

REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUZON STEVEDORING CORPORATION, DEFENDANT-APPELLANT.

G.R. No. L-21749. September 29, 1967

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

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

The present case comes by direct appeal from a decision of the Court of First Instance of Manila (Case No. 44572) adjudging the defendant-appellant, Luzon Stevedoring Corporation, liable in damages to the plaintiff-appellee Republic of the Philippines.

In the early afternoon of August 17, 1960, Barge L-1892, owned by the Luzon Stevedoring Corporation was being towed down the Pasig river by tugboats "Bangus" and "Barbero", [1] also belonging to the same corporation, when the barge rammed against one of the wooden piles of the Nagtahan bailey bridge, smashing the posts and causing the bridge to list. The river, at the time, was swollen and the current swift, on account of the heavy down-pour in Manila and the surrounding provinces on August 15 and 16, 1960.

Sued by the Republic of the Philippines for actual and consequential damage caused by its employees, amounting to P200,000 (Civil Case No. 44562, CFI of Manila), defendant Luzon Stevedoring Corporation disclaimed liability therefor, on the grounds that it had exercised due diligence in the selection and supervision of its employees; that the damages to the bridge were caused by force majeure; that plaintiff has no capacity to sue; and that the Nagtahan bailey bridge is an obstruction to navigation.

After due trial, the court rendered judgment on June 11, 1963, holding the defendant liable for the damage caused by its employee and ordering it to pay to plaintiff the actual cost of the repair of the Nagtahan bailey bridge which amounted to P192,561.72, with legal interest thereon from the date of the filing of the complaint.

Defendant appealed directly to this Court assigning the following errors allegedly committed by the court a quo, to wit:

I - The lower court erred in not holding that the herein defendant-appellant had exercised the diligence required of it in the selection and supervision of its personnel to prevent damage or injury to others.

II - The lower court erred in not holding that the ramming of the Nagtahan bailey bridge by barge L-1892 was caused by force majeure.

III - The lower court erred in not holding that the Nagtahan bailey bridge is an obstruction, if not a menace, to navigation in the Pasig river.

IV - The lower court erred in not blaming the damage sustained by the Nagtahan bailey bridge to the improper placement of the dolphins.

V - The lower court erred in granting plaintiff's motion to adduce further evidence in chief after it has rested its case.

VI - The lower court erred in finding the plain-tiff entitled to the amount of P192,561.72 for damages which is clearly exorbitant and without any factual basis.

However, it must be recalled that the established rule in this jurisdiction is that when a party appeals directly to the Supreme Court, and submits his case there for decision, he is deemed to have waived the right to dispute any finding of fact made by the trial Court. The only questions that may be raised are those of law (*Savellano vs. Diaz*, G.R. No. L-17941, July 31, 1963; *Aballe vs. Santiago*, G.R. No. L-16307, April 30, 1963; *G.S.I.S. vs. Cloribel*, G.R. No. L-22236, June 22, 1965). A converso, a party who resorts to the Court of Appeals, and submits his case for decision there, is barred from contending later that his claim was beyond the jurisdiction of the aforesaid Court. The reason is that a contrary rule would encourage the undesirable practice of appellants' submitting their cases for decision to either court in expectation of favorable judgment, but with intent of attacking its jurisdiction should the decision be unfavorable (*Tyson Tan et al. vs. Filipinas Compañia de Seguros*) et al., G.R. No. L-10096, Res. on Motion to Reconsider, March 23, 1966). Consequently, we are limited in this appeal to the issues of law raised in the appellant's brief.

Taking the aforesaid rules into account, it can be seen that only reviewable issues in this appeal are reduced to two:

- 1) Whether nor not the collision of appellant's barge with the supports or piers of the Nagtahan bridge was in law caused by fortuitous event or force majeure, and
- 2) Whether or not it was error for the Courts to have permitted the plaintiff-appellee to introduce additional evidence of damages after said party had rested its case.

As to the first question considering that the Nagtahan bridge was an immovable and stationary object and uncontrovertedly provided with adequate openings for the passage of water craft, including barges like of appellant's, it is undeniable that the unusual event that the barge, exclusively controlled by appellant, rammed the bridge supports raises a presumption of negligence on the part of appellant or its employees manning the barge or the tugs that towed it. For in the ordinary course of events, such a thing does not happen if proper care is used. In Anglo American Jurisprudence, the inference arises by what is known as the "res ipsa loquitur" rule (*Scott vs. London Docks Co.*, 2 H & C 596; *San Juan Light & Transit Co. vs. Reguena*, 224 U.S. 89, 56 L. Ed., 680; *Whitewall vs. Wolf*, 127 Minn. 529, 149 N. W. 299; *Bryne vs. Great Atlantic & Pacific Tea Co.*, 269 Mass. 130; 168 N.E. 540; *Gribsby vs. Smith*, 146 S.W. 2d 719).

The appellant strongly stresses the precautions taken by it on the day in question: that it assigned two of its most powerful tugboats to tow down river its barge L-1892; that it assigned to the task the more competent and experienced among its patrons, had the towlines, engines and equipment double-checked and inspected; that it instructed its patrons to take extra precautions; and concludes that it had done all it was called to do, and that the accident, therefore, should be held due to force majeure or fortuitous event.

These very precautions, however, completely destroy the appellant's defense. For caso fortuito or force majeure (which in law are identical in so far as they exempt an obligor from liability)[2] by definition, are extraordinary events not foreseeable or avoidable, "events that could not be foreseen, or which, though foreseen, were inevitable" (Art. 1174, Civ. Code of the Philippines). It is, therefore, not enough that the event should not have been fore-seen or anticipated, as is commonly believed but it must be one impossible to foresee or to avoid. The mere difficulty to foresee the happening is not impossibility to foresee the same: "un hecho no constituye caso fortuito por la sola circunstancia de que su existencia haga mas dificil o mas onerosa la accion diligente del presente ofensor" (*Peirano Facio*, Responsabilidad Extra-contractual, p. 465; *Mazeaud*, Traité de la Responsabilité Civile, Vol. 2, sec. 1569). The very measures adopted by appellant prove that the possibility of danger was not only

foreseeable, but actually foreseen, and was not caso fortuito.

Otherwise stated, the appellant, Luzon Stevedoring Corporation, knowing and appreciating the perils posed by the swollen stream and its swift current, voluntarily entered into a situation involving obvious danger; it therefore assumed the risk, and can not shed responsibility merely because the precautions it adopted turned out to be insufficient. Hence, the lower Court committed no error in holding it negligent in not suspending operations and in holding it liable for the damages caused.

It avails the appellant naught to argue that the dolphins, like the bridge, were improperly located. Even if true, these circumstances would merely emphasize the need of even higher degree of care on appellant's part in the situation involved in the present case. The appellant, whose barges and tugs travel up and down the river everyday, could not safely ignore the danger posed by these allegedly improper constructions that had been erected and, in place, for years.

On the second point: appellant charges the lower court with having abused its discretion in the admission of plaintiff's additional evidence after the latter had rested its case. There is an insinuation that the delay was deliberate to enable the manipulation of evidence to prejudice defendant-appellant.

We find no merit in the contention. Whether or not further evidence will be allowed after a party offering the evidence has rested his case, lies within the sound discretion of the trial Judge, and this discretion will not be reviewed except in clear case of abuse.[3]

In the present case, no abuse of that discretion is shown. What was allowed to be introduced, after plaintiff had rested its evidence in chief, were vouchers and papers to support an item of P1,558.00 allegedly spent for the reinforcement of the panel of the bailey bridge, and which item already appeared in Exhibit GG. Appellant, in fact, has no reason to charge the trial court of being unfair, because it was also able to secure, upon written motion, a similar order dated November 24, 1962, allowing reception of additional evidence for the said defendant-appellant.[4]

WHEREFORE, finding no error in the decision of the lower Court appealed from, the same is hereby affirmed. Costs against the defendant-appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur. Bengzon, J., on leave, did not take part.

[1] The lead-tugboat "Bangus" was pulling the barge, while the tugboat "Barbero" was holding or restraining it at the back.

[2] Lasam vs. Smith, 45 Phil. 661.

[3] Lopez vs. Liboro, 81 Phil. 429.

[4] p. 89, Record on Appeal.

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