

NATIONAL DEVELOPMENT COMPANY, PETITIONER-APPELLANT, VS. THE COURT OF APPEALS AND DEVELOPMENT INSURANCE & SURETY CORPORATION, RESPONDENTS-APPELLEES.

G.R. No. L-49407. August 19, 1988

Ponente: PARAS, J.

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PARAS, J.:

These are appeals by certiorari from the decision[*] of the Court of Appeals in CA G.R. No. L-46513-R entitled "Development Insurance and Surety Corporation plaintiff-appellee vs. Maritime Company of the Philippines and National Development Company defendant-appellants", affirming in toto the decision[**] in Civil Case No. 60641 of the then Court of First Instance of Manila, Sixth Judicial District, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering the defendants National Development Company and Maritime Company of the Philippines, to pay jointly and severally, to the plaintiff Development Insurance and Surety Corp., the sum of THREE HUNDRED SIXTY FOUR THOUSAND AND NINE HUNDRED FIFTEEN PESOS AND EIGHTY SIX CENTAVOS (P364,915.86) with the legal interest thereon from the filing of plaintiff's complaint on April 22, 1965 until fully paid, plus TEN THOUSAND PESOS (P10,000.00) by way of damages as and for attorney's fee.

"On defendant Maritime Company of the Philippines' cross-claim against the defendant National Development Company, judgment is hereby rendered, ordering the National Development Company to pay the cross-claimant Maritime Company of the Philippines the total amount that the Maritime Company of the Philippines may voluntarily or by compliance to a writ of execution pay to the plaintiff pursuant to the judgment rendered in this case.

"With costs against the defendant Maritime Company of the Philippines."

(pp. 34-35, Rollo, GR No. L-49469)

The facts of these cases as found by the Court of Appeals, are as follows:

"The evidence before us shows that in accordance with a memorandum agreement entered into between defendants NDC and MCP on September 13, 1962, defendant NDC as the first preferred mortgagee of three ocean going vessels including one with the name 'Dona Nati' appointed defendant MCP as its agent to manage and operate said vessel for and in its behalf and account (Exh. A). Thus, on February 28, 1964 the E. Philipp Corporation of New York loaded on board the vessel 'Dona Nati' at San Francisco, California, a total of 1,200 bales of American raw cotton consigned to the order of Manila Banking Corporation, Manila and the People's Bank and Trust Company acting for and in behalf of the Pan Asiatic Commercial Company, Inc., who represents Riverside Mills Corporation (Exhs. K-2 to K-7-A & L-2 to L-7-A). Also loaded on the same vessel at Tokyo, Japan, were the cargo of Kyo-kuto Boekui, Kaisa, Ltd., consigned to the order of Manila Banking Corporation consisting of 200 cartons of sodium lauryl sulfate and 10 cases of aluminium foil (Exhs. M & M-1). En route to Manila the vessel Dona Nati figured in a collision at 6:04 a.m. on April 15, 1964 at Ise Bay, Japan with a Japanese vessel 'SS Yasushima Maru' as a result of which 550 bales of aforesaid cargo of

American raw cotton were lost and/or destroyed, of which 535 bales as damaged were landed and sold on the authority of the General Average Surveyor for Yen 6,045,-500 and 15 bales were not landed and deemed lost (Exh. G). The damaged and lost cargoes was worth P344,977.86 which amount, the plaintiff as insurer, paid to the Riverside Mills Corporation as holder of the negotiable bills of lading duly endorsed (Exhs. L-7-A, K-8-A, K-2-A, K-3-A, K-4-A, K-5-A, A-2, N-3 and R-3). Also considered totally lost were the aforesaid shipment of Kyokuto, Boekui, Kaisa Ltd., consigned to the order of Manila Banking Corporation, Manila, acting for Guilcon, Manila. The total loss was P19, 938.00 which the plaintiff as insurer paid to Guilcon as holder of the duly endorsed bill of lading (Exhibits M-1 and S-3). Thus, the plaintiff had paid as insurer the total amount of P364,915.86 to the consignees or their successors-in-interest, for the said lost or damaged cargoes. Hence, plaintiff filed this complaint to recover said amount from the defendants-NDC and MCP as owner and ship agent respectively, of the said 'Dona Nati' vessel." (Rollo, L-49469, p. 38)

On April 22, 1965, the Development Insurance and Surety Corporation filed before the then Court of First Instance of Manila an action for the recovery of the sum of P364,915.86 plus attorney's fees of P10,000.00 against NDC and MCP (Record on Appeal, pp. 1-6).

Interposing the defense that the complaint states no cause of action and even if it does, the action has prescribed, MCP filed on May 12, 1965 a motion to dismiss (Record on Appeal, pp. 7-14). DISC filed an Opposition on May 21, 1965 to which MCP filed a reply on May 27, 1965 (Record on Appeal, pp. 14-24). On June 29, 1965, the trial court deferred the resolution of the motion to dismiss till after the trial on the merits (Record on Appeal, p. 32). On June 8, 1965, MCP filed its answer with counterclaim and cross-claim against NDC.

NDC, for its part, filed its answer to DISC's complaint on May 27, 1965 (Record on Appeal, pp. 22-24). It also filed an answer to MCP's cross-claim on July 16, 1965 (Record on Appeal, pp. 39-40). However, on October 16, 1965, NDC's answer to DISC's complaint was stricken off from the record for its failure to answer DISC's written interrogatories and to comply with the trial court's order dated August 14, 1965 allowing the inspection or photographing of the memorandum of agreement it executed with MCP. Said order of October 16, 1965 likewise declared NDC in default (Record on Appeal, p. 44). On August 31, 1966, NDC filed a motion to set aside the order of October 16, 1965, but the trial court denied it in its order dated September 21, 1966.

On November 12, 1969, after DISC and MCP presented their respective evidence, the trial court rendered a decision ordering the defendants MCP and NDC to pay jointly and solidarily to DISC the sum of P364,915.86 plus the legal rate of interest to be computed from the filing of the complaint of April 22, 1965, until fully paid and attorney's fees of P10,000.00. Likewise, in said decision, the trial court granted MCP's cross-claim against NDC.

MCP interposed its appeal on December 20, 1969, while NDC filed its appeal on February 17, 1970 after its motion to set aside the decision was denied by the trial court in its order dated February 13, 1970.

On November 17, 1978, the Court of Appeals promulgated its decision affirming in toto the decision of the trial court.

Hence these appeals by certiorari.

NDC's appeal was docketed as G.R. No. 49407, while that of MCP was docketed as G.R. No. 49469. On July 25, 1979, this Court ordered the consolidation of the above cases (Rollo, p. 103). On August 27, 1979, these consolidated cases were given due course (Rollo, p. 108) and submitted for decision on February 29, 1980 (Rollo, p. 136).

In its brief, NDC cited the following assignments of error:

I

THE COURT OF APPEALS ERRED IN APPLYING ARTICLE 827 OF THE CODE OF COMMERCE AND NOT SECTION 4(2a) OF COMMONWEALTH ACT NO. 65, OTHER-WISE KNOWN AS THE CARRIAGE OF GOODS BY SEA ACT IN DETERMINING THE LIABILITY FOR LOSS OF CARGOES RESULTING FROM THE COLLISION OF ITS VESSEL "DONA NATI" WITH THE "YASUSHIMA MARU" OCCURRED AT ISE BAY, JAPAN OR OUTSIDE THE TERRITORIAL JURISDICTION OF THE PHILIPPINES.

II

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT FOR REIMBURSEMENT FILED BY THE INSURER, HEREIN PRIVATE RESPONDENT-APPELLEE, AGAINST THE CARRIER, HEREIN PETITIONER-APPELLANT. (pp. 1-2, Brief for Petitioner-Appellant National Development Company; p. 96, Rollo)

On its part, MCP assigned the following alleged errors:

I

THE RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT DEVELOPMENT INSURANCE AND SURETY CORPORATION HAS NO CAUSE OF ACTION AS AGAINST PETITIONER MARITIME COMPANY OF THE PHILIPPINES AND IN NOT DISMISSING THE COMPLAINT.

II

THE RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE CAUSE OF ACTION OF RESPONDENT DEVELOPMENT INSURANCE AND SURETY CORPORATION IF ANY EXISTS AS AGAINST HEREIN PETITIONER MARITIME COMPANY OF THE PHILIPPINES IS BARRED BY THE STATUTE OF LIMITATION AND HAS ALREADY PRESCRIBED.

III

THE RESPONDENT COURT OF APPEALS ERRED IN ADMITTING IN EVIDENCE PRIVATE RESPONDENT'S EXHIBIT "H" AND IN FINDING ON THE BASIS THEREOF THAT THE COLLISION OF THE SS DONA NATI AND THE YASUSHIMA MARU WAS DUE TO THE FAULT OF BOTH VESSELS INSTEAD OF FINDING THAT THE COLLISION WAS CAUSED BY THE FAULT, NEGLIGENCE AND LACK OF SKILL OF THE CREWS OF THE YASUSHIMA MARU WITHOUT THE FAULT OR NEGLIGENCE OF THE CREW OF THE SS DONA NATI.

IV

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT UNDER THE CODE OF COMMERCE PETITIONER APPELLANT MARITIME COMPANY OF THE PHILIPPINES IS A SHIP AGENT OR NAVIERO OF SS DONA NATI OWNED BY CO-PETITIONER APPELLANT NATIONAL DEVELOPMENT COMPANY AND THAT SAID PETITIONER-APPELLANT IS SOLIDARILY LIABLE WITH SAID CO-PETITIONER FOR LOSS OF OR DAMAGES TO CARGO RESULTING IN COLLISION OF SAID VESSEL, WITH THE JAPANESE YASUSHIMA MARU.

V

THE RESPONDENT COURT OF APPEALS ERRED IN FINDING THAT THE LOSS OF OR DAMAGES TO THE CARGO OF 550 BALES OF AMERICAN RAW COTTON, DAMAGES WERE CAUSED IN THE AMOUNT OF P344,977.86 INSTEAD OF ONLY P110,000 AT P200.00 PER BALE AS ESTABLISHED IN THE BILLS OF LADING AND ALSO IN HOLDING THAT PARAGRAPH 10 OF THE BILLS OF LADING HAS NO APPLICATION IN THE INSTANT CASE THERE BEING NO GENERAL AVERAGE TO SPEAK OF.

VI

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THE PETITIONERS NATIONAL DEVELOPMENT COMPANY AND MARITIME COMPANY OF THE PHILIPPINES TO PAY JOINTLY AND SEVERALLY TO HEREIN RESPONDENT DEVELOPMENT INSURANCE AND SURETY CORPORATION THE SUM OF P364,915.86 WITH LEGAL INTEREST FROM THE FILING OF THE COMPLAINT UNTIL FULLY PAID PLUS P10,000.00 AS AND FOR ATTORNEY'S FEES INSTEAD OF SENTENCING SAID PRIVATE RESPONDENT TO PAY HEREIN PETITIONERS ITS COUNTERCLAIM IN THE AMOUNT OF P10,000.00 BY WAY OF ATTORNEY'S FEES AND THE COSTS.

(pp. 1-4, Brief for the Maritime Company of the Philippines; p. 121, Rollo)

The pivotal issue in these consolidated cases is the determination of which laws govern loss or destruction of goods due to collision of vessels outside Philippine waters, and the extent of liability as well as the rules of prescription provided thereunder.

The main thrust of NDC's argument is to the effect that the Carriage of Goods by Sea Act should apply to the case at bar and not the Civil Code or the Code of Commerce. Under Section 4 (2) of said Act, the carrier is not responsible for the loss or damage resulting from the "act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship." Thus, NDC insists that based on the findings of the trial court which were adopted by the Court of Appeals, both pilots of the colliding vessels were at fault and negligent, NDC would have been relieved of liability under the Carriage of Goods by Sea Act. Instead, Article 827 of the Code of Commerce was applied and both NDC and MCP were ordered to reimburse the insurance company for the amount the latter paid to the consignee as earlier stated.

This issue has already been laid to rest by this Court in *Eastern Shipping Lines Inc. v. IAC* (150 SCRA 469-470 [1987]) where it was held under similar circumstances that "the law of the country to which the goods are to be transported governs the liability of the common carrier in case of their loss, destruction or deterioration" (Article 1753, Civil Code). Thus, the rule was specifically laid down that for cargoes transported from Japan to the Philippines, the liability of the carrier is governed primarily by the Civil Code and in all matters not regulated by said Code, the rights and obligations of common carrier shall be governed by the Code of Commerce and by special laws (Article 1766, Civil Code). Hence, the Carriage of Goods by Sea Act, a special law, is merely supplementary to the provisions of the Civil Code.

In the case at bar, it has been established that the goods in question are transported from San Francisco, California and Tokyo, Japan to the Philippines and that they were lost or damaged due to a collision which was found to have been caused by the negligence or fault of both captains of the colliding vessels. Under the above ruling, it is evident that the laws of the Philippines will apply, and it is immaterial that the collision actually occurred in foreign waters, such as Ise Bay, Japan.

Under Article 1733 of the Civil Code, common carriers from the nature of their business and for reasons of public policy are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them according to all circumstances of each case. Accordingly, under Article 1735 of the same Code, in all cases other than those mentioned in Article 1734 thereof, the common carrier shall be presumed to have been at fault or to have acted negligently, unless it proves that it has observed the extraordinary diligence required by law.

It appears, however, that collision falls among matters not specifically regulated by the Civil Code, so that no reversible error can be found in respondent court's application to the case at bar of Articles 826 to 839, Book Three of the Code of Commerce, which deal exclusively with collision of vessels.

More specifically, Article 826 of the Code of Commerce provides that where collision is imputable to the personnel of a vessel, the owner of the vessel at fault, shall indemnify the losses and damages incurred after an expert appraisal. But more in point to the instant case is Article 827 of the same Code, which provides that if the collision is imputable to both vessels, each one shall suffer its own damages and both shall be solidarily responsible for the losses and damages suffered by their cargoes.

Significantly, under the provisions of the Code of Commerce, particularly Articles 826 to 839, the shipowner or carrier, is not exempt from liability for damages arising from collision due to the fault or negligence of the captain. Primary liability is imposed on the shipowner or carrier in recognition of the universally accepted doctrine that the shipmaster or captain is merely the representative of the owner who has the actual or constructive control over the conduct of the voyage (*Yueng Sheng Exchange and Trading Co. v. Urrutia & Co.*, 12 Phil. 751 [1909]).

There is, therefore, no room for NDC's interpretation that the Code of Commerce should apply only to domestic trade and not to foreign trade. Aside from the fact that the Carriage of Goods by Sea Act (Com. Act No. 65) does not specifically provide for the subject of collision, said Act in no uncertain terms, restricts its application "to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade." Under Section 1 thereof, it is explicitly provided that "nothing in this Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application." By such incorporation, it is obvious that said law not only recognizes the existence of the Code of Commerce, but more importantly does not repeal nor limit its application.

On the other hand, Maritime Company of the Philippines claims that Development Insurance and Surety Corporation, has no cause of action against it because the latter did not prove that its alleged subrogers have either the ownership or special property right or beneficial interest in the cargo in question; neither was it proved that the bills of lading were transferred or assigned to the alleged subrogers; thus, they could not possibly have transferred any right of action to said plaintiff-appellee in this case. (Brief for the Maritime Company of the Philippines, p. 16).

The records show that the Riverside Mills Corporation and Guilcon, Manila are the holders of the duly endorsed bills of lading covering the shipments in question and an examination of the invoices in particular, shows that the actual consignees of the said goods are the aforementioned companies. Moreover, no less than MCP itself issued a certification attesting to this fact. Accordingly, as it is undisputed that the insurer, plaintiff-appellee paid the total amount of P364,915.86 to said consignees for the loss or damage of the insured cargo, it is evident that said plaintiff-appellee has a cause of action to recover (what it has paid) from defendant-appellant MCP (Decision, CA-G.R. No. 46513-R, p. 10; Rollo, p. 43).

MCP next contends that it can not be liable solidarily with NDC because it is merely the manager and operator of the vessel *Dona Nati*, not a ship agent. As the general managing agent, according to MCP, it can only be liable if it acted in excess of its authority.

As found by the trial court and by the Court of Appeals, the Memorandum Agreement of September 13, 1962 (Exhibit 6, Maritime) shows that NDC appointed MCP as Agent, a term broad enough to include the concept of Ship-agent in Maritime Law. In fact, MCP was even conferred all the powers of the owner of the vessel, including the power to contract in the name of the NDC (Decision, CA G.R. No. 46513, p. 12; Rollo, p. 40). Consequently, under the circumstances, MCP cannot escape liability.

It is well settled that both the owner and agent of the offending vessel are liable for the damage done where both are impleaded (*Philippine Shipping Co. v. Garcia Vergara*, 96 Phil. 281 [1906]); that in case of collision, both

the owner and the agent are civilly responsible for the acts of the captain (Yueng Sheng Exchange and Trading Co. v. Urrutia & Co., supra citing Article 586 of the Code of Commerce; Standard Oil Co. of New York v. Lopez Castelo, 42 Phil. 256, 262 [1921]); that while it is true that the liability of the naviero in the sense of charterer or agent, is not expressly provided in Article 826 of the Code of Commerce, it is clearly deducible from the general doctrine of jurisprudence under the Civil Code but more specially as regards contractual obligations in Article 586 of the Code of Commerce. Moreover, the Court held that both the owner and agent (Naviero) should be declared jointly and severally liable, since the obligation which is the subject of the action had its origin in a tortious act and did not arise from contract (Verzosa and Ruiz, Rementeria y Cia v. Lim, 45 Phil. 423 [1923]). Consequently, the agent, even though he may not be the owner of the vessel, is liable to the shippers and owners of the cargo transported by it, for losses and damages occasioned to such cargo, without prejudice, however, to his rights against the owner of the ship, to the extent of the value of the vessel, its equipment, and the freight (Behn, Meyer & Co. v. McMicking et al. 11 Phil. 276 [1908]).

As to the extent of their liability, MCP insists that their liability should be limited to P200.00 per package or per bale of raw cotton as stated in paragraph 17 of the bills of lading. Also the MCP argues that the law on averages should be applied in determining their liability.

MCP's contention is devoid of merit. The declared value of the goods was stated in the bills of lading and corroborated no less by invoices offered as evidence during the trial. Besides, common carriers, in the language of the court in Juan Ysmael & Co., Inc. v. Barretto et al., (51 Phil. 90 [1927]) "cannot limit its liability for injury to a loss of goods where such injury or loss was caused by its own negligence." Negligence of the captains of the colliding vessel being the cause of the collision, and the cargoes not being jettisoned to save some of the cargoes and the vessel, the trial court and the Court of Appeals acted correctly in not applying the law on averages (Articles 806 to 818, Code of Commerce).

MCP's claim that the fault or negligence can only be attributed to the pilot of the vessel SS Yasushima Maru and not to the Japanese Coast pilot navigating the vessel Dona Nati, need not be discussed lengthily as said claim is not only at variance with NDC's posture, but also contrary to the factual findings of the trial court affirmed no less by the Court of Appeals, that both pilots were at fault for not changing their excessive speed despite the thick fog obstructing their visibility.

Finally on the issue of prescription, the trial court correctly found that the bills of lading issued allow trans-shipment of the cargo, which simply means that the date of arrival of the ship Dona Nati on April 18, 1964 was merely tentative to give allowances for such contingencies that said vessel might not arrive on schedule at Manila and therefore, would necessitate the trans-shipment of cargo, resulting in consequent delay of their arrival. In fact, because of the collision, the cargo which was supposed to arrive in Manila on April 18, 1964 arrived only on June 12, 13, 18, 20 and July 10, 13 and 15, 1964. Hence, had the cargoes in question been saved, they could have arrived in Manila on the above-mentioned dates. Accordingly, the complaint in the instant case was filed on April 22, 1965, that is, long before the lapse of one (1) year from the date the lost or damaged cargo "should have been delivered" in the light of Section 3, sub-paragraph (6) of the Carriage of Goods by Sea Act.

PREMISES CONSIDERED, the subject petitions are DENIED for lack of merit and the assailed decision of the respondent Appellate Court is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Sarmiento, JJ., concur.

[*] Penned by Justice Emilio A. Gancayco, concurred in by Justices Venicio Escolin and Guillermo P. Villazor.

[**] Penned by Judge Jesus P. Morfe

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