

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., RESPONDENT.*G.R. No. 100446. January 21, 1993*

Ponente: MELO, J.

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This refers to a petition for review which seeks to annul and set aside the decision of the Court of Appeals dated June 21, 1991, in CA G.R. SP No. 24918. The appellate court dismissed the petition for certiorari filed by herein petitioner, Aboitiz Shipping Corporation, questioning the Order of April 30, 1991 issued by the Regional Trial Court of the National Capital Judicial Region (Manila, Branch IV) in its Civil Case No. 144425 granting private respondent's prayer for execution for the full amount of the judgment award. The trial court in so doing swept aside petitioner's opposition which was grounded on the real and hypothecary nature of petitioner's liability as ship owner. The application of this established principle of maritime law would necessarily result in a probable reduction of the amount to be recovered by private respondent, since it would have to share with a number of other parties similarly situated in the insurance proceeds on the vessel that sank.

The basic facts are not disputed.

Petitioner is a corporation organized and operating under Philippine laws and engaged in the business of maritime trade as a carrier. As such, it owned and operated the ill-fated "MV P. ABOITIZ," a common carrier which sank on a voyage from Hongkong to the Philippines on October 31, 1980. Private respondent General Accident Fire and Life Assurance Corporation, Ltd. (GAFLAC), on the other hand, is a foreign insurance company pursuing its remedies as a subrogee of several cargo consignees whose respective cargo sank with the said vessel and for which it has priorly paid.

The incident of said vessel's sinking gave rise to the filing of suits for recovery of lost cargo either by the shippers, their successor-in-interest, or the cargo insurers like GAFLAC as subrogees. The sinking was initially investigated by the Board of Marine Inquiry (BMI Case No. 466, December 26, 1984), which found that such sinking was due to force majeure and that subject vessel, at the time of the sinking was seaworthy. This administrative finding notwithstanding, the trial court in said Civil Case No. 144425 found against the carrier on the basis that the loss subject matter therein did not occur as a result of force majeure. Thus, in said case, plaintiff GAFLAC was allowed to prove, and was later awarded, its claim. This decision in favor of GAFLAC was elevated all the way up to this Court in G.R. No. 89757 (*Aboitiz v. Court of Appeals*, 188 SCRA 387 [1990]), with Aboitiz, like its ill-fated vessel, encountering rough sailing. The attempted execution of the judgment award in said case in the amount of P1,072,611.20 plus legal interest has given rise to the instant petition.

On the other hand, other cases have resulted in findings upholding the conclusion of the BMI that the vessel was seaworthy at the time of the sinking, and that such sinking was due to force majeure. One such ruling was likewise elevated to this Court in G.R. No. 100373, *Country Bankers Insurance Corporation v. Court of Appeals*,

et al., August 28, 1991 and was sustained. Part of the task resting upon this Court, therefore, is to reconcile the resulting apparent contrary findings in cases originating out of a single set of facts.

It is in this factual milieu that the instant petition seeks a pronouncement as to the applicability of the doctrine of limited liability on the totality of the claims vis a vis the losses brought about by the sinking of the vessel MV P. ABOITIZ, as based on the real and hypothecary nature of maritime law. This is an issue which begs to be resolved considering that a number of suits alleged in the petition number about 110 (p. 10 and pp. 175 to 183, Rollo) still pend and whose resolution shall well-nigh result in more confusion than presently attends the instant case.

In support of the instant petition, the following arguments are submitted by the petitioner:

1. The Limited Liability Rule warrants immediate stay of execution of judgment to prevent impairment of other creditors' shares;
2. The finding of unseaworthiness of a vessel is not necessarily attributable to the shipowner; and
3. The principle of "Law of the Case" is not applicable to the present petition. (pp. 2-26, Rollo.)

On the other hand, private respondent opposes the foregoing contentions, arguing that:

1. There is no limited liability to speak of or applicable real and hypothecary rule under Article 587, 590, and 837 of the Code of Commerce in the face of the facts found by the lower court (Civil Case No. 144425), upheld by the Appellate Court (CA G.R. No. 10609), and affirmed in toto by the Supreme Court in G.R. No. 89757 which cited G.R. No. 88159 as the Law of the Case; and
2. Under the doctrine of the Law of the Case, cases involving the same incident, parties similarly situated and the same issues litigated should be decided in conformity therewith following the maxim *stare decisis et non quieta movere*. (pp. 225 to 279, Rollo.)

Before proceeding to the main bone of contention, it is important to determine first whether or not the Resolution of this Court in G.R. No. 88159, *Aboitiz Shipping Corporation vs. The Honorable Court of Appeals and Allied Guaranty Insurance Company, Inc.*, dated November 13, 1989 effectively bars and precludes the instant petition as argued by respondent GAFLAC.

An examination of the November 13, 1989 Resolution in G.R. No. 88159 (pp. 280 to 282, Rollo) shows that the same settles two principal matters, first of which is that the doctrine of primary administrative jurisdiction is not applicable therein; and second is that a limitation of liability in said case would render inefficacious the extraordinary diligence required by law of common carriers.

It should be pointed out, however, that the limited liability discussed in said case is not the same one now in issue at bar, but an altogether different aspect. The limited liability settled in G.R. No. 88159 is that which attaches to cargo by virtue of stipulations in the Bill of Lading, popularly known as package limitation clauses, which in that case was contained in Section 8 of the Bill of Lading and which limited the carrier's liability to US\$500.00 for the cargo whose value was therein sought to be recovered. Said resolution did not tackle the matter of the Limited Liability Rule arising out of the real and hypothecary nature of maritime law, which was not raised therein, and which is the principal bone of contention in this case. While the matters threshed out in G.R. No. 88159, particularly those dealing with the issues on primary administrative jurisdiction and the package liability limitation provided in the Bill of Lading are now settled and should no longer be touched, the instant case raises a completely different issue. It appears, therefore, that the resolution in G.R. 88159 adverted to has no bearing other than factual to the instant case.

This brings us to the primary question herein which is whether or not respondent court erred in granting execution of the full judgment award in Civil Case No. 14425 (G.R. No. 89757), thus effectively denying the application of the limited liability enunciated under the appropriate articles of the Code of Commerce. The articles maybe ancient, but they are timeless and have remained to be good law. Collaterally, determination of the question of whether execution of judgments which have become final and executory may be stayed is also an issue.

We shall tackle the latter issue first. This Court has always been consistent in its stand that the very purpose for its existence is to see to the accomplishment of the ends of justice. Consistent with this view, a number of decisions have originated herefrom, the tenor of which is that no procedural consideration is sacrosanct if such shall result in the subverting of substantial justice. The right to an execution after finality of a decision is certainly no exception to this. Thus, in *Cabrias v. Adil* (135 SCRA 355 [1985]), this Court ruled that:

"... It is a truism that every court has the power 'to control, in the furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto.' It has also been said that:

'x x x every court having jurisdiction to render a particular judgment has inherent power to enforce it, and to exercise equitable control over such enforcement. The court has authority to inquire whether its judgment has been executed, and will remove obstructions to the enforcement thereof. Such authority extends not only to such orders and such writs as may be necessary to carry out the judgment into effect and render it binding and operative, but also to such orders and such writs as may be necessary to prevent an improper enforcement of the judgment. If a judgment is sought to be perverted and made a medium of consummating a wrong the court on proper application can prevent it.'" (at p. 359)

and again in the case of *Lipana v. Development Bank of Rizal* (154 SCRA 257 [1987]), this Court found that:

"The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes the imperative in the higher interest of justice to direct the suspension of its execution (*Vecine v. Geronimo*, 59 OG 579); whenever it is necessary to accomplish the aims of justice (*Pascual v. Tan*, 85 Phil. 164); or when certain facts and circumstances transpired after the judgment became final which would render the execution of the judgment unjust (*Cabrias v. Adil*, 135 SCRA 354)." (at p. 201)

We now come to the determination of the principal issue as to whether the Limited Liability Rule arising out of the real and hypothecary nature of maritime law should apply in this and related cases. We rule in the affirmative.

In deciding the instant case below, the Court of Appeals took refuge in this Court's decision in G.R. No. 89757 upholding private respondent's claims in that particular case, which the Court of Appeals took to mean that this Court has "considered, passed upon and resolved Aboitiz's contention that all claims for the losses should first be determined before GAFLAC's judgment may be satisfied," and that such ruling "in effect necessarily negated the application of the limited liability principle" (p. 175, Rollo). Such conclusion is not accurate. The decision in G.R. No. 89757 considered only the circumstances peculiar to that particular case, and was not meant to traverse the larger picture herein brought to fore, the circumstances of which heretofore were not relevant. We must stress that the matter of the Limited Liability Rule as discussed was never in issue in all prior cases, including those before the RTCs and the Court of Appeals. As discussed earlier, the "limited liability" in issue before the trial courts referred to the package limitation clauses in the bills of lading and not the limited liability doctrine arising from the real and hypothecary nature of maritime trade. The latter rule was never made a matter of defense in any of the cases a quo, as properly it could not have been made so since it was not relevant in said cases. The only time it could come into play is when any of the cases involving the mishap were to be executed, as in this case. Then, and only then, could the matter have been raised, as it has now been brought before the Court.

The real and hypothecary nature of maritime law simply means that the liability of the carrier in connection with losses related to maritime contracts is confined to the vessel, which is hypothecated for such obligations or which stands as the guaranty for their settlement. It has its origin by reason of the conditions and risks attending maritime trade in its earliest years when such trade was replete with innumerable and unknown hazards since vessels had to go through largely uncharted waters to ply their trade. It was designed to offset such adverse conditions and to encourage people and entities to venture into maritime commerce despite the risks and the prohibitive cost of shipbuilding. Thus, the liability of the vessel owner and agent arising from the operation of such vessel were confined to the vessel itself, its equipment, freight, and insurance, if any, which limitation served to induce capitalists into effectively wagering their resources against the consideration of the large profits attainable in the trade.

It might be noteworthy to add in passing that despite the modernization of the shipping industry and the development of high-technology safety devices designed to reduce the risks therein, the limitation has not only persisted, but is even practically absolute in well-developed maritime countries such as the United States and England where it covers almost all maritime casualties. Philippine maritime law is of Anglo-American extraction, and is governed by adherence to both international maritime conventions and generally accepted practices relative to maritime trade and travel. This is highlighted by the following excerpts on the limited liability of vessel owners and/or agents:

"Sec. 183. The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board such vessel, or for any loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners shall not exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." (Section 183 of the US Federal Limitation of Liability Act)

- and -

"1. The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner;

(a) loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship.

(b) loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default the owner is responsible for, or any person not on board the ship for whose act, neglect or default the owner is responsible: Provided, however, that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers.

(c) any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbor works, basins and navigable waterways." (Section 1, Article I of the Brussels International Convention of 1957)

In this jurisdiction, on the other hand, its application has been well-nigh constricted by the very statute from which it originates. The Limited Liability Rule in the Philippines is taken up in Book III of the Code of Commerce, particularly in Articles 587, 590, and 837, hereunder quoted in toto:

"Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freight it may have earned during the voyage.

"Art. 590. The co-owners of a vessel shall be civilly liable in the proportion of their interests in the common fund for the results of the acts of the captain referred to in Art. 587.

"Each co-owner may exempt himself from this liability by the abandonment, before a notary, of the part of the vessel belonging to him."

"Art. 837. The civil liability incurred by shipowners in the case prescribed in this section (on collisions), shall be understood as limited to the value of the vessel with all its appurtenances and freightage served during the voyage." (Under-scoring supplied)

Taken together with related articles, the foregoing cover only liability for injuries to third parties (Art. 587), acts of the captain (Art. 590) and collisions (Art. 837).

In view of the foregoing, this Court shall not take the application of such limited liability rule, which is a matter of near absolute application in other jurisdictions, so lightly as to merely "imply" its inapplicability, because as could be seen, the reasons for its being are still apparently much in existence and highly regarded.

We now come to its applicability in the instant case. In the few instances when the matter was considered by this Court, we have been consistent in this jurisdiction in holding that the only time the Limited Liability Rule does not apply is when there is an actual finding of negligence on the part of the vessel owner or agent (*Yango v. Laserna*, 73 Phil. 330 [1941]; *Manila Steamship Co., Inc. v. Abdulhanan*, 101 Phil. 32 [1957]; *Heirs of Amparo delos Santos v. Court of Appeals*, 186 SCRA 649 [1967]). The pivotal question, thus, is whether there is a finding of such negligence on the part of the owner in the instant case.

A careful reading of the decision rendered by the trial court in Civil Case No. 144425 (pp. 27-33, Rollo) as well as the entirety of the records in the instant case will show that there has been no actual finding of negligence on the part of petitioner. In its Decision, the trial court merely held that:

"... Considering the foregoing reasons, the Court holds that the vessel M/V 'Aboitiz' and its cargo were not lost due to fortuitous event or force majeure." (p. 32, Rollo)

The same is true of the decision of this Court in G.R. No. 89757 (pp. 71-86, Rollo) affirming the decision of the Court of Appeals in CA-G.R. CV No. 10609 (pp. 34-50, Rollo) since both decisions did not make any new and additional finding of fact. Both merely affirmed the factual findings of the trial court, adding that the cause of the sinking of the vessel was because of unseaworthiness due to the failure of the crew and the master to exercise extraordinary diligence. Indeed, there appears to have been no evidence presented sufficient to form a conclusion that petitioner shipowner itself was negligent, and no tribunal, including this Court, will add or subtract to such evidence to justify a conclusion to the contrary.

The qualified nature of the meaning of "unseaworthiness," under the peculiar circumstances of this case is underscored by the fact that in the *Country Bankers* case, *supra*, arising from the same sinking, the Court sustained the decision of the Court of Appeals that the sinking of the M/V P. Aboitiz was due to force majeure.

On this point, it should be stressed that unseaworthiness is not a fault that can be laid squarely on petitioner's lap, absent a factual basis for such a conclusion. The unseaworthiness found in some cases where the same has been ruled to exist is directly attributable to the vessel's crew and captain, more so on the part of the latter since Article 612 of the Code of Commerce provides that among the inherent duties of a captain is to examine a vessel before

sailing and to comply with the laws of navigation. Such a construction would also put matters to rest relative to the decision of the Board of Marine Inquiry. While the conclusion therein exonerating the captain and crew of the vessel was not sustained for lack of basis, the finding therein contained to the effect that the vessel was seaworthy deserves merit. Despite appearances, it is not totally incompatible with the findings of the trial court and the Court of Appeals, whose finding of "unseaworthiness" clearly did not pertain to the structural condition of the vessel which is the basis of the BMI's findings, but to the condition it was in at the time of the sinking, which condition was a result of the acts of the captain and the crew.

The rights of a vessel owner or agent under the Limited Liability Rule are akin to those of the rights of shareholders to limited liability under our corporation law. Both are privileges granted by statute, and while not absolute, must be swept aside only in the established existence of the most compelling of reasons. In the absence of such reasons, this Court chooses to exercise prudence and shall not sweep such rights aside on mere whim or surmise, for even in the existence of cause to do so, such incursion is definitely punitive in nature and must never be taken lightly.

More to the point, the rights of parties to claim against an agent or owner of a vessel may be compared to those of creditors against an insolvent corporation whose assets are not enough to satisfy the totality of claims as against it. While each individual creditor may, and in fact shall, be allowed to prove the actual amounts of their respective claims, this does not mean that they shall all be allowed to recover fully thus favoring those who filed and proved their claims sooner to the prejudice of those who come later. In such an instance, such creditors too would not also be able to gain access to the assets of the individual shareholders, but must limit their recovery to what is left in the name of the corporation. Thus, in the case of *Lipana v. Development Bank of Rizal* earlier cited, We held that:

"In the instant case, the stay of execution of judgment is warranted by the fact that respondent bank was placed under receivership. To execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other depositors and creditors, since, as aptly stated in *Central Bank v. Morfe* (63 SCRA 114), after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or preference over another by an attachment, execution or otherwise." (at p. 261)

In both insolvency of a corporation and the sinking of a vessel, the claimants or creditors are limited in their recovery to the remaining value of accessible assets. In the case of an insolvent corporation, these are the residual assets of the corporation left over from its operations. In the case of a lost vessel, these are the insurance proceeds and pending freightage for the particular voyage.

In the instant case, there is, therefore, a need to collate all claims preparatory to their satisfaction from the insurance proceeds on the vessel *M/V P. Aboitiz* and its pending freightage at the time of its loss. No claimant can be given precedence over the others by the simple expedience of having filed or completed its action earlier than the rest. Thus, execution of judgment in earlier completed cases, even those already final and executory, must be stayed pending completion of all cases occasioned by the subject sinking. Then and only then can all such claims be simultaneously settled, either completely or pro-rata should the insurance proceeds and freightage be not enough to satisfy all claims.

Finally, the Court notes that petitioner has provided this Court with a list of all pending cases (pp. 175 to 183, Rollo), together with the corresponding claims and the pro-rated share of each. We likewise note that some of these cases are still with the Court of Appeals, and some still with the trial courts and which probably are still undergoing trial. It would not, therefore, be entirely correct to preclude the trial courts from making their own findings of fact in those cases and deciding the same by allotting shares for these claims, some of which, after all, might not prevail, depending on the evidence presented in each. We, therefore, rule that the pro-rated share of

each claim can only be found after all the cases shall have been decided.

In fairness to the claimants, and as a matter of equity, the total proceeds of the insurance and pending freightage should now be deposited in trust. Moreover, petitioner should institute the necessary limitation and distribution action before the proper admiralty court within 15 days from the finality of this decision, and thereafter deposit with it the proceeds from the insurance company and pending freightage in order to safeguard the same pending final resolution of all incidents, for final pro-rating and settlement thereof.

ACCORDINGLY, the petition is hereby GRANTED, and the Orders of the Regional Trial Court of Manila, Branch IV dated April 30, 1991 and the Court of Appeals dated June 21, 1991 are hereby set aside. The trial court is hereby directed to desist from proceeding with the execution of the judgment rendered in Civil Case No. 144425 pending determination of the totality of claims recoverable from the petitioner as the owner of the M/V P. Aboitiz. Petitioner is directed to institute the necessary action and to deposit the proceeds of the insurance of subject vessel as above-described within fifteen (15) days from finality of this decision. The temporary restraining order issued in this case dated August 7, 1991 is hereby made permanent.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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