longer capable of performing the tasks of an Ordinary Seaman. He cannot carry and lift heavy objects because of the high probability of progression of the condition. His capacity to work is greatly affected and reduced and is not physically fit to return to his previous job. He is unfit for sea duty in whatever capacity with a permanent disability since he can no longer perform his work which he is previously engaged in.

Renato P. Runas, MD
License Nr: 53567
PTR Nr: 6689600¹⁰

By letter ¹¹ dated July 5, 2017, he requested a conference with respondent to discuss his entitlement to disability benefits under the CBA in view of his untreated medical condition and failure to land gainful employment in an ocean-going vessel for more than 120 days from repatriation.

Respondent, however, did not bother taking action, prompting him to file the Notice to Arbitrate before the RCMB. The parties initially agreed to conduct grievance proceedings pursuant to the CBA with Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and Hoegh LNG Maritime. Consequently, the RCMB held in abeyance the selection of voluntary arbitrators.

During the grievance proceedings, he willingly agreed to submit his case for disability assessment to a third doctor. He even provided respondent with a set of parameters acceptable to him, *viz.*:

September 22, 2017

ATTY. KRISTINE GAY M. CENGCA
Legal Counsel
HOEGH FLEET SERVICES PHILS., INC.
4677 Hoegh Building, Arellano St., Palanan,
Arellano Ave, Makati, Metro Manila, Philippines

Dear Atty. Cengca,

x x x for the purpose of referring the assessment to a third doctor, the following parameters are submitted in view of the conduct of the third doctor assessment, to wit:

1. That the referral shall not be construed as a waiver of any right or presumption of law already acquired by the complainant under established principles of law and labor code concept of disability;

¹⁰ *Id.* at 210-211.

¹¹ *Id.* at 212-215.

2. That the conduct of assessment of fitness or unfitness must be done in accordance with the DOH Revised Guidelines for Conducting Medical Fitness Examination for Seafarers;
3. That the failure by the third doctor to strictly comply with the DOH Revised Guidelines shall render the third doctor assessment NULL and VOID;
4. That the referral to a third doctor must be made within 15 days from the time of agreement to submit to a third doctor; and
5. The seafarer suggests Dr. Jason Paul Santiago of the Philippine Orthopedic Center to be the one to conduct the assessment and that the expenses shall be solely borne by the Company.

We would highly appreciate your response to this letter within five (5) days from receipt thereof so that we could proceed with the third doctor assessment under the above-mentioned parameters. Otherwise, the undersigned will regard the same as failure of the parties to agree on the third doctor assessment.

Very truly yours,

Signed
Atty. Arvin C. Dolendo
*Legal Counsel*¹²

Respondent disagreed to the above proposal and the referral to third doctor did not proceed. The grievance proceedings were terminated for the parties' failure to amicably settle. Meanwhile, the proceedings before the RCMB resumed.

During the RCMB proceedings, he demonstrated before the Panel of Arbitrators the difficulty of moving his body due to lower back pain which required him to use back brace support. He, too, manifested that he had been undergoing physical therapy since June 30, 2017. In her Medical Report dated April 2, 2018, Physical Therapist Maricar E. Basario (PT Basario) noted petitioner's limited trunk movement and lower back pain:

Name: Christopher C. Calera	Date: April 2, 2018
Address: Tubao, La Union	
Age: 33	
Diagnosis: Lumbar Spondylosis, Spinal Stenosis	
Frequency/Number of Treatment Sessions: 10 sessions	
Treatment Dates:	
2017: June 30; July 25; Aug. 21; Sep 20; Oct 17	
2018: Jan 5; Jan 12; Feb 10; Feb 16; March 20	

x x x x

II. PREVIOUS COMPLAINT

Limitation of trunk movement
 Crawling sensation, both LE
 Dull aching pain, PS 7/10 to lower back

¹² *Id.* at 218-219.

III. GOALS ACHIEVED

Eliminate crawling sensation to both LE
Decreased dull aching pain to lower back PS 4/10

IV. PRESENT PROBLEM LIST

Limitation of trunk movement esp during morning
Lower back pain increases with lifting
Low back pain during squats

Signed
Maricar E. Basario, PTRP
Physical Therapist¹³

PT Basario noted no improvement on petitioner's condition in her July 11, 2018 Medical Report:

IV. PRESENT PROBLEM LIST

Limitation of trunk movement especially during morning still noted
Lower back pain increases with lifting
Low back pain during squats
Residual dull aching pain at lower back at PS 4/10

Signed
Maricar E. Basario, PTRP
Physical Therapist¹⁴

He never landed any gainful employment ever since he got repatriated.

Respondent,¹⁵ on the other hand, countered that petitioner was engaged as an ordinary seaman for five (5) months on board *Hoegh Grace*. He boarded the vessel on December 12, 2016. He was referred to a medical doctor in Cartagena, Colombia where he was diagnosed with *mechanical lumbago* and *perianal abscess* and was later on declared unfit for sea duty and repatriated. On January 5, 2017, he was referred to Shiphealth for medical care.

Under Initial Medical Report dated January 9, 2017, petitioner was initially diagnosed with *t/c Lumbar Muscle Strain; r/o spine fracture*.¹⁶ Petitioner underwent several medical procedures based on the following findings and recommendations:

¹³ *Id.* at 223.

¹⁴ *Id.* at 224.

¹⁵ *Id.* at 225-239.

¹⁶ *Id.* at 245.

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Medical Report No.	Working Diagnosis	Recommendations
Medical Report No. 2 dated January 18, 2017	Lumbar Muscle Strain	<ul style="list-style-type: none"> - For 6 sessions of physical therapy – 1st set - Follow up consult with Orthopedic Spine Surgery service on January 30, 2017 - Follow up consult with Physiatry service after physiotherapy - Medication as prescribed¹⁷
Medical Report No. 3 dated January 31, 2017	<ul style="list-style-type: none"> - t/c L4 Radiculopathy, right probably secondary to Herniated Nucleus Pulposus - s/p 6 sessions of physical therapy (1st set) 	<ul style="list-style-type: none"> - For Plain MRI of Lumbosacral spine, at a cost of Php11,500.00 (FOR APPROVAL) - For 6 sessions of physical therapy – 2nd set - Follow up consult with Orthopedic Spine Surgery service on February 13, 2017 or earlier once with results - Follow up consult with Physiatry service after physiotherapy - Medications as prescribed¹⁸
Medical Report No. 4 dated February 14, 2017	<ul style="list-style-type: none"> - t/c Lateral Femoral Cutaneous Nerve Neuropathy, right - s/p 2 sets of physical therapy (6 sessions each) 	<ul style="list-style-type: none"> - Estimated length of further treatment is 2-3 months. - Conservative medical management with medications and rehabilitative therapy (2-4 sets of PT)¹⁹
Medical Report No. 5 dated March 7, 2017	<ul style="list-style-type: none"> - t/c Lateral Femoral Cutaneous Nerve Neuropathy, right - s/p 3 sets of physical therapy (6 sessions each) 	<ul style="list-style-type: none"> - As needed intake of analgesics - Follow up consult with Orthopedic Spine Surgery

¹⁷ *Id.* at 246.¹⁸ *Id.* at 247.¹⁹ *Id.* at 248.

		service on March 10, 2017 - Medications as prescribed ²⁰
Medical Report No. 6 dated March 16, 2017	- Sciatica Piriformis Syndrome vs Lateral Femoral Cutaneous Nerve Neuropathy, right - s/p 3 sets of physical therapy (6 sessions each)	- As needed intake of analgesics - Relative rest - Follow up consult with Orthopedic Spine Surgery service on March 20, 2017 - Medications as prescribed ²¹
Medical Report No. 7 dated March 29, 2017	- Piriformis Syndrome, right with Sciatica - s/p 3 sets of physical therapy (6 sessions each)	- Medications prescribed: Keltican OD and Pregabalin 75 mg PRN - For 6 sessions of physical therapy-4 th set - Follow up consult with Orthopedic Spine Surgery service on April 12, 2017 - Medications as prescribed ²²

On April 10, 2017, Shiphealth issued its interim²³ grade 8 disability rating, viz.:

INTERIM DISABILITY GRADING

Mr. Calera is a 33-year-old male from La Union.

Working Diagnosis:

- Piriformis Syndrome, right with Sciatica
- s/p 3 sets of physical therapy (6 sessions each)
- s/p 4 out of 6 sessions of physical therapy – 4th set

IF NEEDED, the disability grading that closely corresponds to patient's present functional capacity, in accordance to the 2010 POEA Standard Employment Contract, Section 32 (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Disease or Illness Contracted), Chest-Trunk-Spine, moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk, is a **Grade 8 (EIGHT) disability**.

Prepared by:

²⁰ *Id.* at 250.

²¹ *Id.* at 251.

²² *Id.* at 252.

²³ *Id.* at 253.

Shiphealth Medical Team/JRA²⁴

Medical Report No.	Working Diagnosis	Recommendations
Medical Report No. 9 dated April 19, 2017	- Piriformis Syndrome, right with sciatica, improved - s/p 4 sets of physical therapy (6 sessions each) ²⁵	N/A
Medical Report No. 10 dated May 16, 2017	- Piriformis Syndrome, right with sciatica, improved - s/p 4 sets of physical therapy (6 sessions each) ²⁶	N/A
Medical Report No. 11 dated May 31, 2017	- Piriformis Syndrome, right with sciatica, improved - s/p 4 sets of physical therapy (6 sessions each) ²⁷	N/A

In its Final Medical Report²⁸ dated June 13, 2017, Shiphealth found petitioner to be suffering from *piriformis syndrome, right with sciatica* but recommended four (4) sets of physical therapy (six [6] sessions each), thus:

FINAL MEDICAL REPORT

Mr. Calera is a 33-year-old male from La Union who was referred for the management of perianal abscess and low back pain.

Present illness started on December 6, 2016 when the patient presented to the vessel's medical officer with complaints of right-sided low back pain of VAS 6-7/10 accompanied by paresthesia on the right lower extremity after prolonged sitting. Pain medication was given. On December 8, 13 and 19, 2016, patient was referred to a shore side facility in [Colombia]. Assessment was *Mechanical Lumbago*. Intravenous medications were given, with temporary relief of symptoms. During the course of treatment, patient complained of minimal perianal pain after defecation. Possible perianal abscess was considered. Home country referral was recommended for further evaluation and management. Patient was repatriated on January 4, 2017 and was then referred to our facility.

Past Medical History: s/p Proctosigmoidoscopy with Hemorrhoidectomy for Mixed Hemorrhoids (September 30, 2015); s/p repeat proctosigmoidoscopy with Lateral Internal Sphincterotomy for Anal Fissure (January 27, 2016); s/p Proctosigmoidoscopy with Lateral Internal Sphincterotomy for Anal Fissure (June 22, 2016)

²⁴ *Id.*

²⁵ *Id.* at 254.

²⁶ *Id.* at 255.

²⁷ *Id.* at 256.

²⁸ *Id.* at 257-258.

Pertinent Findings on Initial Physical Examination

<i>General</i>	conscious, coherent, ambulatory, not in cardiorespiratory distress
<i>Back and Spine</i>	No gross bone deformity and intact spine curvature; (+) tenderness on paralumbar areas; No pain on trunk flexion; (-) straight leg raising and FABERE tests;
<i>Extremities</i>	(+) minimal tenderness on end-range of extension of right shoulder; Pulses full and equal, no cyanosis, no masses or lesions, MMT 5/5 on all extremities
<i>Rectal</i>	No perianal abscess, hemorrhoids or anal fissures; No blood on examining finger

Clinical Course

For perianal abscess:

Patient was examined by General Surgery service on January 5, 2017. At that time, patient denied having perianal pain, bloody or purulent discharge and irregularities in bowel movement. On examination, no perianal abscess, hemorrhoids or anal fissures were identified. No treatment intervention was indicated for the referred condition at that time. Patient was then discharged by General Surgery service for the condition referred.

For low back pain:

On January 6 and 30, 2017, patient was evaluated by Orthopedic Spine Surgery service. At that time, he reported intermittent low back pain of VAS 3/10 with paresthesia on the right lower extremity. Initial consideration was Lumbar Muscle Strain and rule-out Spine Fracture. Commencement of rehabilitation therapy was recommended.

X-ray of the cervical spine showed the cervical bodies, pedicles, posterior elements and intervertebral disc spaces are intact. X-ray of the thoracolumbar spine showed normal findings. Assessment was possible Radiculopathy, right probably secondary to Herniated Nucleus Pulposus. To facilitate return of full function, continued physical therapy was recommended.

After completion of 6 sessions of physical therapy (2nd set), Mr. Calera was then re-evaluated by Orthopedic Spine Surgery. He claimed occasional low back pain of VAS 2/10 accompanied by less paresthesia on the right lower extremity. EMG-NCV findings were within normal limits. Re-assessment was Piriformis Syndrome, right with Sciatica. Continuation of physical therapy was advised to alleviate pain and to improve range of motion. As needed pain medications were continued.

On re-evaluation by Orthopedic Spine Surgery service on March 24, 2017 after completion of 3rd set of physical therapy, patient claimed occasional low back pain and paresthesia on the right lower extremity. Medications were revised. Another 6 sessions of physical therapy [were] recommended.

Mr. Calera returned for follow up on April 17, 2017 after completion of 4th physiotherapy set. Post rehabilitation, patient claimed of intermittent

numbness or paresthesia on the right lower leg. He claimed resolution of low back pain. He had no other subjective complaints. Objectively, physical exam showed no swelling and no tenderness with improved lumbar range of motion. There was noted MMT 5/5 on all extremities. Final diagnosis was Piriformis Syndrome, right with Sciatica, improving. Orthopedic Spine service opined that no further active intervention was indicated for the patient at that time except for continued self-directed home exercises.

After discussion of case with concerned parties, transfer of care patient's physician of choice was requested on June 13, 2017.

Final Diagnosis:

- Piriformis Syndrome, right with Sciatica, improving
- s/p 4 sets of physical therapy (6 sessions each)

Prepared by:

Shiphealth Medical Team/JRA²⁹

Petitioner was declared fit to return to work but refused to sign his certificate of fitness to work. On July 24, 2018, he filed a Notice to Arbitrate before the RCMB. It countered with a Motion to Dismiss³⁰ to give way to the grievance proceedings before the AMOSUP as provided in the CBA.

During the grievance proceedings, the parties explored the possibility of referring petitioner's medical condition to a third doctor. They did not, however, arrive at mutually acceptable parameters in the selection of the third doctor. Thus, the proceedings before the RCMB resumed. Respondents prayed for the denial of petitioner's claim as he was claiming compensation for an illness – lumbar disc disease, different from that for which he was repatriated – *perianal abscess*.

The Ruling of the Panel of Arbitrators

By Decision³¹ dated November 19, 2018, the Panel of Arbitrators³² ruled in petitioner's favor, *viz.*:

WHEREFORE, judgment is hereby rendered ordering the respondent to pay the complainant the amount of US\$60,000.00 as total and permanent disability compensation, plus ten percent (10%) thereof as attorney's (sic) fees, or in Philippine currency at the rate of exchange prevailing on the date of payment.

SO ORDERED.

²⁹ *Id.*

³⁰ *Id.* at 260-266.

³¹ *Id.* at 145-155.

³² Hector L. Hofileña, Levy Edwin C. Ang, and Mariano M. Umali.

The Panel of Arbitrators held that the POEA approved contract between petitioner and respondent was already effective when the former slipped in the bathroom of the Holiday Inn. They noted that petitioner had principally complained of back pain from the very beginning. It was only the cause of such pain that the doctors differed. It was, therefore, error for respondent to conclude that petitioner was claiming payment for an illness distinct from that for which he was repatriated. Against the company-designated physicians' findings, they gave greater weight to petitioner's physician of choice who noted that petitioner was incapacitated due to persistent lower back pain suggestive of a lumbar disc disease.

The Panel of Arbitrators, however, denied petitioner's claim for disability benefits under the CBA on the following grounds; *first*, slipping on a wet bathroom floor could not be said to have been caused by accident as it cannot be totally unexpected; *second*, petitioner was neither an officer to be entitled to the US\$110,000.00 nor a cadet to be entitled to US\$90,000.00; and *third*, petitioner did not even attach a copy of the alleged Model Agreement for Non-Norwegian Vessels for Filipino Officers and Ratings to prove his entitlement thereto.³³

Petitioner's claim for sickness allowance, too, was denied for lack of basis. The Panel of Arbitrators, nonetheless, deemed sufficient respondent's payment of ₱80,148.75 to petitioner as sickness allowance.

Lastly, the Panel of Arbitrators denied petitioner's prayer for moral and exemplary damages as respondent did not act in a wanton or fraudulent manner in refusing petitioner's claims.

Respondent's motion for reconsideration got denied by Resolution³⁴ dated February 6, 2019.

Proceedings before the Court of Appeals

Respondent elevated the case to the Court of Appeals *via* a petition for review³⁵ under Rule 43 of the Rules of Court. It argued that there was absolutely no basis for the panel of arbitrator's award of disability compensation benefits to petitioner.

For one, petitioner was claiming payment for an illness different from that for which he was repatriated – *perianal abscess* and not lumbar disc disease. More, the illness was not work-related and pre-existing.

For another, spinal problems do not automatically entitle a seafarer to disability benefits. More so in this case where petitioner's condition was age-related.

³³ *Rollo*, pp. 145-154.

³⁴ *Id.* at 128-129.

³⁵ *Id.* at 97-122.

It prayed for the deletion of the award of attorney's fees for want of basis. It adopted and reproduced the above allegations in support of its prayer for issuance of a temporary restraining order and or preliminary injunction order.

In his Comment,³⁶ petitioner countered that his entitlement to total and permanent disability benefits was by operation of law since there was no final and definitive assessment of fitness to work. Petitioner was repatriated on January 2, 2017, and more than 240 days had passed since then but no medical assessment with disability grading was ever issued. More, the lack of redeployment proved his unfitness to work and his total and permanent disability.

Contrary to respondent's claim, he was repatriated due to *perianal abscess* and *mechanical lumbago*. At any rate, he pointed out that he was not suffering from any illness or injury prior to embarkation, which proved that his back pain was accident and work-related. It was clear from the alleged final medical report that he was far from recovery. He insisted on his entitlement to attorney's fees.

The Ruling of the Court of Appeals

Through its assailed Decision³⁷ dated July 12, 2019, the Court of Appeals reversed, *viz.*:

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The Decision dated November 19, 2018 and Resolution dated February 6, 2019 of the Philippine Association of Voluntary Arbitrators (PAVA), Regional Conciliation and Mediation Board, National Capital Region in MVA-034-NCR-044-02-02-2018 are hereby **REVERSED** and **SET ASIDE**.

It held that petitioner's condition was neither accidental nor work-related. *First*, to espouse that the accident was the direct and proximate cause of petitioner's disability effectively ruled out the body's wear and tear due to prolonged strenuous work. *Second*, petitioner failed to establish his condition's work-relatedness. At the time of the accident, he was inside his hotel room and was neither exposed to the perils of the sea nor on board *Hoegh Grace*. His injury, therefore, had nothing to do with his seafarer duties. *Lastly*, the CBA only contemplated the seafarer going to or from his or her vessel to be entitled to the benefits thereto. The failure of the company-designated physicians to clear petitioner for sea duty was immaterial since the direct and proximate cause of the injury was not work-related.

Petitioner moved for reconsideration but the same was denied per Resolution³⁸ dated November 22, 2019.

³⁶ *Id.* at 73-96.

³⁷ *Id.* at 52-64.

³⁸ *Id.* at 40-42.

The Present Petition

Petitioner now seeks affirmative relief and prays that the assailed dispositions of the Court of Appeals be reversed, and the Panel of Arbitrators' decision, reinstated.

He asserts that his illness is work-related and, thus, faults the Court of Appeals for holding that there were no risk factors associated with traveling when the incident happened while he was taking a bath; and that the incident had nothing to do with both the nature of his employment and the possible risk factor of being in transit.

Meanwhile, the seafarer's contract commenced from actual departure from the Philippine airport, the point of hire. Thus, the injury happened during the commencement of the employment contract, in a place where he should reasonably be, and engaged in something incidental thereto – preparing for embarkation.

In its Comment,³⁹ respondent supports the dispositions of the Court of Appeals. It counters that petitioner's illness is not work-related and the accident occurred even before he could embark on the vessel. Thus, he was never exposed to the perils of the sea and the injury had nothing to do with the nature of his seafarer duties. At any rate, the company-designated physicians declared him fit to work. Petitioner's basis for his claim for disability benefits, lumbar disc disease, is completely different from that for which he was repatriated – *perianal abscess*.

Threshold Issue

Is petitioner entitled to total and permanent disability benefits?

The Court's Ruling

The petition is meritorious.

Preliminarily, the Court notes that the issues presented in this case are factual in nature. Ordinarily, this Court is not a trier of facts and does not embark in the evaluation of evidence adduced during trial. This rule, however, allows for exceptions as when the findings of fact of the quasi-judicial agencies concerned are conflicting or contradictory with those of the Court of Appeals, as here. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.⁴⁰

We proceed to the merits.

³⁹ *Id.* at 357-368.

⁴⁰ See *General Milling Corp. v. Viajar*, 702 Phil. 532, 540 (2013).

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Petitioner is entitled to total and permanent disability benefits.

The seafarers' employment is governed by the contracts they signed at the time of engagement. As long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Nonetheless, while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-Standard Employment Contract (POEA-SEC) be integrated in every seafarer's contract.⁴¹

Here, petitioner's employment is governed by the POEA-SEC executed on November 14, 2016, the CBA between the AMOSUP and Hoegh LNG Maritime Management PTE LTD., and the CBA for Filipino Officers between the Norwegian Shipowners' Association and the AMOSUP, the Norwegian Maritime Officers' Association, and the Norwegian Union of Marine Engineers.

a. The Holiday Inn incident was not a compensable accident.

Section 1 (4) of the 2010 POEA-SEC mandates the principal employer to take precautions to prevent accident and provide safe working environment for the seafarer, *viz.*:

4. To provide a seaworthy ship for the seafarer and take all reasonable precautions to prevent accident and injury to the crew including provision of safety equipment, fire prevention, safe and proper navigation of the ship and such other precautions necessary to avoid accident, injury or sickness to the seafarer.⁴²

Black's Law Dictionary defines "accident" as an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct. The Philippine Law Dictionary, on the other, defines "accident" as that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual, and unforeseen. In its commonly accepted meaning, accident has been defined as a fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances, is unusual and unexpected by the person to whom it happens. It may denote a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence,

⁴¹ See *C.F. Sharp Crew Management, Inc. v. Legal Heirs of Repiso*, 780 Phil. 645, 666 (2016).

⁴² Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships. POEA Memorandum Circular No. 010-10, October 26, 2010.

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that causes injury, loss, suffering, or death; some untoward occurrence aside from the usual course of events.⁴³

On December 5, 2016, petitioner left for Cartagena, Colombia where he would board *Hoegh Grace*. Since he arrived earlier than his embarkation, respondent checked him in at the Holiday Inn. On December 7, 2016, the day of his embarkation, he slipped and fell on his buttocks while taking a shower, causing him excruciating lower back pain.

To our mind, slipping in the bathroom floor is not an unforeseen injurious occurrence that could not be reasonably anticipated. For once a person enters the bathroom, he knows for a fact that the floor could get slippery and cause him bodily injuries. Too, there is no showing of any measures petitioner adopted to at least lessen or avoid the injury caused by a slippery floor. We cannot therefore consider the incident as an “accident” within the contemplation of the POEA-SEC contract.

b. Petitioner’s injury was work-aggravated

The Court nevertheless finds that petitioner suffered compensable injury under Section 20(A) of the POEA-SEC. For an injury or disability to be compensable under this provision, two (2) elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer’s employment contract.⁴⁴ For a disability claim to prosper, a seafarer only needs to show that his work and contracted illness have a reasonable linkage that must lead a rational mind to conclude that his occupation may have contributed or aggravated the disease.⁴⁵

For the first element, the POEA-SEC defines work-related injury as one “arising out of and in the course of employment.” Jurisprudence further teaches that compensable illness or injury cannot be confined to the strict interpretation of the POEA-SEC as pre-existing conditions may be compensable if **aggravated** by the seafarer’s work.⁴⁶

Here, it is undisputed that before actual boarding of the vessel on December 7, 2016, petitioner slipped in the bathroom of Holiday Inn and suffered injury. To reiterate, this, by itself, is not compensable. But when petitioner boarded his assigned vessel, he immediately reported the incident to the Bosun, as well as the excruciating pain and recurring numbness he had been experiencing on his lower back and extremity after said incident. Apparently, he was already suffering from *mechanical lumbago* and *perianal abscess* at this point. He requested for pain reliever but was not given any.

⁴³ See *NFD International Manning Agents, Inc. v. Illescas*, 646 Phil. 244, 260 (2010).

⁴⁴ See *Wilhelmsen Smith Bell Manning, Inc., Wilhelmsen Ship Management Ltd., and Fausto R. Preysler, Jr., v. Franklin J. Villaflor*, G.R. No. 225425, January 29, 2020.

⁴⁵ See *Grieg Philippines, Inc. v. Gonzales*, 814 Phil. 965, 966 (2017).

⁴⁶ *Supra* note 44.

And instead of showing compassion, his superiors ordered him to immediately get to work, making him carry heavy baggage and cans of grease.

These circumstances show that the injury petitioner suffered at Holiday Inn which would have otherwise been not compensable was **aggravated** by his work on board the vessel. Indeed, due to the strenuous work on the first day and lack of medical attention, petitioner's condition worsened, and he even had difficulty getting out of bed the next day. In view of the factual backdrop, we rule that petitioner's injury was work-related or more specifically, **work-aggravated**.

In *Centennial Transmarine, Inc. v. Quiambao*,⁴⁷ therein respondent-seafarer Quiambao figured in an accident while carrying heavy food provisions which caused him excruciating pain in his upper back. The labor arbiter, NLRC, and the Court of Appeals uniformly found petitioner to be suffering from osteoarthritis. Quiambao was able to prove the conditions necessary for osteoarthritis to be considered as having arisen in the course of his employment either by direct causation or aggravation due to the nature of his work. According to the Court, it was also plain from his duties and responsibilities that his work involved carrying heavy loads and the performance of other strenuous activities such that it can reasonably be concluded that his work caused or at least aggravated his illness.

It is of no moment that petitioner suffered the injury at Holiday Inn. For it is not necessary that the nature of the employment be the sole and only reason for the illness or injury suffered by the seafarer.⁴⁸ In *Heirs of Licuanan v. Singa Ship Management, Inc.*, the Court categorically held that it is not required that the employment be the sole factor in the growth, development, or acceleration of the illness to entitle the claimant to the benefits incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease.⁴⁹

As for the second requisite of a compensable injury, suffice it to state that petitioner's condition was aggravated by his work during the term of his employment contract.

So must it be.

Petitioner's disability is total and permanent

Having established the compensability of petitioner's injury, we proceed to determine his disability rating and respondent's corresponding liability.

⁴⁷ 763 Phil. 411, 414 (2015).

⁴⁸ *Supra* note 44.

⁴⁹ See *Heirs of Licuanan v. Singa Ship Management, Inc.*, G.R. Nos. 238261 & 238567, June 26, 2019.

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Under the 2010 POEA-SEC, the company-designated physician is primarily vested with responsibility to determine the seafarer's disability grading or fitness to work.⁵⁰ In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,⁵¹ the Court set forth the following guidelines in determining whether a medical report was timely issued, *viz.*:

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

Verily, two (2) requisites must concur: 1) an assessment must be issued within the 120/240-day window, and 2) the assessment must be final and definitive.⁵²

a. The assessment was timely issued.

Here, petitioner was medically repatriated on January 2, 2017 and arrived in the Philippines on January 4, 2017. After series of medical procedure, the company-designated physicians issued an interim medical report which assessed petitioner's condition as a grade 8 disability. This interim report was issued on April 10, 2017, or 96 days from repatriation and within the 120-day window prescribed by law. Since petitioner still required further medical treatment as evidenced by the several medical reports that followed, the period of diagnosis and treatment was extended to 240 days. The company-designated physicians issued the alleged final medical assessment on June 13, 2017, or 160 days from repatriation, and within the 240-day period.

Verily, the medical reports were timely issued by the company-designated physicians. As will be discussed, the timeliness of the issuance of the medical reports is of no moment since the alleged final medical report was not at all final.

⁵⁰ See *Magsaysay Mol Marine, Inc. v. Atraje*, 836 Phil. 1061, 1077 (2018).

⁵¹ 765 Phil. 341, 362-363 (2015).

⁵² See *Chan v. Magsaysay Maritime Corp.*, G.R. No. 239055, March 11, 2020.

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b. The company-designated physicians failed to issue a final and definitive assessment of petitioner's condition

A **final and definite disability assessment** is necessary in order to reflect the true extent of the seafarer's sickness or injuries and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.⁵³ Before the disability ratings from the company-designated physician may be considered, **they should first be properly established and contained in a valid and timely medical report.** Thus, the foremost consideration of the courts should be to determine whether the company-designated physician's medical assessment or report was **complete and appropriately issued**; otherwise, the medical report shall be set aside, and the disability grading contained therein cannot be seriously appreciated.⁵⁴

To be conclusive, the company-designated physicians' medical assessments or reports must be complete and definite to give the proper disability benefits to seafarers.⁵⁵ Guided by jurisprudence, the following are the characteristics of a final and complete medical report:

One. It must be **complete.** In *Hanseatic Shipping Philippines, Inc. v. Ballon*,⁵⁶ the Court treated the undated medical report as incomplete because it only discussed the treatment of Ballon's myofascial pain dysfunction, but not his cervical myelopathy in his right C5-C6.

Two. It must be **definite.** The definiteness of a medical report pertains to the company-designated physicians' assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. The company doctor must declare the seaman fit to work or assess the degree of his permanent disability. Without which, the characterization of a seafarer's condition as permanent and total will ensue because the ability to return to one's accustomed work before the applicable periods elapse cannot be shown.⁵⁷

Here, the company-designated physicians, Shiphealth, issued the alleged final medical report dated June 13, 2017, viz.:

FINAL MEDICAL REPORT

Mr. Calera is a 33-year-old male from La Union who was referred for the management of perianal abscess and low back pain.

Present illness started on December 6, 2016 when the patient presented to the vessel's medical officer with complaints of right-sided low back pain of VAS 6-7/10 accompanied by paresthesia on the right lower

⁵³ See *Orient Hope Agencies, Inc. v. Jara*, 832 Phil. 380, 400 (2018).

⁵⁴ See *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234-251 (2015).

⁵⁵ *Supra* note 53 at 396.

⁵⁶ 769 Phil. 567, 587 (2015).

⁵⁷ *Belchem Phils., Inc. v. Zafrá, Jr.*, 759 Phil. 514, 527 (2015).

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extremity after prolonged sitting. Pain medication was given. On December 8, 13 and 19, 2016, patient was referred to a shore side facility in Columbia. Assessment was *Mechanical Lumbago*. Intravenous medications were given, with temporary relief of symptoms. During the course of treatment, patient complained of minimal perianal pain after defecation. Possible perianal abscess was considered. Home country referral was recommended for further evaluation and management. Patient was repatriated on January 4, 2017 and was then referred to our facility.

x x x x

Final Diagnosis:

**Piriformis Syndrome, right with Sciatica, improving
s/p 4 sets of physical therapy (6 sessions each)**

Prepared by:

Shiphealth Medical Team/JRA⁵⁸

As worded, the medical report was far from final. For one, the company-designated physicians made no mention of any disability rating nor any declaration as to petitioner's fitness or unfitness for further sea duty. For another, the alleged finality of the medical report was negated by the fact that petitioner needed further medical treatment, *i.e.*, he was referred for four (4) sets of physical therapy with six (6) sessions each. That he was not re-deployed after the incident at the Holiday Inn lends credence to the fact that he still needed further medical attention and far from healed.

The Court, therefore, finds the June 13, 2017 medical report to have fallen short of the parameters for a final and definite medical report. Even if the company-designated physicians were justified in extending petitioner's medical treatment to more than 120 days, yet, as earlier stated, the alleged final medical report is far from final.

Sans a valid final and definite assessment from the company-designated physicians within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent.⁵⁹ By operation of law, therefore, petitioner is deemed totally and permanently disabled.

In *Magsaysay Mol Marine, Inc. v. Atraje*,⁶⁰ the Court held that respondent's inability to perform his customary sea duties, coupled with the company-designated physicians' abdication of their primary duty to declare his fitness or unfitness to work within the prescribed period, transformed his disability to permanent and total by operation of law. There, the company-designated physicians, Shiphealth, clearly breached their duty to provide a

⁵⁸ *Rollo*, pp. 257-258.

⁵⁹ See *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.

⁶⁰ G.R. No. 229192, July 23, 2018.

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definite assessment of respondent's condition. Despite medication and physical therapy, respondent was not restored to his pre-injury health status.

In the same vein, *Carcedo v. Maine Marine Philippines*⁶¹ teaches that the company-designated physician's failure to give a definitive impediment rating of Carcedo's disability beyond the extended temporary disability period, after the 120-day period but less than 240 days transformed Carcedo's total and temporary disability into a total and permanent disability by operation of law.

Monetary Awards

Contrary to petitioner's claim, he is not entitled to USD90,000.00 disability benefits under the CBA. Article 12 thereof provides:

If an **officer**[,] due to no fault of his own, suffers an occupational injury as a result of an accident or an occupational disease, while serving on board or while travelling to or from the vessel on Company's business or due to marine peril, and as a result[,], his ability to work is permanently reduced, totally or partially, and never to be declared fit. The Company shall pay him a disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be the maximum USD110,000 for officers and USD90,000 for **cadets**.⁶² (Emphases added)

As the panel of voluntary arbitrators observed, petitioner is neither an officer nor cadet, but an ordinary seafarer. Thus, we apply the POEA-SEC under which petitioner is entitled to USD60,000.00.⁶³

Meanwhile, petitioner's prayer for moral and exemplary damages should be denied for failure to show that respondent acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner in dealing with him for medical treatment.⁶⁴ On the contrary, respondent attended to petitioner's medical needs after he continued complaining of his injury as shown by the numerous medical reports.

An award of attorney's fees of 10% of the total monetary award is warranted, considering that petitioner was compelled to litigate to satisfy his claim for disability benefits.⁶⁵

Lastly, the monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this decision until fully paid.⁶⁶

⁶¹ *Supra* note 48.

⁶² *Rollo*, p. 194.

⁶³ See *Gere v. Anglo-Eastern Crew Management Phils. Inc.*, 830 Phil. 695, 702 (2018).

⁶⁴ See *Chan v. Magsaysay Maritime Corp.*, G.R. No. 239055, March 11, 2020.

⁶⁵ See *Balbarino v. Pacific Ocean Manning, Inc.*, G.R. No. 201580, September 21, 2020.

⁶⁶ See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

ACCORDINGLY, the petition is **GRANTED** and the Decision dated July 12, 2019 and Resolution dated November 22, 2019, **REVERSED and SET ASIDE**. Petitioner Christopher C. Calera is declared **TOTALLY AND PERMANENTLY DISABLED** for sea duties. Respondent Hoegh Fleet Services Philippines, Inc. is **ORDERED** to **PAY** petitioner:


- 1) **Total and Permanent Disability Benefits** of USD60,000.00; and
- 2) **Attorney's Fees** of ten percent (10%) of the total monetary award.

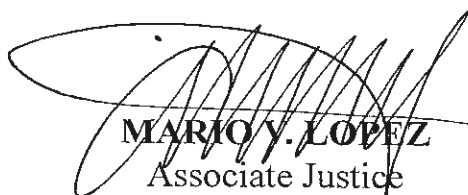
The total monetary award shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.


SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



MARIO Y. LOPEZ
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

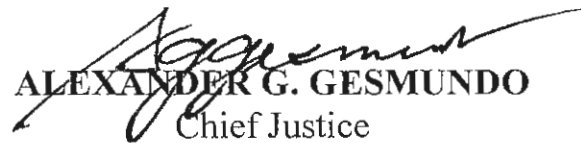
ATTESTATION

I attest that the conclusions in the above Decision has been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson – Second Division

CERTIFICATION

Pursuant to Section 13, Article VII 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.


ALEXANDER G. GESMUNDO
Chief Justice