

CGU INTERNATIONAL INSURANCE PLC., PLAINTIFF-APPELLEE, VS. CANDANO SHIPPING LINES, INC., DEFENDANT-APPELLEE, ALESON SHIPPING LINES, INC., DEFENDANT-APPELLANT.

Ponente: ELBINIAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/984ee00b6ca9/>

ELBINIAS, J.:

Subject of this Appeal[1] filed under Rule 41 of the Rules of Court is the Decision[2] dated May 17, 2010 of the Regional Trial Court of Makati City, Branch 149 (“lower court” for brevity) in Civil Case No. 03-804 for “Damages.”[3]

The salient antecedents are those as stated in the lower court's Decision[4] dated May 17, 2010, as follows:

“This is a case of collision of two vessels whereby the cargo cement in bags, being carried by the vessel of defendant Candano (defendant-appellee here), was insured with the plaintiff (plaintiff-appellee here), hence plaintiff paid the insured. After payment by the plaintiff to the insured of the value of the lost cargo, based on subrogation receipt plaintiff made a demand for reimbursement, still defendants refused to pay. Thus, plaintiff filed this complaint both against the two owners of the colliding vessels.

The complaint was filed on July 14, 2003, and it summarized the collision incident as follows:

1. The vessel of defendant Candano involved in the incident is named M/V 'Romeo'. On the other hand, the name of the vessel owned by defendant Aleson (defendant-appellant here) is M/V 'Aleson Carrier 5'.
2. On May 28, 2002, a time charter party was executed between insured Apo Cement Corporation and defendant Candano over the M/V 'Romeo' within the Philippine waters.
3. The charter party stipulated that Candano shall have exclusive control and command of the vessel for its operation, navigation and management of the vessel M/V 'Romeo'.
4. From July 11, 2002 to July 14, 2002 M/V 'Romeo' berthed for loading purposes of cement at the Apo Cement pier Tinaan Naga, Cebu with a total 31,250 bags of cement or equivalent to 1.250 metric tons.
5. The cargo was insured with plaintiff under Open Policy No. PH-C0125 and Marine Cargo Certificates Schedule No. MC20104160.
6. After loading on July 14, 2002, M/V 'Romeo' left the insured's wharf and started its navigation to Legaspi City, Albay for delivery of the cement in bags to Apo Bicol warehouse.
7. While M/V 'Romeo' was on her way out from the insured's pier, she collided with M/V 'Aleson Carrier 5'. 'M/V Aleson Carrier 5' was then approaching the pier of Apo Cement.
8. The collision caused the sinking of M/V 'Romeo' with the cargo cement in bags worth P3, 437,500.00, to the bottom of the sea.
9. The insured, Apo Cement Corporation made demands to the herein defendants to pay, but to no avail, hence it proceeded with the insurance policy issued by the plaintiff. Thus, plaintiff, after determining that the cause of

the damage upon the insured cargo as compensable, plaintiff paid the insured.”[5] (Emphasis supplied)

On September 1, 2003, defendant-appellant Aleson Shipping Lines, Inc. (“defendant-appellant” for brevity) filed its Answer[6] to the Complaint, alleging that, among others:

“1. Venue is improperly laid. xxx

2. Plaintiff has no cause of action against answering defendant. The damages sustained by Apo Cement Corporation arose from the negligence of the captain and crew of MV 'Romeo' owned and operated by defendant Candano.

3. The officers and crew of answering defendant's vessel MV Aleson Carrier 5 exercised all diligence and care to avoid collision between the two vessels but which mishap occurred because of the wrongful maneuver and negligence only of the officers and crew of MV Romeo.”[7]

For its part, defendant-appellee Candano Shipping Lines, Inc. (defendant-appellee” for brevity) filed its Answer[8] on January 7, 2005 stating that, among others:

“12. At all times material to the complaint the vessel MV 'ROMEO' was in all respects seaworthy and with full complement of fully competent officers and crew.

13. Defendant Candano Shipping Lines, Inc. and the officers and crew of the MV 'ROMEO' exercised extraordinary diligence in the care and custody of the cargo and in the navigation and operation of the vessel.

14. The collision between the MV 'ROMEO' and the MV 'ALESON CARRIER 5' was due to the fault and negligence of defendant Aleson Shipping Lines, Inc., the erroneous and careless maneuvers and operation of the vessel MV 'ALESON CARRIER 5' and the careless and faulty instructions or directions of Apo Cement Corp. to the vessels.

15. As a result of the collision the MV 'ROMEO' sank and was lost. Consequently, defendant Candano Shipping Lines, Inc.'s liability, if any, for the lost cargo of Apo Cement Corp., is, by law, extinguished in accordance with law and jurisprudence, including Articles 587 and 837 of the Code of Commerce.

16. Defendant Candano Shipping Lines, Inc. exercised extraordinary diligence in the selection and supervision of the officers and crew of the MV 'ROMEO'.”[9] (Emphasis supplied)

Afterwards, the lower court rendered the Decision[10] dated May 17, 2010 finding defendant-appellant liable to pay Damages to plaintiff-appellee CGU International Insurance PLC (“plaintiff-appellee” for brevity). The lower court likewise dismissed defendant-appellant's Cross-Claim against defendant-appellee. The dispositive portion of the Decision decreed:

“WHEREFORE, in view of the foregoing considerations, this Court hereby FINDS in favor of the plaintiff against the defendant ALESON, hence it hereby ORDERS defendant ALESON, to pay plaintiff the sum of Philippine Pesos: THREE MILLION THREE HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED FIFTY (P3,368,750.00) with interest at 6% percent per annum from date hereof until the finality of this decision and 12% per annum from finality of this decision until fully paid and attorney's fee of P50,000.00 plus cost of suit.

The complaint against Candano is hereby DISMISSED in accordance with the provision of Article 826 of the Code of Commerce. It states: 'If a vessel should collide with another through the fault, negligence or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after expert appraisal' (Attys. Rufus Bautista Rodriguez and Jesus Puntay Casila. The Law on Transportation, 1979 Edition, pages 166-167).

Finally, the counterclaims filed by defendant Aleson against defendant Candano are hereby DISMISSED for

insufficiency of evidence.

SO ORDERED.”[11] (Emphasis was made in the original)

Defendant-appellant then filed the Appeal[12] at bench, praying that:

“WHEREFORE, foregoing premises considered, it is most respectfully prayed of the Honorable Court to REVERSE and SET ASIDE the Decision dated May 17, 2010 of the Regional Trial Court of Makati City, Branch 149 in Civil Case No. 03-804, and in its stead render a Decision dismissing the complaint.

In the alternative, defendant-appellant prays that the Honorable Court render a decision finding the defendant Candano Shipping Lines, Inc. solely liable to pay plaintiff the sum of Three Million Three Hundred Sixty Eight Thousand Seven Hundred Fifty (P3,368,750.00) with interest at 6% percent (sic) per annum from finality of this decision until fully paid and attorney's fee of P50,000.00 plus cost of suit.

Defendant Appellant Aleson Shipping Lines, Inc. prays for other relief just and equitable in the premises.”[13]

The Appeal raised the following errors:

I. The trial court grossly erred in finding that MV Aleson Con-Carrier V was the vessel solely at fault in the collision.

II. The trial court committed grave reversible error in relying on hearsay testimony and a misplaced and erroneous application of the res gestae rule to justify second-hand information gathered by witnesses rendered incompetent to testify on the circumstances leading to the collision of MV Romeo and MV Aleson Con-Carrier V.

III. The trial court committed grave reversible error in ascribing liability upon defendant-appellant Aleson even though the record is replete with undisputed evidence proving that the crew of defendant-appellant Aleson who exerted extraordinary diligence and care to avoid the collision between MV Romeo and MV Aleson Con-Carrier V on July 14, 2002, but which mishap occurred because of the wrongful maneuver and negligence only of the officers and crew of MV Romeo.

IV. The trial court committed grave reversible error in dismissing defendant appellant Aleson's cross-claim against defendant Candano.”[14] (Emphasis supplied in the original)

Contrary to defendant-appellant's arguments in its assigned errors I and III, defendant-appellant was solely liable for the collision between M/V Aleson Carrier V and M/V Romeo, which collision in turn, resulted to the loss of the bags of cement of Apo Cement Corporation.

Defendant-appellant had argued as follows:

“However, the trial court erroneously ascribes fault to defendant-appellant Aleson making it appear that the appellant's vessel entered the Apocemco pier despite knowledge of the presence of MV Romeo. The trial court conveniently neglected the fact that the management of who goes in and out of the loading area is a function of the Apocemco port personnel and that the witness Cabeltes had no reason to doubt the radio message relayed to him by his crew, since in the eight (8) that he's been loading cargo at the Apocemco pier in Naga, Cebu, the radio message from the Apocemco port operation personnel has always meant a notice to proceed to the loading bay.

XXX

Navigating with caution, MV Aleson Con-Carrier V proceeded towards Apocemco pier's Berth No. 1 at slow speed of two knots. MV Romeo on the other hand was navigating the same waters at full speed.

XXX

Clearly then, since the point of collision happened after the last buoy, then the trial court had no basis for concluding that defendant-appellant Aleson was reckless because of its failure to wait until MV Romeo has exited the last buoy. If the trial court's conclusion was true, then the point of collision would have been before and not after last buoy.

The trial court's conclusion that defendant-appellant 'failed to observe precaution and vigilance' at the time when the collision occurred has no basis in fact.

The records of the case, particularly the testimony of witness Ramil Cabeltes consistently show that MV Aleson Con-Carrier V had exerted all efforts to avoid the collision, but it was MV Romeo that failed to maneuver its vessel properly causing it to hit MV Aleson Con-Carrier V.

xxx

The trial court also erroneously finds fault to defendant Aleson's alleged failure to sound its horn, even when the evidence on record shows that there was no need to blow MV Aleson's horn to warn MV Romeo since both ships have in fact established contact and had explicitly agreed to execute a port to port passing to avoid a collision.”[15] (Emphasis supplied)

Defeating defendant-appellant's arguments however, is that defendant-appellant, as a common carrier, failed to exercise extra-ordinary diligence that would have prevented the collision between between M/V Aleson Carrier V and M/V Romeo.[16]

Here, as the records revealed, the collision between M/V Aleson Carrier V and M/V Romeo was due to the fault of M/V Aleson Carrier V's Capt. Ramil Cabeltes (“Capt. Cabeltes” for brevity). The reason is that Capt. Cabeltes of M/V Aleson Carrier V, despite having been informed that a vessel, M/V Romeo, was loading cement at the pier, still proceeded for M/V Aleson Carrier V to enter the channel towards the pier. Capt. Cabeltes likewise failed to send sound signals in order to alert M/V Romeo that M/V Aleson Carrier V was moving towards the direction of M/V Romeo.

All of these matters were as also found by the lower court, to wit:

“Thus, based on these established and proven facts (sic) will allow this court to conclude that M/V 'Aleson Carrier 5' was recklessly piloted hence the pilot of M/V 'Aleson Carrier 5' was imprudent. xxx

xxx

It is hereby also concluded that the Master of M/V 'Aleson 5' failed to wait until M/V 'Romeo' has exited from the last buoy hence said Master is hereby held reckless and committed imprudence in the piloting of M/V 'Aleson Carrier 5' during the collision that happened on July 14, 2002 at the Apo pier, Naga, Cebu. Thus, this court hereby adopts the ruling of the Supreme Court in the case of Jarco Marketing Corp. vs. Court of Appeals (G.R. No. 129792, December 21, 1999), it ruled 'The test in determining the existence of negligence is enunciated in the landmark case of Picart vs. Smith, thus: 'Did the defendant in doing the alleged negligent act use that reasonable care and caution which ordinarily prudent person would have used in the same situation? If not, he is guilty of negligence.' In this instant case the captain of M/V 'Aleson Carrier 5' just made presumption that they have been called to proceed to the port of Apo Cement of that unfortunate night of July 14, 2002. He knew for a fact that there was a vessel loading cement at that time, hence, prudence dictates that he must ascertain with definiteness if he can indeed proceed to enter the channel of the port because he knew also as a fact that two vessels cannot pass the channel. The Supreme Court further concluded: 'Negligence is failure to observe, for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby the other person suffers injury' (Jarco Marketing vs. Court of Appeals supra). Again, Mr. Cabeltes, the captain M/V 'Aleson Carrier 5' did not move to the right because of his fear that his vessel may be aground without considering the safety and danger upon the other vessel hence

the collision took place. Had Mr. Cabeltes verified first from the Radio Operator of Apo Cement and had he moved a little to the right then there could have been no collision that took place that night. Mr. Cabeltes had all the chances to avoid the collision, but because of fear that his vessel be aground which was the lesser evil, he decided to stay on his course, hence that collision. Mr. Cabeltes must be responsible for the collision. In view of this conclusion of negligence on the part of the captain and the crew of M/V 'Aleson Carrier 5' defendant Aleson must be liable for the negligence of its employees.”[17] (Emphasis supplied)

Given that the evidence showing the negligence of M/V Aleson Carrier V's Capt. Cabeltes was adequate to ascribe fault and liability to defendant-appellant, then defendant-appellant's argument in its assigned error II that the testimony[18] of Ms. Maria Tessie Jadulco Flores (“Ms. Flores” for brevity) was hearsay, became irrelevant.

Defendant-appellant could not also properly argue in its assigned error II that the lower court erred in failing to consider the testimony of M/V Aleson Carrier V's Capt. Cabeltes in finding defendant-appellant to be solely liable. This is because Capt. Cabeltes' testimony was self-serving.

On this matter, defendant-appellant had argued that:

“The trial court gave more credence to plaintiff CGU and defendant-appellant (sic) Candano's witnesses whose testimony pertaining to the incidents leading to the collision were based on hearsay evidence as opposed to witness Cabeltes' actual, first-hand and eyewitness account of the collision.

Witness Cabeltes' testimony remained unchallenged throughout the proceedings due to plaintiff-appellee CGU and defendant Candano's failure to present evidence that would dispute Cabeltes' testimony.”[19]

Prevailing over defendant-appellant's arguments however, is that the testimony of Capt. Cabeltes, which was favorable to plaintiff-appellant, was unsupported and was therefore self-serving.[20] Moreover, the testimony of Capt. Cabeltes was not straightforward, as was also found by the lower court in the Decision appealed from, to wit:

“The testimony of the captain of M/V 'Aleson Carrier 5' was quite not straightforward, hence this court was constrained to adopt this ruling of the Supreme Court, it declared: 'Evidence to be believed must be credible in itself, such that common experience and observation of mankind lead to the inference of its probability under the circumstances' (People vs. Alex Revira G.R. No. 125895, July 4, 2002).”[21] (Emphasis supplied)

The lower court's conclusions and findings of fact should not be disturbed unless for strong and cogent reasons, because the court is in a better position to examine real evidence, as well as observe the demeanor of the witnesses during trial.[22]

On the other hand, defendant-appellee was able to sufficiently prove that it exercised extraordinary diligence in maneuvering M/V Romeo. This was revealed by all of the following: Certificate of Inspection[23] Ship Station License[24] Marine Protest[25] prepared by Mr. Gilbert Salazar (“Mr. Salazar” for brevity), Third Mate of M/V Romeo; Sworn Statements of Mr. Salazar,[26] Mr. Riche Salsa,[27] and Mr. Ramon Ladrera,[28] all of whom were part of the crew of M/V Romeo; Judicial Affidavit[29] of Ms. Maria Tessie Jadulco Flores (“Ms. Flores” for brevity), and; Survey Certificate[30] prepared by the Allegiance Adjusters and Surveyors, Inc., which in turn showed that M/V Romeo was seriously damaged when M/V Aleson Carrier V collided with the latter and causing it to sink.

Because of the failure of defendant-appellant's M/V Aleson Carrier V to exercise the required extraordinary diligence, which failure resulted to the collision between M/V Aleson Carrier V and M/V Romeo, then, contrary to defendant-appellant's assigned ground IV, the lower court properly dismissed defendant-appellant's Cross-Claim against defendant-appellee.

Considering all of these, then, defendant-appellant, as the owner of M/V Aleson Carrier V, was solely liable for Damages to plaintiff-appellee.

A common carrier is presumed to be at fault or to have acted negligently, and is liable for the cargo that is lost as a result, unless the common carrier proved, which was not done so here, that it observed extraordinary diligence. This is pursuant to the pronouncement of the Supreme Court in *Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*, G.R. No. 156978, May 2, 2006:

“From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport according to all the circumstances of each case. In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible, unless they can prove that the loss, destruction or deterioration was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.

XXX

Therefore, we agree with the appellate court in sustaining the trial court’s ruling that petitioner is liable for the total value of the lost cargo.” (Emphasis supplied)

Thus, no cogent reason was shown to justify any deviation from the following findings of the lower court, which findings were based on the facts and the law:

“Furthermore, it was admitted that these two vessels were engaged in the business of transporting goods, hence they are common carrier (admission made in the Answers of both defendants). Being common carriers, defendants are required to observe the extraordinary diligence mandated by law. Article 1733 of the New Civil Code of the Philippines is quite crystal clear on this point it declares. '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.' Moreover, the Supreme Court has ruled 'In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible, unless they can prove that the loss, destruction or deterioration was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence' [*Aboitiz Shipping Corporation vs. New India Assurance Company, Ltd* (G.R. No. 156978, August 24, 2007)]. In this instant case defendant Aleson miserably failed to overcome the presumption of law. However, Ms. Flores has established that Candano has exercised the required diligence.

XXX

As final note, 'In an action for recovery of damages against common carrier on the goods shipped, the shipper or consignee should first prove the fact of shipment and its consequent loss or damage while the same was in possession, actual or constructive of the carrier. Thereafter the burden of proof shifts to respondent to prove that he has exercised extraordinary diligence required by law or that the loss, damage or deterioration of the cargo was due to fortuitous event or some other circumstances inconsistent with its liability.' [*Planters Products Inc. VS Court of Appeals 226 SCRA 476 487* (September 15, 1993)] Defendant Aleson miserably failed to establish that it has exercised the required extraordinary diligence required under the circumstances. Moreover, defendant Aleson was the cause of the evil caused, hence defendant Aleson must be held liable. Otherwise, this Court will be giving premium to negligence and imprudence. On the other hand, defendant Candano appeared to have observed the required extraordinary diligence under the circumstances.”[31] (Emphasis supplied)

Indeed, the findings of the lower court are entitled to great weight and respect on appeal, and are in fact accorded finality when supported by sufficient evidence on the record,[32] as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

IN VIEW OF ALL THESE, the Appeal is DENIED. The Decision of the lower court is AFFIRMED.

SO ORDERED.

Didican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 36-79.

[2] Rollo, pp. 82-92.

[3] Records, pp. 1-4.

[4] Rollo, pp. 82-92.

[5] Rollo, pp. 82-83.

[6] Records, pp. 45-49.

[7] Records, p. 47.

[8] Records, pp. 122-126.

[9] Records, pp. 123-124

[10] Rollo, pp. 82-92

[11] Rollo, pp. 91-92.

[12] Rollo, pp. 36-79.

[13] Rollo, pp. 78-79.

[14] Rollo, pp. 38-40.

[15] Rollo, pp. 54-60.

[16] ART. 1733. 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 the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

[17] Rollo, pp. 89-91.

[18] Records, pp. 669-675.

[19] Rollo, pp. 62-64.

[20] TSN, May 22, 2008.

[21] Rollo, p. 89.

[22] Spouses Bernales vs. Heirs of Sambaan, G.R. No. 163271, January 15, 2010.

[23] Records, p. 658.

[24] Records, p. 659.

[25] Records, p. 662.

[26] Records, pp. 664-665.

[27] Records, p. 666.

[28] Records, pp. 667-668.

[29] Records, pp. 669-675.

[30] Records, pp. 321-325.

[31] Rollo, pp. 89-91.

[32] Spouses Patricio and Myrna Bernales vs. Heirs of Julian Sambaan, et al., G.R. No. 163271, January 15, 2010.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.