

**STANDARD VACUUM OIL COMPANY, PLAINTIFF AND APPELLANT,
VS. LUZON STEVEDORING CO., INC., DEFENDANT AND APPELLEE.***G.R. No. L-5203. April 18, 1956*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff entered into a contract with defendant to transport between the ports of Manila and Nin Bay, Sagay, Iloilo, 2,916.44 barrels of bulk gasoline belonging to plaintiff. The gasoline was delivered in accordance with the contract but defendant failed to transport it to its place of destination and so plaintiff brought this action in the Court of First Instance of Manila to recover the sum of P75,578.50 as damages.

Defendant, in its answer, pleaded that its failure to deliver the gasoline was due to fortuitous event or caused by circumstances beyond its control and not to its fault or negligence or that of any of its employees. The court, after receiving the evidence, rendered decision finding that the disaster that had befallen the tugboat was the result of an unavoidable accident and the loss of the gasoline was due to a fortuitous even which was beyond the control of defendant and, consequently, dismissed the case with costs against the plaintiff.

The facts as found by the trial court are: "that pursuant to an agreement had between the parties, defendant's barge No. L-522 was laden with gasoline belonging to the plaintiff to be transported from Manila to the Port of Iloilo; that early in the morning of February 2, 1947, defendant's tugboat 'Snapper' picked up the barge outside the breakwater; that the barge was placed behind the tugboat, it being connected to the latter by a tow rope ten inches in circumference; that behind the barge, three other barges were likewise placed, one laden with some cargo while the other two containing hardly any cargo at all; that the weather was good when on that day the tugboat with its tow started on its voyage; that the weather remained good on February 3, 1947, when it passed Santiago Point in Batangas; that at about 8:00 o'clock in the morning of February 4, 1947, the engine of the tugboat came to a dead stop; that the engineer on board the tugboat found out that the trouble was due to a broken idler; that a message was then sent to the defendant's radio station in Manila informing its officials of the engine trouble; that upon the receipt of the message the defendant called up several shipping companies in Manila to find out if they had any vessels in the vicinity where the 'Snapper' had stalled but said companies replied in the negative; that thereupon the defendant radioed its tugboat 'Tamban' which was docked at Batangas, ordering it to proceed to the place where the 'Snapper' was; that at about 6:00 o'clock in the same morning of February 4, 1947, the master of the 'Snapper' attempted to cast anchor but the water areas around Elefante Island were so deep that the anchor did not touch bottom; that in the afternoon of the same day the weather become worse as the wind increased in intensity and the waves were likewise increased in size and force; that due to the rough condition of the sea the anchor chains of the 'Snapper' and the four barges, broke one by one and as a consequence thereof they were drifted and were finally dashed against the rocks off Banton Island; that on striking the rocks a hole was opened in the hull of the 'Snapper', which ultimately caused it to sink, while the barge No. L-522 was so badly damaged that the gasoline it had on board leaked out; and that the 'Tamban' arrived at the place after the gasoline had already leaked out."

Defendant is a private stevedoring company engaged in transporting local products, including gasoline in bulk and has a fleet of about 140 tugboats and about 90 per cent of its business is devoted to transportation. Though it is engaged in a limited contract of carriage in the sense that it chooses its customers and is not opened to the public, nevertheless, the continuity of its operations in this kind of business have earned for it the level of a public utility. The contract between the plaintiff and defendant comes therefore under the provisions of the Code of Commerce. The pertinent law is article 361 which provides:

"Art. 361. The merchandise shall be transported at the risk and venture of the shipper, if the contrary was not expressly stipulated.

"Therefore, all damages and impairment suffered by the goods during the transportation, by reason of accident, force majeure, or by virtue of the nature or defect of the articles, shall be for the account and risk of the shipper.

"The proof of these accidents is incumbent on the carrier."

It therefore appears that whenever merchandise is transported on the sea by virtue of a contract entered into between the shipper and the carrier, the merchandise is deemed transported at the risk and venture of the shipper, if the contrary is not stipulated, and all damages suffered by the merchandise during the transportation by reason of accident or force majeure shall be for the account and risk of the shipper, but the proof of these accidents is incumbent on the carrier. Implementing this provision, our Supreme Court has held that all a shipper has to prove in connection with sea carriage is delivery of the merchandise in good condition and its non-delivery at the place of destination in order that the burden of proof may shift to the carrier to prove any of the accidents above adverted to. Thus, it was held that "Shippers who are forced to ship goods on an ocean liner or any other ship have some legal rights, and when goods are delivered on board a ship in good order and condition, and the shipowner delivers them to the shipper in bad order and condition, it then devolves upon the shipowner to both allege and prove that the goods were damaged by reason of some fact which legally exempts him from liability" (*Mirasol vs. Robert Dollar Co.*, 53 Phil., 129).

The issue to be determined is: Has defendant proven that its failure to deliver the gasoline to its place of destination is due to accident or force majeure or to a cause beyond its control? This would require an analysis of the facts and circumstances surrounding the transportation of said gasoline.

It appears that the tugboat "Snapper" was acquired by defendant from the Foreign Liquidation Commission. It was a surplus property. It was a deep-sea tugboat that had been in the service of the United States Armed Forces prior to its purchase by the Luzon Stevedoring Co. The tugboat was put into operation without first submitting it to an overhaul in a dry-dock. It also appears that this tugboat had previously made several trips and each time it had to obtain a special permit from the Bureau of Customs because it had never been dry-docked and did not have complete equipment to be able to obtain a permanent permit. The special permits that were issued by said Bureau specifically state that they were issued "pending submission of plans and load line certificate, including test and final inspection of equipment." It further appears that, when the tugboat was inspected by the Bureau of Customs on October 18, 1946, it found it to be inadequately equipped and so the Bureau required defendant to provide it with the requisite equipment but it was never able to complete it. The fact that the tugboat was a surplus property, has not been dry-docked, and was not provided with the requisite equipment to make it seaworthy, shows that defendant did not use reasonable diligence in putting the tugboat in such a condition as would make its use safe for operation. It is true, as defendant contends, that there were then no dry-dock facilities in the Philippines, but this does not mean that they could not be obtained elsewhere. It being a surplus property, a dry-dock inspection was a must, to put the tugboat in a sea going condition. It may also be true, as contended, that the deficiency in the equipment was due to the fact that no such equipment was available at the time, but this did not justify defendant

in putting such tugboat in business even if unequipped merely to make a profit. Nor could the fact that the tugboat was given a special permit by the Bureau of Customs to make the trip relieve defendant from liability.

"Where owner buys old tug, licensed coastwise, and equips it for ocean going, it is negligence to send tug out without knowing something of her stability and especially without stability test,' where history and performance with respect to crankiness and tenderness are matters of official record. Sabine Towing Co vs. Brennan, C. C. A. Tex., 72 F 2d 490, certiorari' denied 55 'S. Ct. 141, 293 U. S. 611, 79 L. Ed. 701, rehearing denied 55 S. Ct. 212, 293 U. S. 632, 79 L. Ed. 717." (80 C.'J. Si 803 Footnote)

There are other circumstances which show the lack of precaution and diligence taken by defendant to make the travel of the tugboat safe. One is the failure to carry on board the necessary spare parts. When the idler was broken, the engineer of the tugboat examined it for the first time and it was only then that he found that there were no spare parts to use except a worn out spare driving chain. And the necessity of carrying such spare parts was emphasized by the very defendant's witness, Mr. Depree, who said that in vessels motored by diesel engines it is necessary always to carry spare chains, ball bearings and chain drives. And this was not done.

"A tug engaged to tow a barge is liable for damage to the cargo of the barge caused by faulty equipment of the tug. The Raleigh, D. C. Md. 50 P. Supp. 961." (80 C. J. S. Footnote.)

Another circumstance refers to the deficiency or incompetence in the man power of the tugboat. According to law, a tugboat of the tonnage and powers of one like the "Snapper" is required to have a complement composed of one first mate, one second mate, one third mate, one chief engineer, one second engineer, and one third engineer, (section 1203, Revised Administrative Code); but when the trip in question was undertaken, it was only manned by one master, who was merely licensed as a bay, river, and lake patron, one second mate, who was licensed as a third mate, one chief engineer who was licensed as third motor engineer, one assistant engineer, wh6 was licensed as a bay, river, and lake motor engineer, and one second assistant engineer, who was unlicensed. The' employment of this crew to perform functions beyond its competence and qualifications is not only risky but against the law and if a mishap is caused, as in this case, one cannot but surmise that such incompetence has something to do with the mishap. The fact that 'the tugboat had undertaken several, trips before with practically the same crew without any untoward consequence, cannot furnish any justification for continuing in its employ a deficient or incompetent personnel contrary to law and the regulations of the Bureau of Customs.

"(1) Generally, seaworthiness is that strength, durability and engineering skill made a part of a ship's construction and continued maintenance, together with a competent and sufficient crew, which would withstand the vicissitudes and dangers of the elements which might reasonably be expected or encountered during her voyage without loss or damage/ to her particular cargo. The Cleveco, D. C. Ohio, 59 P. Supp. 71, 78, affirmed, -C. C. A., 154 P. 2d 606." (80 C. J. S. 997, Footnote.)

Let us now come to the efforts exerted by defendant in extending help to the tugboat when it was notified of the breakage of the idler. The evidence shows that the idler was broken at about 3:00 o'clock in the morning of February 4, 1947. Within a few minutes, a message was sent to defendant by radio informing it of the engine trouble. The weather was good at the time and the sea was smooth, and remained good until 12:00 o'clock noon when the wind started to blow. According to defendant, since it received the message, it called up different shipping lines in Manila asking them if they had any vessel in the vicinity where the "Snapper" stalled but, unfortunately, none was available at the time, and as its tug "Tamban" was then docked in Batangas, Batangas, which was nearest to the place, it radioed said tug to go, to the aid of the "Snapper". Accordingly, the tug "Tamban" set sail from Batangas for the rescue only to return to secure a map of the vicinity where the "Snapper" had stalled, which entailed a delay of two hours. In the meantime, the captain of the "Snapper" attempted to cast anchor. The water areas off Elefante Island were deep and the anchor would not touch bottom. Then the sea

became rough and the waves increased in size and force and notwithstanding the efforts of the crew to prevent the tug from drifting away, the force of the wind and the violence of the waves dashed the tug and the barges against the rocks. The tug developed a hole in her hull and sank. The barge carrying the gasoline was so badly damaged that the gasoline leaked out. The tug "Tamban" was finally able to locate the "Snapper" but it was too late.

The foregoing acts only serve to emphasize that the efforts made by defendant fall short of that diligence and precaution that are demanded by the situation to save the tugboat and the barge it was towing from disaster for it appears that more than twenty-four hours had elapsed before the tug "Tamban" showed up to extend help. The delay was caused not so much because of the lack of available ships in the vicinity where the "Snapper" stalled but because defendant did not have in readiness any tugboat sufficient in tonnage and equipment to attend to the rescue. The tug "Tamban" that was ordered to extend help was fully inadequate for that purpose. It was a small vessel that was authorized to operate only within Manila Bay and did not even have any map of the Visayan Islands. A public utility that is engaged in sea transportation even for a limited service with a fleet of 140 tugboats should have a competent tug to rush for towing or repairs in the event of untoward happening Overseas. If defendant had only such a tug ready for such an emergency, this disaster would not have happened. Defendant could have avoided sending a poorly equipped tug which, as it is to be expected, failed to do job.

While the breaking of the idler may be due to an accident, or to something unexpected, the cause of the disaster which resulted in the loss of the gasoline can only be attributed to the negligence or lack of precaution to avert it on the part of defendant. Defendant had enough time to effectuate the rescue if it had only a competent tug for the purpose because the weather was good from 3:00 o'clock a.m. to 12:00 o'clock noon of February 4, 1947 and it was only in the afternoon that the wind began to blow with some intensity,[1] but failed to do so because of that shortcoming. The loss of the gasoline certainly cannot be said to be due to force majeure or unforeseen event but to the failure of defendant to extend adequate and proper help. Considering these circumstances, and those we have discussed elsewhere, we are persuaded to conclude that defendant has failed to establish that it is exempt from liability under the law.

Wherefore, the decision appealed from is reversed. Defendant is hereby ordered to pay to plaintiff the sum of P75,578.50, with legal interest from the date of the filing of the complaint, with costs.

Parás, C. J., Bengzon, Padilla, Montentayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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