

## Chapter 1

# **Human factor in shipping: seafarer disability compensation claims in Philippine Supreme Court decisions**

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### **Abstract**

This paper provides an analysis of seafarers' disability compensation claims using data from Supreme Court decisions from 2016 to 2023. Human factors in shipping include the health and safety of seafarers, which have a significant impact on seafarers' performance of their duties on board ships. Gaps in shipping and seafarer policy need to be addressed to avoid risk and reduce compensation costs due to illness, disability, and death. An integrated approach combining qualitative and quantitative methods is the framework for investigating seafarers' disability compensation claims. In the Philippines, disputes over seafarer compensation are resolved through both voluntary and mandatory arbitration procedures. This paper presents current updates on case management, duration and outcomes of seafarers' compensation claims, focusing on the complex framework of the country's seafarers' compensation laws, policies and procedures. The Supreme Court decisions embracing seafarers' labour issues have attempted to balance the interests of employers, shipping companies and seafarers. The complex web of laws, rules and regulations on seafarer employment is reflected in the diversity of Supreme Court decisions on seafarer compensation claims. An important policy recommendation is for rules and regulation on seafarer employment to be simplified, consolidated, and consistently aligned with the 2006 Maritime Labour Convention and its amendments, which were ratified and in force in the Philippines. Future legislation must recognize the international scientific, medical evidence on unique or specific illness and syndromes unique to seafarers; and must incorporate Supreme Court jurisprudence.

**Keywords:** Philippine seafarers, disability compensation claims, maritime labor and employment, relations, maritime disputes settlement

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Email: mvamante@up.edu.ph The views and opinions in this paper are those of the author and do not represent the position of the IDE JETRO or the University of the Philippines.

## I. Introduction

Seafarers face a physically challenging work environment every day, distinct from their land-based counterparts. They work on a limited workspace in the middle of the ocean, with work and sleep patterns vulnerable to disruption in extreme weather conditions. At any time, seafarers are called to be on duty, with unpredictable, sudden calls for "all hands-on deck" including training for emergency situations. Even while in port, seafarers are limited in their shore leave by cargo loading and maintenance duties. The ship is at sea for several days, and the only things the sailors can see are the vast ocean and the sky above during good weather. Aside from this environment, the usual seafarer works around 12 hours every day in varying weather conditions as the ship traverses the open ocean. A seafarer may be exposed to both man-made and natural hazards on board the ship, such as extreme weather conditions, accidents, and serious adverse incidents. In addition, the seafarer must face emotional or psychological distress that may drive him to desperation. These circumstances may require an individual's early repatriation, resulting in a loss of income and inconveniencing the ship's management officers and, eventually, the employer.

The human factor is a key consideration in shipping and is embedded in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (hereinafter STCW Code). Regulation A-1/8 of the STCW Code provides that "all training, assessment of competence, certification, endorsement and revalidation activities carried out by non-government agencies or entities under its authority are continuously monitored through a quality standards' system".<sup>2</sup> Most seafarer training activities are done by privately owned schools or institutes. Many of these private training centers directly serve global shipping companies. The MARINA is required by law to regulate these training centers. The European Maritime Safety Agency (EMSA) audit has shown some deficiencies. In response, MARINA has tightened its implementation of regulations. Future audits shall determine if compliance with quality standards are sustained.

In 2012, the Philippines ratified International Labour Organization Maritime Labor Convention 2006 (hereinafter ILO MLC 2006) which recognizes occupational health and safety hazards and compensation. Supreme Court (hereinafter SC) decisions on seafarer

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<sup>2</sup> IMO International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978), as amended. Accessed on November 6, 2023 at <https://www.imo.org/en/OurWork/HumanElement/Pages/STCW-Convention.aspx>

compensation for disability are based on a variety of national standards and international agreements, including recognition of seafarer union agreements with shipping employers on compensation for disability and death.

#### **A. The human factor in the STCW Code**

The 2010 Manila Amendments to the Seafarers’ Training, Certification and Watchkeeping Code <sup>3</sup> provided details on skills training, competency assessment, functions and certification. The management of maritime labor compliance, human resource development, including seafarer health and safety are embedded, if not directly provided throughout the STCW Code, and its amendments.

“Function 3” in Table AII/1 of the STCW Code provides for “controlling the operation of the ship and care for persons on board at the operational level.” Function 3 has specific “minimum standard of competence for officers in charge of a navigational watch on ships of 500 gross tonnage or more.” Competencies include operation of life saving devices such as rescue boats, medical first aid, and compliance with legislative standards on ship operations, as well as seafarer health and safety. Most important, the STCW Code calls for the “application of leadership and teamwork skills and contribute to the safety of personnel and the ship.”

The Philippines ratified MLC 2006 <sup>4</sup> in 2012, which now directly benefits Filipino seafarers, protecting their rights to decent pay, benefits, working conditions, health and safety, and related welfare concerns. Tripartite stakeholders, organized employers, seafarers, and the government, all agreed and endorsed ratification of the convention to strengthen guarantees for maritime labor rights for “quality seafaring.” The ILO MLC 2006 recognized the special needs of seafarers, and experts agreed on the guidelines to implement occupational health provisions. Occupational safety and health guidelines provide for standards on hours of work, physical working conditions, hazardous and potentially hazardous tasks, high stress levels and fatigue. These human factors are critical to seamanship.

The Philippines ratified the MLC 2006 to benefit from a global tripartite framework for the protection of seafarer rights, and to promote quality supply of seafarers with decent jobs. Based on this perspective, it could be argued that the continuous growth

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<sup>3</sup> IMO STCW 1978, op. cit. (as previously cited).

<sup>4</sup> ILO Maritime Labour Convention, 2006 accessed on November 5, 2023 at <https://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>

in Philippine global seafarer deployment has achieved the objective of the MLC 2006 ratification.

Multiple stakeholders in Philippine seafaring include ship owners and their representative crewing and manning agents, seafarer unions and welfare organizations and a labyrinth of government regulatory agencies. Decisions on seafarer labor disputes are mostly on disability compensation claims. Some cases go on to appeals with the SC. These seafarer labor cases reveal gaps in the proper, timely and competent. An outcome of this module should offer viable recommendations for both urgent and long-term action by the stakeholders to move forward in institutional capacity building to strengthen the MLC 2006 compliance.

## **B. The MLC 2006 and seafarer health and safety**

The MLC 2006 Regulation 2.1 provide standards for seafarer employment agreements. Regulation 2.2 are the standards for wages, while Regulation 4.1 is about medical care on board and ashore. Amendments in 2014 on Regulation 1.2 provided for protection by way of insurance for seafarer money claims. Seafarer employment agreements include wages and claims for disability in case of injury or accident in terms of total, permanent or partial. The agreement also provides for the resolution of seafarer monetary claims. There are many labor cases filed for arbitration with the National Labor Relations Commission (hereinafter NLRC), but subject to review by the Court of Appeals (hereinafter CA), and to questions of law and constitutionality with the SC.

It is important to note that the Department of Labor and Employment (hereinafter DoLE) has issued a variety of rules and regulations to provide protection to Overseas Filipino Workers (hereinafter OFWs) which include seafarers. During the COVID-19 pandemic, there were guidelines to provide financial assistance for displaced seafarers. Due to the strict protocols requiring several weeks of isolation to seafarers prior to embarkation and after disembarkation of vessels, the Overseas Workers Welfare Administration (hereinafter OWWA) provided hotel accommodation. There were media reports on complaints due to the variations in quality of room accommodation.

An important regulation that is aligned with the financial security amendments of MLC 2006 is the Department of Labor and Employment Department Order (hereinafter

DoLE DO) No. 181 series of 2017<sup>5</sup>. This regulation ensures that all seafarers in international voyages are provided with expeditious and effective financial security system, in the form of either 'insurance agreement or escrow agreement's in the event of abandonment, and protection from the final consequences of sickness, injury or death occurring in connection with their employment. The financial security provision follows the amendments implementing Regulations 2.5 or the Repatriation and 4.2 or Ship owners' liability of the MLC, 2006. The Philippine Overseas Employment Administration (hereinafter POEA) implemented the procedural guidelines as part of the "Certificate of the MLC 2006 Compliance" by crewing and shipping employer.

Human factors may determine shipping business outcomes. As a workspace, the ship is hierarchical, with the captain or master on top, officers next, and the ratings, or the rank-and-file the CA seafarers below. Command responsibility is a cornerstone, with the safety and efficiency in ship operations as the paramount consideration. Authority and leadership are exercised to serve the mission of the ship to safely and efficiently deliver cargo from port to port. In most global ships, multinational crew is the norm, and diverse cultural factors may influence communication, behavior and work performance on board.

It is important for ship officers to harness, control and manage these diversities. Officers must develop and enrich their leadership and teamwork skills and competencies. Understanding of theories of human motivation, error and deviations in behavior, as well as miscommunication. Human factors relate to specific and critical operations such as watchkeeping and navigation.

Effective performance management onboard may now be supported by smart technology with the latest software and communications links via satellite and reduce the need for routine and manual operations. Employment relations now require new models away from traditional "human resource management" towards people support management in organizations. The shift away from routine and manual operations towards "smart" ships run by artificial intelligence shall sooner or later result in smaller

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<sup>5</sup> Department Order No. 181-17: Guidelines on the Provision of Financial Security in Compliance with the Amendments Implementing Regulations 2.5 and 4.2 and Appendices of the Maritime Labour Convention, 2006; Department Order No. 181-A -18 "Extension on the Grant of Dispensation . . .".

accessed on November 5, 2023 at

[https://bwc.dole.gov.ph/images/Issuances/DepartmentOrder/DO\\_181\\_17\\_Guidelines\\_onthe\\_Provision\\_of\\_FinancialSecurity\\_in\\_Compliance\\_withthe\\_Amendments\\_Implementing\\_Regulations\\_2\\_5\\_and\\_4\\_2\\_and\\_Appendices\\_ofthe\\_MaritimeLabourConvention\\_2006\\_MLC2006.pdf](https://bwc.dole.gov.ph/images/Issuances/DepartmentOrder/DO_181_17_Guidelines_onthe_Provision_of_FinancialSecurity_in_Compliance_withthe_Amendments_Implementing_Regulations_2_5_and_4_2_and_Appendices_ofthe_MaritimeLabourConvention_2006_MLC2006.pdf)

and more technology aligned crew complements, requiring greater synergy between human competencies and robotics applicable to shipping.

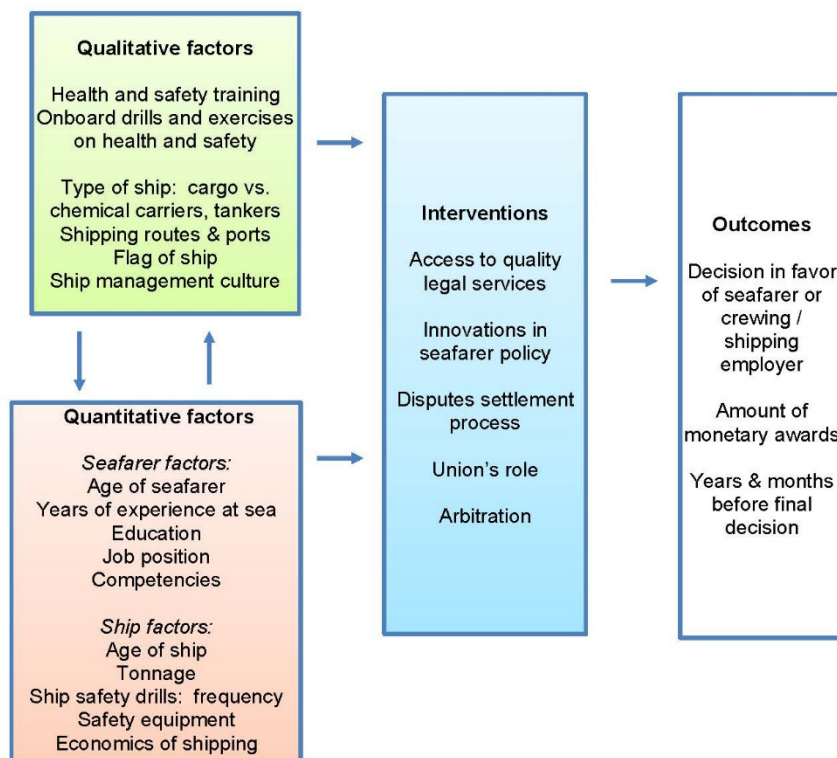
The governance and legal dimensions are increasingly relevant in ship operation and leadership. Seafarer employment is governed by several types of employment contracts. For seafarers who are union members, many are affiliated with the global union International Transportation Workers' Federation (hereinafter ITF). Seafarer union members sign collective bargaining agreements with shipping employers, and in case of non-ITF coverage, the default is with the Department of Migrant Workers' Standard Employment Contract (hereinafter DMW SEC). Cruise ship employment contracts are also specific, as well as stationary offshore platforms such as oil rigs. Seafarer cadets are covered by apprenticeship agreements with maritime schools as part of the curriculum.

Leadership and governance in maritime crewing is influenced by industry stakeholders. In the Philippines, the MLC 2006 stakeholders can be classified into several groups with common interests to ensure decent seafarer jobs on board global commercial vessels, but with conflicts of interest over adequate pay and benefits, voice and representation in governance, welfare concerns, seafarer compensation claims, and labor disputes settlement, among others. First, the employers group consists of shipping companies with global commercial operations, represented by the International Chamber of shipping.

## **II. Analytical framework, methodology and limitations**

The analytical framework combines both quantitative and qualitative analysis of seafarer compensation claims. Documents are available online, and are in the public domain, from a variety of private websites and government agencies including the Department of Migrant Workers (hereinafter DMW), and the Philippine Supreme Court e-library webpage which posts all the decisions on seafarer compensation claims. Documents were collected and the seafarer cases were organized and encoded into a spreadsheet. The encoded data provides the quantitative, statistical tables in the sections analyzing Philippine seafarer claims. Fortunately, Philippine government rules and regulations on seafarers, including compensation claims are now posted online. Published books and articles of varying quality in terms of method and findings support the analysis.

**Figure 1.1 Analytical framework for Philippine seafarer disability claims**



Source: Created by the author

The analytical framework used to analyze seafarer disability compensation outcomes as a human factor is provided in *Figure 1.1*. The key human factor outcome is the final decision, whether in favor of the seafarer or crewing shipping employer, the amount of the monetary award for disability compensation, and the number of years and months in litigation. Shipping industry factors such as company management culture, power distance between officers and ratings, and investments on health and safety training matter a lot in reducing or eliminating seafarer disability risks. Individual seafarer factors are also significant in terms of age, years of experience, education and training, which determine risks and vulnerabilities. Interventions in the seafarer dispute settlement process may however determine the outcome of disability claims, such as access to quality legal services, and the integrity of the arbitration or court processes and appeals.

The primary data source for this paper are the decisions on seafarer cases downloaded from the Philippine Supreme Court E-Library.<sup>6</sup> The labor cases were accessed using a search engine using keywords for "seafarer compensation," "seafarer employment cases," "seafarer labor disputes," "maritime crewing," "permanent disability," "total disability," "seafarer death claims," and the like. The search was limited from 2016 to 2023. The summary data were encoded into a Microsoft Excel template and converted into a statistical format.<sup>7</sup>

The summary data includes the case number, date when the labor dispute or compensation claim started, date when it was filed with the arbitrator, labor arbiter in the NLRC. Appeals by either seafarer and employer are then filed and processed with an assigned division of commissioners in the NLRC, then the CA. The final decision is with the SC. From the set of SC decisions on labor cases, seafarer cases were sorted and selected into a separate data file. Data validation and checking were done by removing typographical errors and ensuring no case duplication in the data. The spreadsheet of seafarer cases was transformed into a statistical format. The clean spreadsheet data file was then transferred for processing with the Statistical Package for the Social Sciences software to generate the descriptive statistics, frequency counts, crosstabulations, analysis of variations and correlations.

Due to time and resource constraints, the paper is limited to summary data of Philippine Supreme Court decisions on 174 seafarer cases from 2016 to 2023 on claims arising from accident, illness or death. The cut-off year 2016 was selected since it was the start of a new Philippine administration after the national elections, with a new set of labor officials. The President appoints a new secretary of the DoLE, and top officials of other labor agencies, the NLRC, the POEA and the Bureau of Working Conditions. The President also appointed a new administrator of the Maritime Industry Development Authority. The SC decisions on seafarer cases does not include the decisions of the CA, which could be appealed. There are also pending seafarer cases in the NLRC, the labor

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<sup>6</sup> The Philippine Supreme Court posts all decisions in its website. Decisions are written in the English language, and could be accessed through the SC e-Library portal accessed from July 1, 2022 to June 30, 2023 at <https://elibrary.judiciary.gov.ph/>

<sup>7</sup> The case analysis was part of an exercise in the graduate class guided by Professor M. Amante, the University of the Philippines Diliman – School of Labor and Industrial Relations. The raw data file is unpublished and is available in spreadsheet format for n=174 seafarer cases from January 2016 to March 2023, cut off for decisions that were posted.



arbiters, as well as the voluntary arbitrators with the National Mediation and Conciliation Commission (hereinafter NCMB).

### **III. Philippine laws, policies and procedures on seafarer compensation claims**

The previous section provided the analytical framework, methodology and the nature of the data from the SC decisions on Philippine seafarer compensation claims. Both qualitative and quantitative factors must be taken into account to explain how these disability claims arise. Interventions may change the human factor outcomes that are important and critical to ensure safe and efficient shipping. The outcomes of the procedure for litigating compensation claims may be in favor of either the seafarer or the crewing and shipping employer. This section presents the laws, policies and procedures which explains the steps involved in resolving seafarer compensation claims. A concise summary of this procedure is outlined. Compulsory arbitration may take years due to the web of laws, rules as well as jurisprudence in seafarer disability compensation claims.

#### **A. Philippine laws and policies on seafarer compensation**

A variety of laws provide for compensation claims in cases of industrial accidents resulting in physical injury or death. Current laws include the Labor Code of the Philippines such as the Presidential Decree 442 (hereinafter PD 442), the Social Security Act of 1997, and the Workmen's Compensation Act which is the Commonwealth Act amended Workmen's Compensation Act of 1964. The republic Act No.4119 by Presidential Decree 626, 1976, Workmen's Compensation Act, Commonwealth Act No.3428 enacted on December 10, 1927, are also related. The POEA Standard Employment Contract (hereinafter POEA SEC) for Seafarers On-Board Ocean-Going Ships, were mandated by the Migrant Workers Act of 1995, the Republic Act 8042, is another remarkable law to be added.

The law governing the entitlement of a seafarer to disability compensation benefits consists of an interplay between the Labor Code, the Amended Rules on Employee Compensation (hereinafter AREC), and the POEA SEC. Philippine laws and policies on the protection of seafarers are intertwined with the history and legislation to promote overseas employment as originally intended in the Philippine Labor Code of

1974 and the law which provided for amendments for the protection of migrant workers, later known as OFWs.<sup>8</sup>

In 2015, the SC clarified the guidelines<sup>9</sup> in the issuance of a final and definite medical assessment on the seafarer's disability by the company-designated physician. The SC required that 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. 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.

The company-designated physician may fail to give an assessment within 120 days, with sufficient justification, including the need for further medical tests or treatment. It is also possible that the seafarer may no longer cooperate due to antagonistic relations with the company. In such cases, 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. Finally, if the company-designated physician still fails to give a medical assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In another case in 2019,<sup>10</sup> the SC upheld the 120 or the extended 240-day rule, counted "from the time the seafarer reported to [the company-designated physician]." Subsequent seafarer disability cases applied this rule, starting from the date of the seafarer's repatriation for medical treatment. This is true even in cases where the date of repatriation of the seafarer does not coincide with the date of his first consultation with the company-designated physician. A "definite final medical assessment" justifies the extended 240-day period.

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<sup>8</sup> Teresita Castillon Lora (2011), *Philippine Laws on Overseas Seafarers*, Manila: Rex Book Store.

<sup>9</sup> Philippine Supreme Court, G.R. No. 211882, July 29, 2015 - Elburg Ship Management et. al.

Philippines versus Ernesto S. Quiogue Jr. Accessed November 5, 2023 at <https://chanrobles.com/cralaw/2015julydecisions.php?id=574>

<sup>10</sup> Philippine Supreme Court, G.R. No. 220904, September 25, 2019, Jebsens Maritime Inc. and Hapag-Lloyd Aktien-gesellschaft vs. Ruperto Pasamba November 7, 2023 at [https://lawphil.net/judjuris/juri2019/sep2019/gr\\_220904\\_2019.html](https://lawphil.net/judjuris/juri2019/sep2019/gr_220904_2019.html)

The AREC<sup>11</sup> provide that the seafarer is declared to be on temporary total disability during the 120-day period when the seafarer is unable to work. However, a temporary total disability lasting continuously for more than 120 days [sic], except as otherwise provided in the Rules, is considered as a total and permanent disability.

The exception referred to above pertains to a situation when the sickness "still requires medical attendance beyond "120 days but not to exceed 240 days." In such event, the temporary total disability period is extended up to a maximum of 240 days. For the company-designated physician to avail of the extended 240-day period, there must be a sufficient justification. The seafarer for example may need further treatment and confinement, which would require additional medical tests to confirm the effect of such treatment. These additional medical treatment and tests must be done within 120 days but should not exceed 240 days. If not, the seafarer's disability shall be conclusively presumed to be permanent and total.

Compliance with the 120/240-day periods is essential because the expiration of the period without the company-designated physician having issued a final and definite medical assessment transforms the seafarer's temporary total disability into one of total and permanent by operation of law. Stated differently, the opinions of the company-designated and the independent physicians are rendered irrelevant because the seafarer is already conclusively presumed to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto. Moreover, the referral by the parties to a third-party doctor only becomes mandatory when there is a valid and timely assessment made by the company-designated physician.

DMW SEC concerns the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels." Seafarer employment standards were strengthened as a result of the Migrants Protection Law of 1995.

Section 29 of the DMW SEC requires the following process for seafarer employment: (1) the minimum terms and conditions of employment of Filipino seafarers on-board ocean-going ships; (2) both the crewing agent and shipping company, upon agreement of the seafarer may improve the terms and conditions of employment; these improvements must be attached in the contract; (3) the crewing or manning agents must

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<sup>11</sup> Philippine Employees Compensation Commission (2014), Amended Rules on Employee Compensation at [https://ecc.gov.ph/wp-content/uploads/2015/09/Booklet\\_Amended\\_Rules\\_on\\_EC\\_2014.pdf](https://ecc.gov.ph/wp-content/uploads/2015/09/Booklet_Amended_Rules_on_EC_2014.pdf) accessed on November 7, 2023.

submit the full text of the seafarer's employment contract, for approval and processing; (4) crewing and manning agents must provide a copy of the amended terms and conditions of employment to their principal shipping company employers; (5) a copy of the employment contract must be given to the seafarer before departure, for random checking at airports; and (6) in their pre-departure orientation seminar providers must include changes or amendments in the terms and conditions of employment.

Section 32-A of the DMW SEC lists some 21 illnesses which are considered work-related provided the conditions therein are met. Some of the 21 illnesses listed are deafness, cardio-vascular diseases, peptic ulcer, hernia, pneumonia, viral hepatitis, pulmonary tuberculosis, essential hypertension, etc.

## **B. Procedures on compensation claims**

The process of seafarer compensation claims could be lengthy and arduous, if not stressful for both employer and the worker. Philippine seafarer compensation claims on partial or total disability go through a process of voluntary or compulsory arbitration. In case the seafarer belongs to a union, a collective bargaining agreement (hereinafter CBA) provides for an administrative process for the settlement of the dispute with the crewing agent, representing the principal shipping company. Arbitration is voluntary when it can be set in motion only with the agreement of the parties to the dispute. On the other hand, compulsory arbitration is triggered when there is no agreement or settlement between the seafarer and the crewing or shipping employer. Seafarer claims are filed with the labor arbiter, the NCMB, the Department of Migrant Workers, Office of Sea-based Concerns (DMW-SBC), formerly the POEA, the DoLE or its regional offices, through an online Single-Entry Approach (hereinafter SENA) portal.

*Figure 1.2* in the next page presents a brief outline of the procedure on seafarer compensation claims, as a labor dispute.

Seafarers working for companies for a long period of time are normally saddled with heavy responsibilities relative to the navigation of the vessel, ship safety, and management of emergencies. A seafarer can be subjected to physical and mental stress and strain; these responsibilities cause heavy burdens on those working onboard. Seafarers may have been exposed to a variety of working conditions, each with different types of shipping hazards. Years of shipboard work experience and exposure to a variety of cargo that emit a different type of chemicals, fumes, and gases, as well as extreme

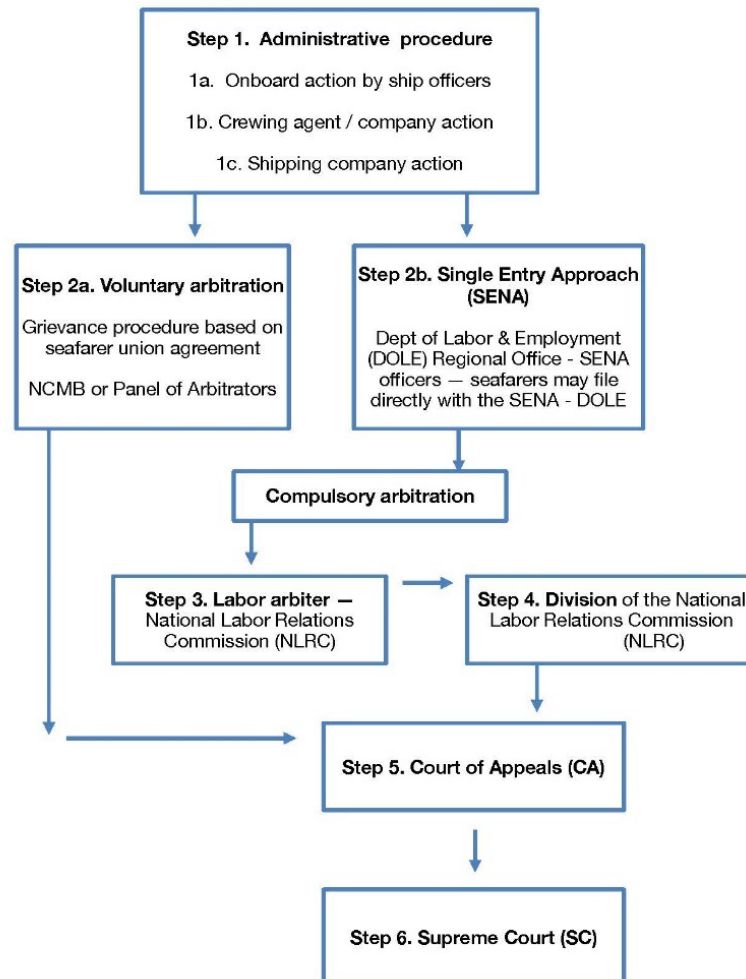
temperatures in effect contribute to the development of a seafarer's health condition on board the vessel.

While on board the vessel, a seafarer may be confronted with situations that will involve untimely repatriation, either he was dismissed or that he suffered from an injury or illness, or worse if the seafarer has an accident on board resulting in death. There are several steps involved in the resolution of seafarer labor disputes, including compensation claims. Disputes on the nature and cause of seafarer accidents, and illness on board are recorded in the ship's logbook and must be addressed by the immediate superior, the first officer including the chief officer, the chief engineer, or the master. If the dispute is unresolved onboard, the seafarer compensation claims must be addressed by the shipping company, through the crewing agent, based on the employment contract.

Internal resolution on board between seafarers and ship officer is the ideal, and best frontline action, to minimize the risks of a full-blown legal dispute. Shipping company guidelines usually provide for internal labor dispute, to enable the seafarer to consult and discuss with their supervisor, chief officer, or master or captain while on board. If there is conflicting interpretation or unsatisfactory action, the grievance or dispute is not settled on board between the seafarer and the chief officer or master. The problem may be settled by the crewing or shipping company based on the employer's guidelines and procedures on disputes settlement. Shipboard officers in practice defer to the provisions of the seafarer employment contract based on crewing agent and shipping company policy. The interest of the crewing or shipping employer is to minimize compensation claims, while the seafarer seeks to maximize the value of benefit pay-outs.

In the event that a seafarer feels that his right to fair and equitable compensation is violated, he might resort to legal action before the NLRC or the NCMB to assert his monetary claims for (a) termination disputes or illegal dismissal cases; (b) money claims arising out of employer-employee relationship or by virtue of any law or contract, involving Filipino workers for overseas employment, including nonpayment or underpayment of wages, claims for disability or death benefits, actual, moral, exemplary and other forms of damages and other cases as may be provided by law.

**Figure 1.2      Brief outline of the procedure for Philippine seafarer disability claims**



Source: Created by the author

If unsettled through administrative procedure, voluntary arbitration is the next step. In case of the dispute going through the grievance procedure, there are three possible routes: (1) voluntary arbitration between the seafarer, through the grievance procedure of the seafarer union's grievance procedure; (2) voluntary arbitration through the DoLE SENA; and (3) voluntary arbitration with the NCMB-DoLE, who assigns a voluntary arbitrator, or a panel depending on the complexity scope or coverage, as well as the amount of the claim. These procedures are provided in the DMW SEC, as mandated by the Philippine Labor Code on the settlement of labor disputes. Voluntary arbitration is required by the grievance procedures in the CBAs between seafarer unions. Employers may have CBAs with the Philippine seafarer unions with most of them being a member of either the Associated Marine Officers and Seafarers Union of the Philippines (hereinafter AMOSUP), the Associated Philippine Seafarer's Union called the APSU-ALU-TUCP and Japan Seafarers Union called the JSU-ITF.

Voluntary arbitration is mandated by the grievance procedure in seafarer union collective contracts with shipping employers. Disagreements are directly appealed to the CA, with final decisions by Philippine Supreme Court. Compulsory arbitration in contrast starts with the labor arbiters as a first step and appeals go to a division of the NLRC. Further disagreements go to the CA, and finally, the SC.<sup>12</sup>

In 2023, the Philippine Supreme Court updated the guidelines<sup>13</sup> to resolve a seafarer's claim for disability benefits in case of contradictory findings from the employer-designated physician and the seafarer's physician of choice, and when the examination by a third physician is sought by the seafarer but is denied or not acted upon by the employer. A seafarer who received contrary medical findings from his or her physician of choice must "within a reasonable period," request the employer a medical examination by a third physician of their mutual choice. The request must contain the medical report of the seafarer's physician of choice to be considered. If a valid request is denied, a seafarer can file a complaint before the NLRC.

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<sup>12</sup> Dennis Gorecho "Flow of seafarer labor cases". SVBB Law Office accessed on May 12, 2023 at <https://www.sapalovelez.com/2017/02/06/flow-of-seafarers-labor-cases/>

<sup>13</sup> Philippine Supreme Court Public Information Office, "SC Sets Guidelines in Cases Where Seafarer Claiming Disability Benefits Requests Third Doctor Referral" "accessed on May 6, 2023 at <https://sc.judiciary.gov.ph/sc-sets-guidelines-in-cases-where-seafarer-claiming-disability-benefits-requests-third-doctor-referral/>

Once the complaint is with the first step in the NLRC, the labor arbiter would direct both parties, employer and the seafarer, to secure an opinion based on the medical findings of a third physician. The failure of the parties to get a third physician's opinion would make the findings of the employer-designated physician final and binding "unless the same is found to be biased, i.e., lacking in scientific basis or unsupported by the medical records of the seafarer." The SC guidelines emphasize that "while labor rules must be applied fairly, reasonably, and liberally in favor of the seafarers, they cannot be taken to sanction award of disability benefits anchored on flimsy evidence."

If the medical findings are biased, the issue would have to be resolved by the NLRC and thereafter by the CA, and a final decision by the SC. If both the employer and the seafarer were able to secure a third physician, the medical findings of the third physician "is considered final and binding." The seafarer's request for the services of a third physician must be acted upon by the employer within 10 days from receipt. If the request is granted, the third physician must be secured in 15 days and the findings must be submitted in 30 days. Conflicting medical findings are examined based on their merits and the totality of evidence. If there is no evidence to compensation, monetary aid and assistance maybe provided by the employer. If either the seafarer or the employer appeals the decision of the labor arbiter, the NLRC appoints a panel, "division" of commissioners to examine the merits, evidence and arguments. Details on legal procedure are critical in deciding the outcomes of a seafarer claim. The seafarer or the employer may appeal the decision of the NLRC to the CA. The Philippine Supreme Court may consider the appeal based on a petition for review, based on questions of law.

In the NCMB, there is no appeal stage. Instead, the unsuccessful party who wishes to contest the decision must file a Motion for Reconsideration. When the decision on the Motion for Reconsideration is delivered, the unsuccessful party can elevate the claim to the CA. This is done via a Petition for Certiorari from the NLRC or a Petition for Review from the NCMB. The denial of a Motion for Reconsideration also means that any award of damages to a seafarer becomes "final and executory" within 10 days from the receipt of the decision unless the CA issues a Temporary Restraining Order (hereinafter TRO); final and executory means that the seafarer can file a Motion seeking the issuance of a Writ of Execution, which, if granted, will entitle him to payment of the award of damages.

When the decision on the Petition is issued, the unsuccessful party has a final chance of redress by applying to the SC. The decision rendered here is final, and no further appeal is possible. If the decision in relation to the Petition for Certiorari/Review or from the SC favors the shipowner, they are entitled to restitution of the award



previously paid out, once the case reaches finality and the corresponding Entry of Judgment has been issued. The following tables provide the details on the seafarer compensation claims for disability and death with respect to cases decided by the SC, nature of case, whether decisions were in favor of the seafarer or the employer in the CA, the NLRC and the arbiter, including length of litigation and number of awards.

Decisions on seafarers constitute about one third of SC decisions on labor disputes. On average, compensation claims take about 7.8 years to a final SC decision. Seafarers have a 62 percent chance of having a favorable decision from the SC, 49 percent chance with the CA, 45 percent chance with the NLRC, and 68 percent chance with the labor arbiter. Seafarers’ disability compensation is about US\$66,866 on average, with a minimum awarded in the amount of US\$5,225 and a maximum of US\$250,000.

#### **IV. Philippine Supreme Court decisions on seafarer compensation claims for disability and death**

The previous section provided the analytical framework and the methodology in analyzing SC decisions on Philippine seafarer compensation claims. It is also important to understand the context of Philippine laws, policies and procedures in processing and resolving compensation claims, from onboard action after incidents of injury or illness, to voluntary and compulsory arbitration. This section presents the statistical tables on SC decisions on seafarer compensation claims from 2016 to 2023. The data includes the types of seafarer compensation claims, variations in the resolution from the labor arbiter, up to the final decision and resolution. The final tables present the length of the process in terms of the number of years that each step takes to resolve the claim up to appeals and their final resolution in the SC. Seafarer claims with clear decisions on monetary awards for each type of disability present important variations that could be explained by the nature and process, as well as the complexity involving in proving each type of seafarer claim.

This section presents the statistical tables generated from an analysis of seafarer cases based on SC decisions from 2016 to 2023. The source of the raw data are the decisions posted in the e-library of the SC website. There were 174 seafarers’ cases collected and analyzed. The SC decisions represent the apex or final point for disposition of the seafarer claims. The key finding from these tables is that Philippine seafarers have a very high chance, 67.8 percent probability of being awarded monetary compensation benefits by the labor arbiters. This chance declines significantly upon reaching the NLRC, seafarers have a lower 44.8 percent chance of being awarded their claims. In the CA seafarers have a slightly higher, about 48.9 percent, chance of being awarded their claims.

In the SC, the chance goes significantly higher. Seafarers have a 62.1 percent chance of being awarded their compensation claims.

**Table 1.1 Philippine seafarer cases by type of complaint**

	Frequency	Percent (%)
Permanent and total disability	104	59.8
Permanent disability	22	12.6
Death benefits	13	7.5
Partial disability benefit	13	7.5
Total disability	7	4.0
Other cases	159	8.6
<b>Total</b>	<b>174</b>	<b>100.0</b>
Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <a href="https://elibrary.judiciary.gov.ph/">https://elibrary.judiciary.gov.ph/</a>		

Table 1.1 shows that the dominant type of labor dispute decided by the SC concerns disability compensation claims. Permanent disability prevents an individual from being able to work again on a full-time basis for the rest of their life. Partial disability means that the worker may be able to work on a limited basis, but not 100 percent of their capacity compared to their work before the disability. Total permanent disability means that the individual will never be able to work again. Philippine laws on compensation for accidents and deaths related to work have their origins in the Commonwealth period,<sup>14</sup>

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<sup>14</sup> Supreme Court e-Library, Commonwealth Act No. 3428, enacted on December 10, 1927. “An Act Prescribing the Compensation to be Received by Employees for Personal Injuries, Death or Illness Contracted in the Performance of their Duties” accessed November 15, 2023, at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/28/54268>

amended by postwar laws on disability compensation.<sup>15</sup> For equity, Section 20-A of the ECC simply applies the same rules to seafarers.

Note that “permanent and total disability” is a separate claim from “total” or “permanent” disability which may involve variations of partial degrees of illnesses. While there were 104 cases (59.8 percent) of claims involving total and permanent disability, there were separate 22 cases (12.6 percent) involving permanent disability alone. There were 13 death benefit claims (7.5 percent); and 7 claims for total disability. There were also 7 claims for permanent disability (4 percent).

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<sup>15</sup> Supreme Court e-Library, Republic Act No. 4119, enacted June 20, 1964 “An Act to Further Amend Certain Sections of Act Numbered Thirty-Four Hundred and Twenty-Eight, Otherwise Known as the Workmen’s Compensation Act, As Amended” accessed on November 15, 2023 at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/26143>

**Table 1.2 Philippine seafarer cases decided by the Supreme Court (2016 to 2023)**

	Non-seafarer	Seafarer	Total
2016	45	14	59
	8.6%	2.7%	11.3%
2017	36	21	57
	6.9%	4.0%	10.9%
2018	59	40	99
	11.3%	7.6%	18.9%
2019	62	29	91
	11.8%	5.5%	17.4%
2020	63	28	91
	12.0%	5.3%	17.4%
2021	51	31	82
	9.7%	5.9%	15.6%
2022	29	10	39
	5.5%	1.9%	7.4%
2023	5	1	6
	1.0%	0.2%	1.1%
Total	350	174	524
	66.8%	33.2%	100.0%
Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <a href="https://elibrary.judiciary.gov.ph/">https://elibrary.judiciary.gov.ph/</a>			

Table 1.2 shows that seafarer cases constitute about 33 percent of the total labor disputes decided by the SC between 2016 to 2023. There were more seafarer cases in 2018 and 2019, compared to the other years. Seafarer cases seem to pre-occupy a significant attention of the SC, constituting 33.2 percent out of a total of 524 cases, both seafarers and non-seafarers combined that were analyzed for the period 2016 to 2023.

**Table 1.3      Types of seafarers and whether collective or individual complaint**

	Missing data	Collective non-union	Collective union	Individual	Total
	0	0	0	1	1
	0.0%	0.0%	0.0%	0.6%	0.6%
Constructive dismissal	0	0	0	1	1
	0.0%	0.0%	0.0%	0.6%	0.6%
Death benefits	1	1	0	11	13
	0.6%	0.6%	0.0%	6.3%	7.5%
Disability benefit	1	0	0	12	13
	0.6%	0.0%	0.0%	6.9%	7.5%
Employment contract violation	0	0	0	1	1
	0.0%	0.0%	0.0%	0.6%	0.6%
Illegal dismissal	0	0	0	9	9
	0.0%	0.0%	0.0%	5.2%	5.2%
Permanent and total disability	13	0	1	90	104
	7.5%	0.0%	0.6%	51.7%	59.8%
Permanent disability	1	0	0	21	22
	0.6%	0.0%	0.0%	12.1%	12.6%
Total disability	0	0	0	7	7
	0.0%	0.0%	0.0%	4.0%	4.0%
Underpayment of wages	0	0	0	3	3
	0.0%	0.0%	0.0%	1.7%	1.7%
Total	16	1	1	156	174
	9.2%	0.6%	0.6%	89.7%	100.0%

Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <https://elibrary.judiciary.gov.ph/>

The highest number of SC decisions on seafarer cases was recorded in 2018 (n=40 cases), and the second highest in 2021 (n=31 cases). There were only 10 cases in 2022. It is possible that there were also many cases in 2023, but not to the extent that these cases

were decided in previous years. There seems to be a declining trend in the number of seafarer cases. With so many precedents in SC decisions, it remains to be seen whether the number of seafarer disability claims will be mitigated in 2024, and in the future. The SC decisions are mostly repetitive in terms of principle and should guide the resolution in both the arbiter level, and their appeals with the NLRC and the CA. It is possible that there are other seafarer cases which were not yet included in the current inventory. In future research it would be relevant to determine if this high percentage of seafarer cases is also true in other venues for labor disputes settlement — the labor arbiters, NLRC, and the CA.

Table 1.3 shows that the bulk of the seafarer cases are individual non-collective actions. Some seafarers are members of global unions, with Philippine affiliates. Even the collective bargaining agreement provides for administrative and voluntary procedures in disputes settlement, either seafarers or the crewing and shipping employer choose to proceed to compulsory arbitration when significant monetary awards are involved. This human factor could be the most important explanation on why most seafarers choose for their individual claims to proceed to the tedious and stressful litigation.

It should be noted that the data shows that there are almost no collective union-related seafarer compensation claims. Individual seafarers may belong to organizations affiliated with global unions, with a collective bargaining agreement that provides for a grievance machinery. These seafarers go through voluntary arbitration, but decisions could be appealed to the CA, for final decision by the SC. Table 1.3 further confirms that the most common causes of seafarer compensation claims are related to disability. Physical work conditions onboard are the proximate factors of disability due injuries and trauma, musculoskeletal disorders, gastrointestinal problems, and genitourinary illnesses, leading to malfunctioning or failure of organ systems.

The SC seafarer decisions validate the earlier findings<sup>16</sup> based on retrospective analysis of records from January 2010 to December 2014 of medical repatriations of Filipino seafarers from the claims and legal departments of different manning agencies in Manila, Philippines. Research to profile their health issues may help optimize current protocols, implementing health surveillance programs, and formulating health policies

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<sup>16</sup> Antonio Roberto M Abaya 1, Saren Roldan, Jose Carlo E Ongchangco, Regina M Ronquillo-Sarmiento, Raymond Francis R Sarmiento, "Repatriation rates in Filipino seafarers: a five-year study of 6,759 cases" US NIH National Library of Medicine <https://pubmed.ncbi.nlm.nih.gov/26726888/>  
Accessed November 7, 2023

for seafaring personnel. In addition, our study results may help physicians performing pre-employment medical examinations to identify and manage conditions that are at a high risk of medical repatriation.

**Table 1.4 Labor arbiter decisions in favor of seafarer or employer**

	Missing data	Seafarer	Employer	Partial	Total
	0	0	1	0	1
	0.0%	0.0%	0.6%	0.0%	0.6%
Constructive dismissal	0	1	0	0	1
	0.0%	0.6%	0.0%	0.0%	0.6%
Death benefits	0	5	8	0	13
	0.0%	2.9%	4.6%	0.0%	7.5%
Disability benefit	0	8	5	0	13
	0.0%	4.6%	2.9%	0.0%	7.5%
Employment contract violation	0	1	0	0	1
	0.0%	0.6%	0.0%	0.0%	0.6%
Illegal dismissal	0	3	6	0	9
	0.0%	1.7%	3.4%	0.0%	5.2%
Permanent and total disability	2	76	25	1	104
	1.1%	43.7%	14.4%	0.6%	59.8%
Permanent disability	0	16	6	0	22
	0.0%	9.2%	3.4%	0.0%	12.6%
Total disability	0	6	1	0	7
	0.0%	3.4%	0.6%	0.0%	4.0%
Underpayment of wages	0	2	1	0	3
	0.0%	1.1%	0.6%	0.0%	1.7%
Total	2	118	53	1	174
	1.1%	67.8%	30.5%	0.6%	100.0%
Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <a href="https://elibrary.judiciary.gov.ph/">https://elibrary.judiciary.gov.ph/</a>					

Table 1.4 shows that labor arbiters decide mostly (67.8 percent) in favor of seafarer claims. In a significant contrast, crewing agents and shipping employers have a significantly lower chance (30.5 percent) of these cases being decided in their favor. Note that among the compensation claims, labor arbiters most likely will decide in favor of the



seafarer in total and permanent disability cases. In fact, the SC has repeatedly emphasized that questions of fact should be decided in the arbiter level, and by the NLRC with respect to seafarer compensation claims. Note that in 62.1 percent of the cases, the SC favored seafarers with compensation awards while the arbiters also decided 67.8 percent of these cases in favor of the seafarers. In the death benefit cases, the arbiters however decided mostly in favor of the employers. Documentation and evidence is most stringent in death benefit claims, and it is usually the widow or the children who pursue these claims, entrusting the lawyer with the required paperwork. Variations in the other types of compensation claims seem to be insignificant.

What is the basis of the disability compensation claims? The Philippines is a signatory to various ILO conventions on social protection and health insurance, including the MLC 2006. Laws on employee compensation were first promulgated in 1936, when the Philippines was part of the US commonwealth. Subsequent laws and amendments produced a well-developed system of social protection in the country which benefited the workers. The mandate of the Employees' Compensation Commission (hereinafter ECC) is based on the PD442 particularly the implementation of Title II, Book IV on employees' compensation and the state insurance fund. The PLC provides and defines coverage and liability, with respect to medical, health, disability and death benefits of workers. In this regard, the AREC provides a comprehensive list of occupational and work-related diseases, as a basis for work-related injury, disability, and death (Annex A).<sup>17</sup>

Based on Annex A of the AREC, an "occupational disease" and the disability or death of a worker or seafarer, to be entitled to compensation, all of the following conditions must be satisfied: (1) the employee's work and/or the working conditions must involve risk/s that caused the development of the illness; (2) the disease was contracted as a result of the employee's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; (4) there was no deliberate act on the part of the employee to disregard the safety measures or ignore established warning or precaution.

The AREC also provides the definitions for various types of disability — partial, total, and permanent (Section 2). Temporary disability is a result of the injury or sickness of the employee, who is unable to perform any gainful occupation for a continuous period

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<sup>17</sup> Philippine Employees' Compensation Commission (2014), Amended Rules on Employee Compensation accessed on November 7, 2023 at [https://ecc.gov.ph/wp-content/uploads/2015/09/Booklet\\_Amended\\_Rules\\_on\\_EC\\_2014.pdf](https://ecc.gov.ph/wp-content/uploads/2015/09/Booklet_Amended_Rules_on_EC_2014.pdf)

not exceeding 120 days. In contrast, total and permanent disability is a result of injury or sickness that makes an employee unable to perform any gainful occupation for a continuous period exceeding 120 days. Partial and permanent disability on the other hand is due to injury or sickness that makes the seafarer suffer a partial but permanent loss of any body part.

**Table 1.5 NLRC decision in favor of seafarer or employer**

	Missing data	Seafarer	Employer	Total
	0	1	0	1
	0.0%	0.6%	0.0%	0.6%
Constructive dismissal	0	0	1	1
	0.0%	0.0%	0.6%	0.6%
Death benefits	1	6	6	13
	0.6%	3.4%	3.4%	7.5%
Disability benefit	1	4	7	13
	0.6%	2.3%	4.0%	7.5%
Employment contract violation	0	0	1	1
	0.0%	0.0%	0.6%	0.6%
Illegal dismissal	0	4	5	9
	0.0%	2.3%	2.9%	5.2%
Permanent and total disability	6	46	51	104
	3.4%	26.4%	29.3%	59.8%
Permanent disability	0	13	9	22
	0.0%	7.5%	5.2%	12.6%
Total disability	0	3	4	7
	0.0%	1.7%	2.3%	4.0%
Underpayment of wages	0	1	2	3
	0.0%	0.6%	1.1%	1.7%
Total	8	78	88	174
	4.6%	44.8%	49.4%	100.0%
Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 <a href="https://elibrary.judiciary.gov.ph/">https://elibrary.judiciary.gov.ph/</a>				

Table 1.5 shows in contrast that the NLRC decides mostly in favor of crewing agents and their principals, the shipping employers, compared to the decisions of the labor arbiters. Seafarers have a 44.8 percent chance of being awarded their claims is

significantly lower when appealed to the NLRC. Crewing agents and shipping employers have a slightly even chance, 49.4 percent of the cases being decided in their favor.

The NLRC however decides mostly in favor of the seafarers in cases of permanent disability (n=13 cases, 7.5 percent). In death benefit cases, the NLRC decided evenly between the seafarer and the crewing and shipping employer. Partial disability cases however are decided mostly in favor of the crewing and shipping company. Again, there are very few observations on the other types of seafarer compensation claims decided by the NLRC.

The NLRC is a quasi-judicial agency, enjoying autonomy but is supervised by the Secretary of the DoLE which acts as the country's labor court. It has its origins in the Court of Industrial Relations, established in 1936 when the Philippines was a US commonwealth. In the PD442 which established the Philippine Labor Code decided to have a "quasi" or semi-judicial procedure in resolving labor disputes. The labor arbiters are part of the NLRC. As the first step in compulsory arbitration, the labor arbiter is the key officer who receives the documents, examines them and given the facts, data and documents presented, makes an administrative decision either in favor of the seafarer or the employer. There are some cases where the labor arbiter's decision could stand, and there are no appeals to the next higher level. The most critical step however is the appeal of the losing party to the NLRC. The case is assigned to a division who may sustain the labor arbiter's decision, reverse, amend, or partially grant the seafarer's compensation claims. Motions for reconsideration, postponements, or amendments of the claims are allowed. This is the main reason for the delay in the resolution of seafarer claims and other labor cases. There is always an incentive to file questions of jurisdiction, scope or legal interpretation into the next higher level.

**Table 1.6 Court of Appeals decisions in favor of seafarer or employer**

	Seafarer	Employer	Total
	1	0	1
	0.6%	0.0%	0.6%
Constructive dismissal	0	1	1
	0.0%	0.6%	0.6%
Death benefits	8	5	13
	4.6%	2.9%	7.5%
Disability benefit	7	5	13
	4.0%	2.9%	7.5%
Employment contract violation	1	0	1
	0.6%	0.0%	0.6%
Illegal dismissal	3	6	9
	1.7%	3.4%	5.2%
Permanent and total disability	50	53	104
	28.7%	30.5%	59.8%
Permanent disability	9	13	22
	5.2%	7.5%	12.6%
Total disability	6	1	7
	3.4%	0.6%	4.0%
Underpayment of wages	0	3	3
	0.0%	1.7%	1.7%
Total	85	89	174
	48.9%	51.0%	100.0%
Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <a href="https://elibrary.judiciary.gov.ph/">https://elibrary.judiciary.gov.ph/</a>			

Table 1.6 shows also that in the CA, employers have a slightly higher chance of 51 percent of being favored in the litigation. Seafarers have a slightly lower chance of 48.9 percent of winning their claims with the CA. The CA has a higher probability of favoring employers rather than seafarers in their review of NLRC decisions. Permanent

disability claims have the highest chance of being decided in favor of crewing and shipping employers. Claims for death benefits however have a higher chance of being decided in favor of the seafarer.

The CA consists of one presiding justice and sixty-eight associate justices. The Philippine Constitution provides that the CA shall "reviews not only the decisions and orders of the Regional Trial Courts awards, judgments, final orders or resolutions of administrative agencies exercising quasi-judicial functions. The jurisdiction of the CA includes the appeals on decisions of the NLRC. While the NLRC is an administrative agency with quasi-judicial functions, the CA is bound by the rules of court, including the requirements of evidence.

Decisions of the CA are done by a division composed of three justices. Many of the SC justices who are assigned to write decisions on seafarers were promoted from the CA. SC justices often reverse the decision of their lower CA colleagues. Either the losing seafarer, or the crewing and shipping employer may appeals decisions of the NLRC, as well as the NCMB. Motions for postponements, amendments and other legal remedies are possible, which could be granted or denied by the CA panel. The CA website does not provide information on the number of cases still pending for resolution, and for how many years the cases were undecided. There were media reports of irregularities such as "temporary restraining orders" for sale to the highest bidder, to prevent a monetary award to a worker or a seafarer from being implemented. In the past, a CA justice was dismissed by the SC for corruption.<sup>18</sup>

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<sup>18</sup> Philippine Supreme Court e-Library, Complaint against Justice Elvi John S. Asuncion of the Court of Appeals, A.M. NO. 06-44-CA-J, promulgated March 20, 2007, accessed January 20, 2024 at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/41550>

**Table 1.7 Supreme Court decisions in favor of seafarer or employer**

	Missing data	Seafarer	Employer	Total
Constructive dismissal	0	1	0	1
	0.0%	0.6%	0.0%	0.6%
Death benefits	0	6	7	13
	0.0%	3.4%	4.0%	7.5%
Disability benefit	0	7	6	13
	0.0%	4.0%	3.4%	7.5%
Employment contract violation	0	1	0	1
	0.0%	0.6%	0.0%	0.6%
Illegal dismissal	0	7	2	9
	0.0%	4.0%	1.1%	5.2%
Permanent and total disability	5	67	32	104
	2.9%	38.5%	18.4%	59.8%
Permanent disability	0	12	10	22
	0.0%	6.9%	5.7%	12.6%
Total disability	0	5	2	7
	0.0%	2.9%	1.1%	4.0%
Underpayment of wages	0	2	1	3
	0.0%	1.1%	0.6%	1.7%
Total	6	108	60	174
	3.4%	62.1%	34.5%	100.0%

Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <https://elibrary.judiciary.gov.ph/>

Table 1.7 shows the highlight of the disposition of the seafarer compensation claims. The SC decision is mostly in favor of seafarers, a higher 62.1 percent chance. Employers have a smaller 34.5 percent chance of a favorable decision. Note that permanent and total disability cases are mostly decided in favor of the seafarers, compared to the other compensation claims. Table 1.7 shows further that SC decisions

are about even between the seafarer and the company employer with respect to claims for death benefit, and in other types of partial, or total disability.

The seafarer decisions by the SC also validate and confirm jurisprudence based on the 2010 POEA SEC, in addition to more favorable terms and conditions of employment provided in the collective bargaining agreements between seafarer unions. The CBAs provide for a grievance machinery and voluntary arbitration, with decisions that could be directly appealed to the CA and final review by the SC.

Most SC decisions on seafarer compensation claims recognize that 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. 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.

Why is 62.1 percent of the SC's decisions in favor of the seafarers? The explanation is in the Philippine Constitutional mandate, "The state shall afford protection to labor" (Article XIII, Section 3). The Philippine Labor Code (Article 3), and other labor laws as well as social legislation repeat the same declaration. The PLC (Article 4) declares that as a policy "all doubts shall be resolved in favor of labor". There is a relatively higher chance of the seafarer being favored in the final SC decision, in sharp contrast with a lower probability in the CA (48.9 percent), and the NLRC (45 percent). SC decisions however are more often aligned with the decisions of the labor arbiter whose decisions are 67.8 percent in favor of the seafarer.

## **V. Monetary awards for disability compensation of seafarers**

The previous section provided the framework, methodology and the data from the SC decisions on seafarer compensation claims from the inventory of cases from 2016 to 2023. These cases may not be exhaustive, but provides an indicator of the most probable trends with respect to the types of disability compensation claims, and the variations in the decisions of the labor arbiter, the NLRC, the CA and the SC.

This section focuses on the data on SC decisions which adds to the case law on the jurisprudence on seafarer compensation claims with respect to partial, total, and permanent disability. These decisions may be in favor of seafarers, who are awarded substantial compensation based on the employment contract, plus attorney's fees which is a significant 10 percent share of the total monetary award, plus interest until the award is fully paid. In many other cases, the decisions are against the seafarer for procedural or



technical reasons, such as the prescriptive period and deadlines to file claims and appeals, medical certifications by the company physician within 120 to 240 days, and seafarers’ lack of financial means to pay for a competent lawyer.

The funds from the seafarer compensation claims are paid from regular budgets of the shipping company. “Subsidiary liability” or joint responsibility for payment of claims is with the principal shipping company and their crewing agents who process the recruitment and employment of the seafarers. Funding is also provided by Protection and Indemnity (hereinafter P&I) Clubs. The P&I Club is a non-governmental, non-profitable mutual or cooperative association of marine insurance to members from the shipping business, the ship owners, operators, charterers and seafarers.<sup>19</sup>

#### **A. Employment contract provision for work-related injury and illness**

The DMW became a new government department in 2019, which absorbed what used to be the POEA. The DMW is now in the process of updating what used to be known as the POEA SEC. Pending the promulgation of a new DMW SEC and POEA SEC is still in effect as the benchmark for all Filipino seafarer’s employment on board international vessels. The seafarer is required by law to sign the POEA SEC prepared by the crewing agent and shipping employer.

The current version of the contract delineates between work and non-work-related provisions. The POEA SEC defines a work-related injury as an “injury arising out of and in the course of employment,” which does not require that a seafarer must suffer an injury while in actual performance of his or her duties. Section 2-A of the POEA SEC likewise provides that a seafarer’s contract of employment shall be effective from the date of arrival in the point of hire, and upon disembarkation when employment ends. Shipping companies are obliged to ensure that the ship is sea-worthy and safe for the seafarers. It is the obligation of the shipping company to take all measures to prevent an accident or injury to the crew. This requirement is provided in Section 1-A.4 of the POEA SEC and is consistent with the MLC 2006.

The Section 32 of the POEA SEC lists the “schedule of disability or impediment for injuries or diseases, including occupational diseases or illness contracted” on the job. Section 32-A has a “Table of Occupational Diseases.” In the view of the Pandiman

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<sup>19</sup> More information about Protection and Indemnity (P & I) Clubs is available here: American Club, Protection and Indemnity Insurance <https://www.american-club.com/page/protection-indemnity-insurance> accessed March 26, 2024

Philippines, this list of occupational diseases created problems, due to the lack of definition of a seafarer-related occupational disease. The P&I Club notes that Section 32-A is based on earlier Philippine laws such as Commonwealth Act No.3428 enacted in 1927 and subsequently amended by Republic Act No.4119, enacted in 1964 which amended the workmen's compensation act. These laws are in force and effect alongside the PD442 and the Philippine Social Security Law, Republic Act 1161, enacted in 1954," the Act to Create a Social Security System Providing Sickness, Unemployment Retirement, Disability and Death Benefits for Employees," and subsequent amendments.

According to a representative of the P&I group, the POEA contract "... is a very poorly written document" and Section 32-A "has no relevance to the marine environment."<sup>20</sup> This is a condescending view which indicates lack of appreciation of the Philippine Constitution, its guarantees to human rights, and its basic laws on labor to provide social protection to all workers, including seafarers. It should be recalled that the intention of the tripartite meetings in 1998 to 1999 was "to create an employment contract that ensures distinction between work and non-work-related diseases. The POEA SEC was formalized in 2010, with the full title "Standard Terms and Conditions Governing the Employment of Filipino Seafarers on-board Ocean-Going Ships." Crewing and shipping employers raise three concerns: "(1) there is no definition of "work related" diseases; (2) the list on Section 32-A has no relevance to the marine environment and was lifted from the ECC Table from the 1950s; (3) the last minute inclusion by lawyers of Section 20-B, Item 4 "those illnesses not listed in Section 32 are disputably presumed as work related" negates the list in Section 32-A, already considered inadequate. The

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<sup>20</sup> Statement of Captain Andrew Malpass, Pandiman Philippines, Protection & Indemnity P&I Issues Presentation notes Pandiman Philippines, Joint Manning Committee accessed on February 24, 2022 [https://mediafra.admiralcloud.com/customer\\_609/99421745-d1b4-48bd-bf3d-5a7632561423?response-content-disposition=inline%3B%20filename%3D%22Joint%20Manning%20Committee%2024th%20February%202022.pdf%22&Expires=1711368539&Key-Pair-Id=K3XAA2YI8CUDC&Signature=H9QfqxNeAEBuD8WvlsUjnSqPHiwLZ03UoSWpEDNreMPKvp3Mekl~xYoMgOZ60K50IaJqzg2A-ySLTBHcuixu~rvwBxVN7GgKDOW~v9IE4HYeQB9HF55a9mp~nIfi-EiqdBjDuPLjIk0ovBxZLySJgP4~0S97K9jzi8IyPydkG18VCE6MAAAij1d~~LCnHGmEQ~iPip~A8ke8dC11zHGrfn930JcFHIzUa0f8DsifO2Jlpzia6GBcOuSpe86xvrXi28gGt6gRl5KiUr09F58pVgogo~8TvIapiX3TidW0Ck0u6MiUjQO-QPtP35tqvhLAGI7HiIjthaydrJmMdGUxNA\\_\\_](https://mediafra.admiralcloud.com/customer_609/99421745-d1b4-48bd-bf3d-5a7632561423?response-content-disposition=inline%3B%20filename%3D%22Joint%20Manning%20Committee%2024th%20February%202022.pdf%22&Expires=1711368539&Key-Pair-Id=K3XAA2YI8CUDC&Signature=H9QfqxNeAEBuD8WvlsUjnSqPHiwLZ03UoSWpEDNreMPKvp3Mekl~xYoMgOZ60K50IaJqzg2A-ySLTBHcuixu~rvwBxVN7GgKDOW~v9IE4HYeQB9HF55a9mp~nIfi-EiqdBjDuPLjIk0ovBxZLySJgP4~0S97K9jzi8IyPydkG18VCE6MAAAij1d~~LCnHGmEQ~iPip~A8ke8dC11zHGrfn930JcFHIzUa0f8DsifO2Jlpzia6GBcOuSpe86xvrXi28gGt6gRl5KiUr09F58pVgogo~8TvIapiX3TidW0Ck0u6MiUjQO-QPtP35tqvhLAGI7HiIjthaydrJmMdGUxNA__)

seafarer unions required that Item 4 should be included, as a condition to agree on Section 32-A.

In the view of the Pandiman Philippines, “. . . the [POEA SEC] contract lacks clear definition of a seafarer occupational disease” and has led to abuse and a significant increase in filed claims... it is fair to state that these claims should never have been filed in the first instance if the contract had been given more thought. These unnecessary claims cost the P&I Clubs and Owners significant amounts in legal fees and the length of time a labor case can take.” The Pandiman Philippines view is erroneous, since the 2014 edition of the ECC’s Amended Rules on Employees’ Compensation applies to all workers, whether land or sea-based, which the SC upheld and validated in precedent . Any new legislation must recognize diseases and illness unique to maritime labor, based on international scientific, medical evidence; and must incorporate Supreme Court jurisprudence.

It is observed that in practice, seafarers do not read their contract and are totally unaware of clauses that directly affect them and their direct responsibility to maintain health and safety onboard. Since seafarers are most eager to embark, start their job onboard and enjoy their pay, they often sign their employment contracts without hesitation or adequate review.

## **B. Case studies on selected seafarer disability compensation cases**

Seafarer compensation claims for disability are the most numerous among labor cases which go to appeal, and finally decided by the SC. Many of the monetary awards are based on the US\$60,000 total and permanent disability compensation in the 2010 POEA SEC. Almost all SC decisions on seafarer compensation disability claims do not refer to the MLC 2006 which the Philippines ratified in 2012. It should be noted that disability compensation claims are the subject matter of the key MLC 2006 items concerning seafarer welfare and subsequent amendments addressing adequate financial security and provision of insurance. The following cases are selected to provide contrasts on why the SC decided in favor of one seafarer claim while deciding the opposite in another similar claim. The awards in favor of the seafarers also significantly vary from the usual US\$60,000 monetary award for total and permanent disability.

*Case 1.* Case of a seafarer who belongs to the ITF-affiliate AMOSUP who was awarded US\$95,949 in total and permanent disability compensation. This is the case of a chief cook with a monthly pay US\$1,805 for six-months contract. While carrying

a heavy provision of food, the seafarer claimed that he suddenly slipped and fell causing mild to moderate pain on his lower back area. The pain persisted and his condition worsened until he was medically repatriated in 2015. The seafarer filed a claim for total and permanent disability benefits, but the employer, which is CF Sharp Crew Management Incorporated, ignored the seafarer's letter. The seafarer then filed a grievance with the assistance of the AMOSUP which also did not succeed. The seafarer then filed a complaint against the employer and requested payment for total permanent disability benefits, medical reimbursement, moral and exemplary damages, and attorney's fees. The complaint was filed with the National Conciliation and Mediation Board (NCMB-DoLE), who assigned the case to a Panel of Voluntary Arbitrators. The employer argued that the seafarer failed to present proof of the accident that occurred on board the vessel. The NCMB arbitrators decided to require the company to pay the seafarer permanent total disability benefits pursuant to the collective agreement between the union and the shipping company in the amount of US\$121,176 attorney's fees equivalent to ten percent of the award, or US\$612,117.60, all in the total amount of US\$133,293. The company appealed, but the CA affirmed the decision of the arbitrators. The company filed a petition to review the CA decision. The SC decided in favor of the seafarer, with the disability rate for ratings as the guide to fix the compensation of US\$95,949 plus lawyers' fees of 10 percent.<sup>21</sup>

*Case 2.* Seafarer denied compensation for failure to confirm or contest company designated physician's finding that he is fit for work. In this case the SC denied the total and permanent disability claim due to the failure of the seafarer to report to the company physician within 120 to 240 days to examine and certify fitness to work. Garcia had a basic salary of US\$690, with a nine-month employment contract extended to one month. His primary duties as a bosun are to ensure efficient deck operations and maintenance; operate and maintain the "paint airless sprayer" as well as pneumatic and electric tools. He is also in charge of the inventory and requisition of deck stores, paint, and anti-pollution materials. The seafarer was on duty from 8 to 16 hours a day. Even when he was not on duty, Garcia was on call to ensure that the vessel was always seaworthy in every voyage. As a bosun, Garcia was always exposed

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<sup>21</sup> Philippine Supreme Court e-Library, CF Sharp Crew Management Inc. vs. Roberto Daganato. G.R. No. 243399. July 06, 2022 accessed on August 30, 2023 at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/68440>

to harsh conditions such as pollutants and other intoxicating chemicals found in the engine room. Apart from severe stress of being away from his family, Garcia was also suffering from over fatigue due to long and strenuous hours of work. In one of its voyages, the ship encountered rough seas. He was one among the men who were thrown overboard due to giant waves. He had chest pains for a week and was repatriated. The physician concluded that the nature and extent of his illness permanently and totally prohibit him from working as a seafarer. The company did not pay Garcia his total and permanent disability benefits, giving him reason to file for compensation claims. It is the company's position however that the seafarer is not entitled to disability benefits in any amount since the company-designated physician determined that the seafarer was fit to work. The labor arbiter dismissed his claim, but the NLRC decided in the seafarer's favor. The company appealed, and the CA affirmed the NLRC's decision of a US\$60,000 permanent and total disability award to the seafarer. The company petitioned the SC for a review. The SC decided to deny the claim of the seafarer, due to his failure to report to the company designated physician after 120 to 240 days to examine his fitness to work.<sup>22</sup>

*Case 3.* The highest award on record for seafarer compensation. The compensation claim is due to permanent & total disability is for US\$250,000. The case started in 2012 and was decided in 2019, 7 years of litigation. This case is about a ship fitter (metal fabrication / welder for ship repair). In 2012, George Toquero was hired and certified fit for duty. The ship master ordered Filipino fitter Toquero to repair a generator, assisted by an oiler from another nationality. Toquero asked the oiler not to remove the flanges, meaning the metal pipe connections, since the problem is with the generator. Oiler argued that the fitter has no right to order him how to do his job. The oiler hit Toquero with a metal spanner tool, knocking him unconscious, hospitalized, repatriated due to skull injury and trauma. The physician certified him permanently unfit for sea duty. The International Maritime Employers Council CBA with the global union, ITF, provided for US\$250,000 compensation for seafarers above Able Body rank. The shipping company argued that disability is not work related but was due to

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<sup>22</sup> Philippine Supreme Court e-Library, Career Philippines Shipmanagement Inc., Columbia Shipmanagement and/or Verlou R. Carmelino Vs. Ardel S. Garcia G.R. No. 230352. November 29, 2022 accessed on August 30, 2023 at <https://sc.judiciary.gov.ph/wp-content/uploads/2023/02/230352.pdf>

a criminal act. The SC disagreed with that argument and decided in favor of the seafarer.<sup>23</sup>

These cases illustrate both similarities and variations in seafarer disability compensation claims. The Coverage of policy, law and rules are similar but there are significant variations in the interpretation and outcomes either in favor of the seafarer or employer as well as amounts of the monetary award. Variations in the amounts is due to different interpretations of the grades of total and permanent disability, and whether the seafarer belongs to a global union which has an agreement with shipping business principals. Amounts of award vary depending on the flag of the ship, the country or nationality of the shipowner, as well as the seafarer. Even within European countries, there is variation in the generous amounts awarded for varying degrees of disability compensation, regardless of seafarer nationality. Indeed, with the MLC 2006 as a primary force of leverage, global shipping may converge to uniform definition and scope of ship related occupational diseases and degrees of partial, temporary, permanent and total disability.

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<sup>23</sup> Philippine Supreme Court e-Library, G.R. No. 213482. June 26, 2019, George M. Toquero versus Crossworld Marine Services Inc., Kapal Cyprus and Arnold Mendoza accessed on June 5, 2023 at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65333>

**Table 1.8      Number of years from the start of seafarer claim to final Supreme Court decisions**

Type of case	Average	Number of cases	Standard deviation
Constructive dismissal	8.800	1	0.0000
Death benefits	6.162	11	1.3895
Disability benefit	9.123	12	4.6464
Illegal dismissal	10.986	8	6.0495
Permanent and total disability	8.113	88	4.2357
Permanent disability	7.405	20	2.9545
Total disability	6.260	5	1.5646
Underpayment of wages	5.033	3	1.4742
Total	7.989	148	4.0639

Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 <https://elibrary.judiciary.gov.ph/>

Table 1.8 shows that on average, it takes about 8 years from the start of the case with the labor arbiter, to the final decision of the Supreme Court. It takes about 6 years for the SC to render a decision on death benefit claims, while for illegal dismissal cases, it takes about 11 years on the average. What could explain the lengthy and tenuous duration for the resolution of seafarer cases? The NLRC rules provide strict guidelines on deadlines for decisions and appeals, and the requirements for posting bond and letters of guarantee. Motions are allowed for postponements due to sickness, unavailability or conflicts in schedule of the parties, as well as their lawyers. This is the main cause for the delay in the final resolution, which is in general true for all other labor cases.

It should be noted that after the labor arbiter promulgates a decision, the losing party may appeal to the full NLRC within 10 days. If there is no appeal, the labor arbiter’s decision shall be final and should be executed or implemented. The respondent of the appeal should post a bond equivalent to the award, except the lawyer’s fees and must be submitted along with the appeal. A letter of guarantee by an accredited underwriter or the

P&I Club is not acceptable to the NLRC. The letter of guarantee could however be used as a collateral to obtain an appeal bond, to be purchased from a local bonding company accredited with the NLRC.

After the NLRC promulgates its decision, the losing party may file a motion for reconsideration (hereinafter MR) within 10 days. The NLRC’s decision on the MR is final and executory. The losing party may challenge the NLRC’s decision by filing a petition for certiorari within 60 days with the CA. A TRO maybe issued by the CA. In the absence of a TRO from the CA within 10 days, the NLRC will then issue an order for a final Entry of Judgment. The order shall be implemented by the labor arbiter who first heard the case, who shall convene a conference of the parties. Both the seafarer and the crewing and shipping employer may implement the NLRC’s decision by themselves. If there is no voluntary settlement, the labor arbiter is required by the rules to order a sheriff to garnish the crewing and shipping employer’s bond, the company’s properties, or cash deposit as payment to the seafarer (Lora 2011).

**Table 1.9 Amount of SC monetary award to seafarers (US\$)**

	Average	Minimum	Maximum	Number of cases
Disability benefit	73,063.50	50,000	93,154	4
Permanent and total disability	64,917.54	5,225	250,000	56
Permanent disability	72,884.91	10,075	150,000	11
Total disability	71,778.00	39,180	127,932	4
Total	66,886.43	5,225	250,000	75

Source: Data processed by the author through Supreme Court of the Philippines E-Library Decisions from 2016 to 2023 at <https://elibrary.judiciary.gov.ph/>

Table 1.9 shows that on average seafarers were awarded US\$66,886 in disability compensation claims. Permanent and total disability cases were awarded US\$64,917 for each seafarer. The highest award is US\$250,000, and the lowest is US\$5,225. What explains the great variation of these awards? In almost all cases, the awards greater than



the POEA SEC provision for US\$60,000 is based on a CBA with a seafarer affiliated with a global union.

The relatively small award of US\$5,225 is due to one case where the SC decided that not all injuries sustained by a seafarer on board a ship shall be compensable. Compensation is only relevant to “. . . injuries arising from or growing out of the risk’s peculiar to the nature of work in the scope of the workmen’s employment or incidental to such employment, and accidents in which it is possible to trace the injury to some risk or hazard to which the employee is exposed in a special degree by reason of such employment.”<sup>24</sup>

Indeed, in many cases seafarers were disqualified from receiving disability benefits if the crewing and shipping employer is able to prove that: (1) the injury, incapacity, or disability is directly attributable to the seafarer; (2) the seafarer committed a crime or willful breach of duties; and (3) the cause of the injury, incapacity, or disability, and breach of duties is due to the seafarer’s deliberate or willful act.

The losing party may appeal for reconsideration of the CA decision, within 15 days. In case the CA denies the motion for reconsideration, the losing party may file a “Petition for Certiorari” to review the decision based on a question of law within 15 days. Indeed, there is a chance that the CA and the SC may reverse the decision of the NLRC; and in case of voluntary arbitration, the decision of the NCMB. The monetary awards received by the seafarer from the company may be refunded. There is a chance that the seafarer may have moved their residence address and could no longer be found.

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<sup>24</sup> Philippine Supreme Court, G.R. No. 254586 “Arguilles v. Wilhelmsen Smith Bell Manning, Inc./Wilhelmsen Ship Management Ltd., and Preysler, Jr.” promulgated on July 10, 2023 accessed on December 5, 2023 at <https://sc.judiciary.gov.ph/254586-rosell-r-arguilles-vs-wilhelmsen-smith-bell-manning-inc-wilhelmsen-ship-management-ltd-and-fausto-r-preysler-jr/>

## **VI. Conclusions and recommendations**

The objective of this paper is to focus on the human factor that mostly determines the outcomes of safe, efficient and profitable shipping. Global shipping continues to be a competitive and dynamic phenomenon crucial to the movement of goods and services. Automation and Artificial Intelligence in shipping however is rapidly shaping seafaring competencies, in terms of demands for higher productivity and efficiency. Filipino seafarers are caught in this demand for higher performance to deliver safe and more efficient ships.

Seafarers are not expected to be automatons or robots on board, and their health and safety are of utmost consideration as the critical human factor to deliver profitable and safe ships from port to port. Shipping industry stakeholders could not but wonder and ask questions on why there seems to be a greater frequency and bigger pay-outs decided for seafarer disability claims in the Philippines. This paper examines this question and highlights key findings about Philippine Supreme Court decisions on seafarer compensation claims from 2016 to 2023. Decisions on seafarers constitute about one third (33 percent) of SC decisions on 524 labor disputes from January 2016 to March 2023. The complex web of laws, rules and regulations on seafarer employment is reflected in the numerous litigation that end up in Supreme Court decisions on seafarer compensation claims. The obvious solution is to simplify and consolidate these rules into one document, to mitigate the suffering and stress from costly, lengthy and repetitive litigation for disability compensation.

On average Philippine seafarers have a very high chance, 67.8 percent probability of being awarded their claims by the labor arbiters. This chance declines significantly upon reaching the NLRC, seafarers have a lower 44.8 percent chance of being awarded their claims. In the CA, seafarers have a slightly higher, about 48.9 percent chance of being awarded their claims. In the SC, the chance goes significantly higher. Seafarers have a 62.1 percent chance of being awarded their claims. This is a significant incentive for seafarers to file claims and go through the stressful and lengthy process of compulsory arbitration with the courts. Seafarers' disability compensation is about US\$66,866 on average, with a minimum awarded in the amount of US\$5,225 and a maximum of US\$250,000.

The seafarer cases highlight the need to streamline the labor dispute resolution to reduce delays. Key recommendations include the following: strengthening the pre-employment hiring and recruitment training process to ensure compliance with the competency requirements for safe shipping and watchkeeping embodied in the STCW

Code. Education, training and other resources need to be enhanced and provided the support to supplement government regulatory agencies. Maritime crewing agencies, shipping employers as well as the seafarers understand their rights and responsibilities would help reduce the number of seafarer compensation claims and disputes in process with the arbiters, the NLRC, the CA and the SC. Maritime industry stakeholders accept that seafarer welfare, especially health and safety, is a crucial factor for success, growth, and innovation in the maritime industry. Seafarers' working conditions and wellbeing are critical dimensions of the "human element" in shipping outcomes and safe delivery from port-to-port.

Most marine casualties at sea are related to stress, fatigue, and high workloads. Under extreme weather conditions, inadequate onboard sanitation, hygiene, and health protocols can generate fatigue and raise the probability of human error, leading to accidents. Potential illness and the spread of diseases can result in closed work and living spaces in proximity to other seafarers onboard. Mental health risk is another consideration because seafarers tend to spend long months away from their families at home. With little or no communication, and a bare minimum of rest hours, seafarers can easily feel socially isolated, potentially leading to depression, accidents, and maritime losses.

Seafarer disability and death incidents are significant human factors in shipping, and maritime labor. Philippine compensation claims on partial or total disability go through a process of voluntary or compulsory arbitration. Seafarer claims are filed with the labor arbiter, the National Conciliation and Mediation Board, the Department of Migrant Workers, Office of Sea-based Concerns, formerly the Philippine Overseas Employment Administration, the DoLE or its regional offices, through an online SENA portal. Seafarer disability compensation claims in Philippine Supreme Court decisions indicate the need for adequate consideration of the human factor in shipping. A just transition from risky to safe jobs at sea requires investments in health and safety.

While ratification of the MLC 2006 took place in 2012, the Philippines has yet to enact a "Magna Carta of Seafarers" aligned to incorporate and recognize these agreements. Despite the "Anti-Ambulance Chasing Law" of 2015, the Republic Act No.10706, seafarer claims for partial, total and permanent disability compensation continue to be filed for arbitration with the NLRC. The RA 10706 declares as unlawful the practice of "... some unscrupulous individuals [taking] advantage of the plight of our seafarers who met an accident, illness or death in the course of their service by exploiting the compensation system." Seafarers have fallen prey to an unfair scheme where ambulance chasers charge exorbitant fees, with the promise of huge monetary award.

Section 4 of RA 10706 limited the lawyer or attorney's fees for seafarer representation to 10 percent of the monetary award. However, Section 5 provided only for penalties between PhP50,000 to PhP100,000 which is equivalent to US\$908 to US\$1,808 at the prevailing exchange rate. In addition, the guilty person may be imprisoned for one to two years. Ambulance chasers continue to take advantage of vulnerable seafarers. SC precedents on significant payments for seafarer disability compensation has raised concerns among global maritime and shipping companies who employ Filipino seafarers. Pending legislation in both the Senate and the House of Representatives should be able to incorporate the MLC 2006 provisions and its amendments, which the Philippines ratified, into the new SEC for Philippine seafarers currently being updated by the Department of Migrant Workers. Future legislation must recognize international scientific, medical evidence on unique or specific illnesses and syndromes unique to seafarers; and must incorporate Supreme Court jurisprudence.

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