

PEDRO VASQUEZ, SOLEDAD ORTEGA, CLETO B. BAGAIPO, AGUSTINA VIRTUDES, ROMEO VASQUEZ AND MAXIMINA CAINAY, PETITIONERS, VS. THE COURT OF APPEALS AND FILIPINAS PIONEER LINES, INC. RE...

G.R. No. L-42926. September 13, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This litigation involves a claim for damages for the loss at sea of petitioners' respective children after the shipwreck of MV Pioneer Cebu due to typhoon "Klaring" in May of 1966.

The factual antecedents, as summarized by the trial Court and adopted by respondent Court, and which we find supported by the record, read as follows:

"When the interisland vessel MV 'Pioneer Cebu' left the Port of Manila the early morning of May 15, 1966 bound for Cebu, it had on board the spouses Alfonso Vasquez and Filipinas Bagaipo and a four-year old boy, Mario Marlon Vasquez, among her passengers. The MV 'Pioneer Cebu' encountered typhoon 'Klaring' and struck a reef on the southern part of Malapascua island, located somewhere north of the island of Cebu and subsequently sunk. The aforementioned passengers were unheard from since then.

Plaintiffs Pedro Vasquez and Soledad Ortega are the parents of Alfonso Vasquez; plaintiffs Cleto Bagaipo and Agustina Virtudes are the parents of Filipinas Bagaipo; and plaintiffs Romeo Vasquez and Maximina Cainay are the parents of the child, Mario Marlon Vasquez. They seek the recovery of damages due to the loss of Alfonso Vasquez, Filipinas Bagaipo and Mario Marlon Vasquez during said voyage.

At the pre-trial the defendant admitted its contract of carriage with Alfonso Vasquez, Filipinas Bagaipo and Mario Marlon Vasquez, and the fact of the sinking of the MV 'Pioneer Cebu'. The issues of the case were limited to the defenses alleged by the defendant that the sinking of the vessel was caused by force majeure, and that the defendant's liability had been extinguished by the total loss of the vessel.

The evidence on record as to the circumstances of the last voyage of the MV 'Pioneer Cebu' came mainly, if not exclusively, from the defendant. The MV 'Pioneer Cebu' was owned and operated by the defendant and used in the transportation of goods and passengers in the interisland shipping. Scheduled to leave the Port of Manila 9:00 p.m. on May 14, 1966, it actually left port at 5:00 a.m. the following day, May 15, 1966. It had a passenger capacity of three hundred twenty-two (322) including the crew. It undertook the said voyage on a special permit issued by the Collector of Customs inasmuch as, upon inspection, it was found to be without an emergency electrical power system. The special permit authorized the vessel to carry only two hundred sixty (260) passengers due to the said deficiency and for lack of safety devices for 322 passengers (Exh. 2). A headcount was made of the passengers on board, resulting on the tallying of 168 adults and 20 minors, although the passengers manifest only listed 106 passengers. It has been admitted, however, that the headcount is not reliable inasmuch as it was only done by one man on board the vessel.

When the vessel left Manila, its officers were already aware of the typhoon Klaring building up somewhere in

Mindanao. There being no typhoon signals on the route from Manila to Cebu, and the vessel having been cleared by the Customs authorities, the MV 'Pioneer Cebu' left on its voyage to Cebu despite the typhoon. When it reached Romblon Island, it was decided not to seek shelter thereat, inasmuch as the weather condition was still good. After passing Romblon and while near Jintotolo island, the barometer still indicated the existence of good weather condition continued until the vessel approached Tanguingui island. Upon passing the latter island, however, the weather suddenly changed and heavy rains fell. Fearing that due to zero visibility, the vessel might hit Chocolate island group, the captain ordered a reversal of the course so that the vessel could 'weather out' the typhoon by facing the winds and the waves in the open. Unfortunately, at about noontime on May 16, 1966, the vessel struck a reef near Malapascua island, sustained leaks and eventually sunk, bringing with her Captain Floro Yap who was in command of the vessel."

Due to the loss of their children, petitioners sued for damages before the Court of First Instance of Manila (Civil Case No. 67139). Respondent defended on the plea of force majeure, and the extinction of its liability by the actual total loss of the vessel.

After proper proceedings, the trial Court awarded damages, thus:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay:

(a) Plaintiffs Pedro Vasquez and Soledad Ortega the sums of P15,000.00 for the loss of earning capacity of the deceased Alfonso Vasquez, P2,100.00 for support, and P10,000.00 for moral damages;

(b) Plaintiffs Cleto B. Bagaipo and Agustina Virtudes the sum of P17,000.00 for loss of earning capacity of deceased Filipinas Bagaipo, and P10,000.00 for moral damages; and

(c) Plaintiffs Romeo Vasquez and Maximina Cainay the sum of P10,000.00 by way of moral damages by reason of the death of Mario Marlon Vasquez.

On appeal, respondent Court reversed the aforementioned judgment and absolved private respondent from any and all liability.

Hence, this Petition for Review on Certiorari, the basic issue being the liability for damages of private respondent for the presumptive death of petitioners' children.

The trial Court found the defense of *caso fortuito* untenable due to various decisive factors, thus:

"x x x It is an admitted fact that even before the vessel left on its last voyage, its officers and crew were already aware of the typhoon brewing somewhere in the same general direction to which the vessel was going. The crew of the vessel took a calculated risk when it proceeded despite the typhoon advisory. This is quite evident from the fact that the officers of the vessel had to conduct conferences amongst themselves to decide whether or not to proceed. The crew assumed a greater risk when, instead of seeking shelter in Romblon and other islands the vessel passed enroute, they decided to take a chance on the expected continuation of the good weather the vessel was encountering, and the possibility that the typhoon would veer to some other directions. The eagerness of the crew of the vessel to proceed on its voyage and to arrive at its destination is readily understandable. It is undeniably lamentable, however, that they did so at the risk of the lives of the passengers on board."

Contrariwise, respondent Appellate Court believed that the calamity was caused solely and proximately by fortuitous event which not even extraordinary diligence of the highest degree could have guarded against; and that there was no negligence on the part of the common carrier in the discharge of its duties.

Upon the evidence and the applicable law, we sustain the trial Court. "To constitute a *caso fortuito* that would exempt a person from responsibility, it is necessary that (1) the event must be independent of the human will; (2) the occurrence must render it impossible for the debtor to fulfill the obligation in a normal manner; and that (3)

the obligor must be free of participation in, or aggravation of, the injury to the creditor"[1] In the language of the law, the event must have been impossible to foresee, or if it could be foreseen, must have been impossible to avoid.[2]</sup

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