

[G.R. No. L-9534. September 29, 1956]

MANILA STEAMSHIP CO., INC., PETITIONER, VS. INSA ABDUL-HAMAN (MORO) AND LIM HONG TO RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

This case was begun in the Court of First Instance of Zamboanga (Civil Case No. 170) by Insa Abdulhaman against the Manila Steamship Co., owner of the M/S "Bowline Knot", and Lim Hong To, owner of the M/L "Consuelo V", to recover damages for the death of his (plaintiff's) five children and loss of personal properties on board the M/L "Consuelo V" as a result of a maritime collision between said vessel and the M/S "Bowline Knot" on May 4, 1948, a few kilometers distant from San Ramon Beach, Zamboanga City.

On appeal, the Court of Appeals found the following facts to have been established:

"From 7:00 to 8:00 o'clock in the evening of May 4, 1948, the M/L "Consuelo V", laden with cargoes and passengers left the port of Zamboanga City bound for Siokon under the command of Faustino Macrohon. She was then towing a kumpit, named "Sta. Maria Bay". The weather was good and fair. Among her passengers were the plaintiff Insa Abdulhaman, his wife Carimla Mora and their five children already mentioned. The plaintiff and his wife paid their fare before the voyage started.

On that same night the M/S "Bowline Knot" was navigating from Maribojoc towards Zamboanga.

Between 9:30 to 10:00 in the evening the dark clouds bloated with rain began to fall and the gushing strong wind began to blow steadily harder, lashing the waves into a choppy and roaring sea. Such weather lasted for about an hour and

then it became fair although it was showering and the visibility was good enough.

When some of the passengers of the M/L "Consuelo V" were then sleeping and some were lying down awake, all of a sudden they felt the shocking collision of the M/L "Consuelo V" and a big motorship, which later on was identified as the M/V "Bowline Knot".

Because the M/L "Consuelo V" capsized, her crew and passengers, before realizing what had happened, found themselves swimming and floating on the crest of the waves and as a result of which nine (9) passengers were dead and missing and all the cargoes carried on said boat, including those of the plaintiff as appear in the list, Exhibit "A", were also lost.

Among the dead passengers found were Maria, Amlasa, Bidoaya and Bidaila, aH surnamed Inasa, while the body of the child Abdula Inasa of 6 years of age was never recovered. Before the collision, none of the passengers were warned or informed of the impending danger as the collision was so sudden and unexpected. All those rescued at sea were brought by the M/V "Bowline Knot" to Zamboanga City/ (Decision of C. A., pp. 5-6).

As the cause of the collision, the Court of Appeals affirmed the findings of the Board of Marine Inquiry, that the commanding officer of the colliding vessels had both been negligent in operating their respective vessels. Wherefore, the Court held the owners of both vessels v solidarily liable to plaintiff for the damages caused to him by the collision, under Article 827 of the Code of Commerce; but exempted defendant Lim Hong To from liability by reason of the sinking and total loss of his vessel, the M/L "Consuelo V", while the other defendant, the Manila Steamship Co., owner of the M/S "Bowline Knot", was ordered to pay all of plaintiff's damages in the amount of P20,784.00 plus one-half of the costs. It is from this judgment that defendant Manila Steamship Co. had appealed to this Court.

Petitioner Manila Steamship Co. pleads that it is exempt from any liability to plaintiff under Article 1903 of the Civil Code because it had exercised the diligence of a good father of a family in the selection of its employees, particularly Third Mate Simplicio Ilagan, the officer in command of its vessels, the M/S "Bowline Knot", at the time of the collision. This defense is untenable. While it is true that plaintiff's action against petitioner is

based on a tort or quasi-delict, the tort in question is not a civil tort under the Civil Code but a maritime tort resulting in a collision at sea, governed by Articles 826-939 of the Code of Commerce. Under Article 827 of the Code of Commerce, in case of collision between two vessels imputable to both of them, each vessel shall suffer her own damage and both shall be *solidarity* liable for the damages occasioned to their cargoes. The characteristic language of the law in making the “vessels” solidarity liable for the damages due to the maritime collision emphasizes the direct nature of the responsibilities on account of the collision incurred by the shipowner under maritime law, as distinguished from the civil law and mercantile law in general. This direct responsibility is recognized in Article 618 of the Code of Commerce under which the captain shall be civilly liable to the ship agent, and the latter is the one liable to third persons, as pointed out in the collision case of *Yueng Sheng Exchange & Trading Co vs. Urrutia & Co.*, 12 Phil. 747, 753:

“The responsibility involved in the present action is that derived from the management of the vessel, which was defective on account of lack of skill, negligence, or fault, either of the captain or of the crew, for which the captain is responsible to the agent, who in his turn is responsible to the third party prejudiced or damaged. (Article 618, Code of Commerce).”

In fact, it is a general principle, well established maritime law and custom, that shipowners and ship agents are civilly liable for the acts of the captain (Code of Commerce, Article 586) and for the indemnities due the third persons (Article 587); so that injured parties may immediately look for reimbursement to the owner of the ship, it being universally recognized that the ship master or captain is primarily the representative of the owner (*Standard Oil Co. vs. Lopez Castelo*, 42 Phil. 256, 260). This direct liability, moderated and limited by the owner’s right of abandonment of the vessel and earned freight (Article 587), has been declared to exist, not only in case of breached contracts, but also in cases of tortious negligence (*Yu Biao Sontua vs. Osorio*, 43 Phil. 511, 515):

“In the Second assignment of error, the appellant contends that the defendant ought not to be held liable for the negligence of his agents and employees.

It is proven that the agents and employees, through whose negligence the explosion and fire in question occurred, were agents, employees and mandataries of the defendant. Where the vessel is one Of freight, a public concern or public

utility, its owner or agents is liable for the tortious acts of his agents (Articles 587, 613, and 618 Code of Commerce; and Article 1902, 1903, 1908, Civil Code). This principle has been repeatedly upheld in various decisions of this court.

The doctrines cited by the appellant in support of his theory have reference to the 'relations between principal and agent in general, but not to the relations between ship agent and his agents and employees; for this reason they cannot be applied in the present case"

It is easy to see that to admit the defense of due diligence of a *bonus paterfamilias* (in the selection and vigilance of the officers and crew) as exempting the ship-owner from any liability for their faults, would render nugatory the solidary liability established by Article 827 of the Code of Commerce for the greater protection of injured parties. Ship owners would be able to escape liability in practically every case, considering that the qualifications and licensing of ship masters and officers are determined by the State, and that vigilance is practically impossible to exercise over officers and crew of vessels at sea. To compel the parties prejudiced to look to the crew for indemnity and redress would be an illusory remedy for almost always its members are, from captains down, mere wage earners.

We, therefore, find no reversible error in the refusal of the Court of Appeals to consider the defense of the Manila Steamship Co., that it is exempt from liability for the collision with the M/L "Consuelo V" due to absence of negligence on its parts in the selection and supervision of the officers and crew of the M/S "Bowline Knot".

The case of *Walter S. Smith & Co. vs Cadwallader Gibson Lumber Co.*, 55 Phil. 517, invoked by petitioner, is not the point. Said case treated of a civil tort, in that the vessel of the defendant, allegedly negligently managed by its captain in the course of its maneuvers to moor at plaintiff's wharf, struck the same and partially demolished it, causing damage to plaintiff. Because the tort allegedly committed was civil, the provisions of Article 1903 of the Civil Code were correctly applied. The present case, on the other hand, involves tortious conduct resulting in a maritime collision; wherefore, the liability of the shipowner is, as already stated, governed by the provisions of the Code of Commerce and not by the Civil Code.

We agree, however, with petitioner-appellant, that the Court of Appeals was in error in declaring the respondent Lim Hong To, owner of the M/L "Consuelo V", exempt from

liability to the original plaintiff, Abdulhaman, in view of the total loss of his own vessel, that sank as a result of the collision. It is to be noted that both the master and the engineer of the motor launch "Consuelo V" were not duly licensed as such (Exh. 2). In applying for permission to operate, despite the lack of properly trained and experienced crew, respondent Lim Hong To gave as a reason—

“that the income derived from the vessel is insufficient to pay licensed officers who demand high salaries”,

and expressly declared:

“That in case of any accident, damage or loss, I shall assume full risk and responsibility for all the consequences thereof.” (Exhibit 2).

His permit to operate, in fact, stipulated—

“that in case of any accident, damage or loss, the registered owner thereof shall assume full risk and responsibility for all the consequences thereof, and that said vessel shall be held answerable for any negligence, disregard or violation of any of the conditions herein imposed and for any consequence arising from such negligence, disregard or violations.” (Exhibit 3.)

The Court of Appeals held that neither the letter (Exhibit 2) nor the permit (Exhibit 3) contained any waiver of the right of respondent Lim Hong To to limit his liability to the value of his motor launch and that he did not lose the statutory right to limit his liability by abandonment of the vessel, as conferred by Article 587 of the Code of Commerce..

We find the ruling untenable. Disregarding the question whether, mere inability to meet the salary demands of duly licensed masters and engineers constitutes non-availability thereof that would excuse noncompliance with the law and authorize operation without licensed officers under Act 3553, the fact remains that by operating with an unlicensed master, Lim Hong To deliberately increased the risk to which the passengers and shippers of cargo aboard the "Consuelo V" would be subjected. In his desire to reap greater benefits in the maritime trade, Lim Hong To willfully augmented the dangers and hazards

to his 'vessel's unwary passengers, who would normally assume that the launch officers possessed the necessary skill and experience to evade the perils of the sea. Hence, the liability of said respondent can not be the identical to that of a shipowner Who bears in mind the safety of the passengers and cargo by employing duly licensed officers. To hold, as the Court of Appeals has done, that Lim Hong To may limit his liability to the value of his vessels, is to erase all difference between compliance with law and the deliberate disregard thereof. To such proposition we can not assent.

The international rule is to the effect that the right of abandonment of vessels, as a legal limitation of a ship-owner's liability, does not apply to cases where the injury or the average is due to shipowner's own fault. Farifia (Derecho Comercial Maritimo, Vol. I, pp. 122-123), on the authority of judicial precedents from various nations, sets the rule to be as follows:

“Esta generalmente admitido que el propietario del buque no tiene derecho a la Hmitacion legal de respnsibilidad si los danos o averias que dan origen a la limitacidn provienen de sus propias culpas. El Convenio de Bruselas de 25 de agosto de 1924 tambien invalida la limitacion en el caso de culpa personal en los accidentes o averias sobrevenidos (Art. 2°).”

To the same effect, a noted French author states:

“La limitacion de la responsabilidad maritima ha sido admitida para proteger a los armadores contra los actos abusivos de sus encargados y no dejar su patrimonio entero a la discrecion del personal de sus buques, porque este personal cumple sus obligaciones en condiciones especiales; *pero los armadores no tienen por sobre los demds derecho a ser amparados contra ellos mismos ni a ser protegidos contra sus propios actos.*”

(Danjon, Derecho Maritimo, Vol. 2, p. 332). (*Italics suuplied.*)

That Lim Hong To understood that he would incur greater liability than that normally borne by shipowners, is clear from his assumption of “full” risk and responsibility for all the consequences” of the operation of the M/L “Consuelo V”; a responsibility expressly assumed in his letter Exhibit 2, and imposed in his special permit, in addition to the

vessel itself being held answerable. This express assumption of "full risk and responsibility" would be meaningless unless intended to broaden the liability of respondent Lim Hong To beyond the value of his vessel.

In resume, we hold:

(1) That the Manila Steamship Co., owner of the M/S "Bowline Knot", is directly and primarily responsible in tort for the injuries caused to the plaintiff by the collision of said vessel with the launch "Consuelo V", through the negligence of the crews of both vessels, and it may not escape liability on the ground that it exercised due diligence in the selection and supervision of the officers and crew of the "Bowline Knot";

(2) That Lim Hong To, as owner of the motor launch "Consuelo V", having caused the same to sail without licensed officers, is liable for the injuries caused by the collision over and beyond the value of said launch;

(3) That both vessels being at fault, the liability of Lim Hong To and Manila Steamship Co. to the plaintiff herein is *in solidum*, as prescribed by Article 827 of the Code of Commerce.

In view of the foregoing, the decision of the Court of Appeals is modified, and that of the Court of First Instance affirmed, in the sense of declaring both original defendants solidarity liable to plaintiff Insa Abdulhaman in the sum of P20,784.00 and the cost of the litigation, without prejudice to the right of the one who should pay the judgment in full to demand contribution from his co-defendant.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.