

SULPICIO LINES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS (TWELFTH DIVISION) AND JACINTA L. PAMALARAN, RESPONDENTS.

G.R. No. 106279. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse the Decision dated April 8, 1992 of the Court of Appeals in CA-G.R. CV No. 21919, affirming the decision of the Regional Trial Court of Bohol, Branch 2, Tagbilaran City, which awarded the claim for damages filed by private respondent against CBL Timber Corporation (CBL), AGO Lumber Company (ALC), Sulpicio Lines, Inc. (SLI) and Ernie Santiago (Civil Case No. 2864).

We deny the petition.

I

A contract of carriage was entered into between petitioner and ALC for the transport of the latter's timber from Pugad, Lianga, Surigao del Sur.

On March 17, 1976, petitioner sent its tugboat "MT Edmund" and barge "Solid VI" to Lianga to pick up ALC's timber. However, no loading could be made because of the heavy downpour. The next morning, several stevedores of CBL, who were hired by ALC, boarded the "Solid VI" and opened its storeroom. The stevedores were warned of the gas and heat generated by the copra stored in the holds of the ship. Not heeding the warning, a stevedore entered the storeroom and fell unconscious. Two other stevedores followed, one of whom was Leoncio L. Pamalaran. He also lost consciousness and eventually died of gas poisoning.

Thus, Civil Case No. 2864 for damages was filed with the Regional Trial Court of Bohol, Branch 2, Tagbilaran by Pamalaran's heirs against petitioner CBL, ALC and its manager, Ernie Santiago. The trial court ruled in favor of plaintiffs, disposing as follows:

"WHEREFORE, finding a preponderance of evidence in favor of the plaintiffs, judgment is hereby rendered:

"Ordering defendants CBL Timber Corporation, AGO Lumber Company, Sulpicio Lines, Inc. and Ernie Santiago to pay plaintiffs jointly and severally:

1. Actual and compensatory damages of P40,000.00;
2. Moral damages of P 50,000.00;
3. Attorney's fees of P 20,000.00 and the costs of the suit" (Rollo, p. 57).

On appeal, the Court of Appeals in its Decision dated April 8, 1992 in CA-G.R. No. CV No. 21919, affirmed the

lower court's decision, the dispositive portion of which reads:

"WHEREFORE, WE AFFIRM the appealed judgment there being no justifiable reason that warrants the reversal thereof. Costs against defendant-appellant" (Rollo, p. 32).

Not satisfied with the appellate court's decision, petitioner filed this petition.

II

Petitioner raises the following arguments:

- Pamalaran was never a passenger of petitioner. Therefore, it is not liable as a common carrier;
- Petitioner and its employees were not negligent in the series of events which led to the death of Pamalaran;
- Petitioner is not liable under Article 2180 of the New Civil Code;
- It is CBL and/or ALC which should be held liable for the death of the victim; and,
- Petitioner should have been granted its just and valid counterclaims and cross claims.

We agree with the Court of Appeals that although Pamalaran was never a passenger of petitioner, still the latter is liable as a common carrier for his death. The Court of Appeals relied on *Canas v. Dabatos*, 8 Court of Appeals Report 918 (1965). In said case, 13 persons were on board the vessel of defendant not as passengers but as 'cargadores' of the shipper's goods. They were there with the consent and knowledge of the owner of the vessel. Despite the absence of a passenger-carrier relationship between them, the appellate court, just the same, held the patron thereof liable as a common carrier. The appellate court ruled:

"There is no debate as to the fact that not one of the thirteen passengers have paid an amount of money as fare for their conveyance from Hingotanan to Cebu. The undisputed fact, however, is that all of them were in the boat with the knowledge and consent of the patron. The eleven passengers, other than Encarnacion and Diosdado, were in the boat because they have helped in loading the cargoes in the boat, and 'to serve as cargadores of the cargoes,' presumably, in unloading them at the place of destination. For those services they were permitted to be in the boat and to proceed to their destination in Cebu. The services rendered were the valuable consideration in exchange for the transportation fare. 'In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; x x x'" (at p. 925; underscoring supplied).

ALC had a contract of carriage with petitioner. The presence of the stevedores sent by ALC on board the barge of petitioner was called for by the contract of carriage. For how else would its lumber be transported unless it is placed on board? And by whom? Of course, the stevedores. Definitely, petitioner could not expect the shipper itself to load the lumber without the aid of the stevedores. Furthermore, petitioner knew of the presence and role of the stevedores in its barge and thus consented to their presence. Hence, petitioner was responsible for their safety while on board the barge.

Petitioner next claims that its employees even warned the stevedores and tried to prevent their entry into the storeroom. Such argument, again, is demolished by the findings of the Court of Appeals, thus:

"xxx. However, appellant failed to prove that its employees were actually trained or given specific instructions to see to it that the barge is fit and safe not only in transporting goods but also for people who would be loading the cargo into the bodega of the barge. It is not enough that appellant's employees have warned the laborers not to enter the barge after the hatch was opened. Appellant's employees should have been sufficiently instructed to see to it that the hatch of the barge is not opened by any unauthorized person and that the hatch is not easily opened by anyone. At the very least, precautionary measures should have been observed by

appellant's employees to see to it that no one could enter the bodega of the barge until after they have made sure that it is safe for anyone to enter the same. Failing to exercise due diligence in the supervision of its employees, the lower court was correct in holding appellant liable for damages" (Rollo, pp. 31-32; *Italics supplied*).

Inasmuch as the findings of the Court of Appeals are merely an affirmance of the findings of the trial court, which findings are supported by the evidence, we do not find any reason to reverse the same.

There is no quarrel that ALC and CBL are also liable as they were in fact held liable by both the trial and appellate courts.

Both the counterclaims and cross claims of petitioner are without legal basis. The counterclaims and cross claims were based on the assumption that the other defendants are the ones solely liable. However, inasmuch as its solidary liability with the other defendants has clearly been established by both the trial and the appellate courts, which we find to be in order, we cannot make a different conclusion contrary to that of the said courts.

Finally, the indemnity for the death of Leoncio L. Pamalaran is increased from P40,000.00 to P50,000.00 in accordance with our ruling in *People v. Flores*, 237 SCRA 653 (1994).

WHEREFORE, the Decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the award of actual and compensatory damages is increased to P50,000.00.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Bellosillo, J., on leave.

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