

PNOC SHIPPING AND TRANSPORT CORPORATION, PETITIONER, VS. HONORABLE COURT OF APPEALS AND MARIA EFIGENIA FISHING CORPORATION, RESPONDENTS.*G.R. No. 107518. October 08, 1998*

Ponente: ROMERO, J.

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A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved.[1] Indeed, basic is the rule that to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof.[2] The claimant is duty-bound to point out specific facts that afford a basis for measuring whatever compensatory damages are borne.[3] A court cannot merely rely on speculations, conjectures, or guesswork as to the fact and amount of damages[4] as well as hearsay[5] or uncorroborated testimony whose truth is suspect.[6] Such are the jurisprudential precepts that the Court now applies in resolving the instant petition.

The records disclose that in the early morning of September 21, 1977, the M/V Maria Efigenia XV, owned by private respondent Maria Efigenia Fishing Corporation, was navigating the waters near Fortune Island in Nasugbu, Batangas on its way to Navotas, Metro Manila when it collided with the vessel Petroparcel which at the time was owned by the Luzon Stevedoring Corporation (LSC).

After investigation was conducted by the Board of Marine Inquiry, Philippine Coast Guard Commandant Simeon N. Alejandro rendered a decision finding the Petroparcel at fault. Based on this finding by the Board and after unsuccessful demands on petitioner,[7] private respondent sued the LSC and the Petroparcel captain, Edgardo Doruelo, before the then Court of First Instance of Caloocan City, paying thereto the docket fee of one thousand two hundred fifty-two pesos (P1,252.00) and the legal research fee of two pesos (P2.00).[8] In particular, private respondent prayed for an award of P692,680.00, allegedly representing the value of the fishing nets, boat equipment and cargoes of M/V Maria Efigenia XV, with interest at the legal rate plus 25% thereof as attorney's fees. Meanwhile, during the pendency of the case, petitioner PNOC Shipping and Transport Corporation sought to be substituted in place of LSC as it had already acquired ownership of the Petroparcel.[9]

For its part, private respondent later sought the amendment of its complaint on the ground that the original complaint failed to plead for the recovery of the lost value of the hull of M/V Maria Efigenia XV.[10] Accordingly, in the amended complaint, private respondent averred that M/V Maria Efigenia XV had an actual value of P800,000.00 and that, after deducting the insurance payment of P200,000.00, the amount of P600,000.00 should likewise be claimed. The amended complaint also alleged that inflation resulting from the devaluation of the Philippine peso had affected the replacement value of the hull of the vessel, its equipment and its lost cargoes, such that there should be a reasonable determination thereof. Furthermore, on account of the sinking of the vessel, private respondent supposedly incurred unrealized profits and lost business opportunities that would thereafter be

proven.[11]

Subsequently, the complaint was further amended to include petitioner as a defendant[12] which the lower court granted in its order of September 16, 1985.[13] After petitioner had filed its answer to the second amended complaint, on February 5, 1987, the lower court issued a pre-trial order[14] containing, among other things, a stipulations of facts, to wit:

- "1. On 21 September 1977, while the fishing boat 'M/V MARIA EFIGENIA' owned by plaintiff was navigating in the vicinity of Fortune Island in Nasugbu, Batangas, on its way to Navotas, Metro Manila, said fishing boat was hit by the LSCO tanker 'Petroparcel' causing the former to sink.
2. The Board of Marine Inquiry conducted an investigation of this marine accident and on 21 November 1978, the Commandant of the Philippine Coast Guard, the Honorable Simeon N. Alejandro, rendered a decision finding the cause of the accident to be the reckless and imprudent manner in which Edgardo Doruelo navigated the LSCO 'Petroparcel' and declared the latter vessel at fault.
3. On 2 April 1978, defendant Luzon Stevedoring Corporation (LUSTEVECO), executed in favor of PNOC Shipping and Transport Corporation a Deed of Transfer involving several tankers, tugboats, barges and pumping stations, among which was the LSCO Petroparcel.
4. On the same date on 2 April 1979 (sic), defendant PNOC STC again entered into an Agreement of Transfer with co-defendant Lusteveco whereby all the business properties and other assets appertaining to the tanker and bulk oil departments including the motor tanker LSCO Petroparcel of defendant Lusteveco were sold to PNOC STC.
5. The aforesaid agreement stipulates, among others, that PNOC-STC assumes, without qualifications, all obligations arising from and by virtue of all rights it obtained over the LSCO 'Petroparcel'.
6. On 6 July 1979, another agreement between defendant LUSTEVECO and PNOC-STC was executed wherein Board of Marine Inquiry Case No. 332 (involving the sea accident of 21 September 1977) was specifically identified and assumed by the latter.
7. On 23 June 1979, the decision of Board of Marine Inquiry was affirmed by the Ministry of National Defense, in its decision dismissing the appeal of Capt. Edgardo Doruelo and Chief mate Anthony Estenzo of LSCO 'Petroparcel'.
8. LSCO 'Petroparcel' is presently owned and operated by PNOC-STC and likewise Capt. Edgardo Doruelo is still in their employ.
9. As a result of the sinking of M/V Maria Efigenia caused by the reckless and imprudent manner in which LSCO Petroparcel was navigated by defendant Doruelo, plaintiff suffered actual damages by the loss of its fishing nets, boat equipments (sic) and cargoes, which went down with the ship when it sank the replacement value of which should be left to the sound discretion of this Honorable Court."

After trial, the lower court[15] rendered on November 18, 1989 its decision disposing of Civil Case No. C-9457 as follows:

"WHEREFORE, and in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant PNOC Shipping & Transport Corporation, to pay the plaintiff:

- a. The sum of P6,438,048.00 representing the value of the fishing boat with interest from the date of the filing of the complaint at the rate of 6% per annum;
- b. The sum of P50,000.00 as and for attorney's fees; and

c. The costs of suit.

The counterclaim is hereby DISMISSED for lack of merit. Likewise, the case against defendant Edgardo Doruelo is hereby DISMISSED, for lack of jurisdiction.

SO ORDERED."

In arriving at the above disposition, the lower court cited the evidence presented by private respondent consisting of the testimony of its general manager and sole witness, Edilberto del Rosario. Private respondent's witness testified that M/V Maria Efigenia XV was owned by private respondent per Exhibit A, a certificate of ownership issued by the Philippine Coast Guard showing that M/V Maria Efigenia XV was a wooden motor boat constructed in 1965 with 128.23 gross tonnage. According to him, at the time the vessel sank, it was then carrying 1,060 tubs (bañeras) of assorted fish the value of which was never recovered. Also lost with the vessel were two cummins engines (250 horsepower), radar, pathometer and compass. He further added that with the loss of his flagship vessel in his fishing fleet of fourteen (14) vessels, he was constrained to hire the services of counsel whom he paid P10,000 to handle the case at the Board of Marine Inquiry and P50,000.00 for commencing suit for damages in the lower court.

As to the award of P6,438,048.00 in actual damages, the lower court took into account the following pieces of documentary evidence that private respondent proffered during trial:

- (a) Exhibit A - certified xerox copy of the certificate of ownership of M/V Maria Efigenia XV;
- (b) Exhibit B - a document titled "Marine Protest" executed by Delfin Villarosa, Jr. on September 22, 1977 stating that as a result of the collision, the M/V Maria Efigenia XV sustained a hole at its left side that caused it to sink with its cargo of 1,050 bañeras valued at P170,000.00;
- (c) Exhibit C - a quotation for the construction of a 95-footer trawler issued by Isidoro A. Magalong of I. A. Magalong Engineering and Construction on January 26, 1987 to Del Rosario showing that construction of such trawler would cost P2,250,000.00;
- (d) Exhibit D - pro forma invoice No. PSPI-05/87-NAV issued by E.D. Daclan of Power Systems, Incorporated on January 20, 1987 to Del Rosario showing that two (2) units of CUMMINS Marine Engine model N855-M, 195 bhp. at 1800 rpm. would cost P1,160,000.00;
- (e) Exhibit E - quotation of prices issued by Scan Marine Inc. on January 20, 1987 to Del Rosario showing that a unit of Furuno Compact Daylight Radar, Model FR-604D, would cost P100,000.00 while a unit of Furuno Color Video Sounder, Model FCV-501 would cost P45,000.00 so that the two units would cost P145,000.00;
- (f) Exhibit F - quotation of prices issued by Seafgear Sales, Inc. on January 21, 1987 to Del Rosario showing that two (2) rolls of nylon rope (5" cir. X 300fl.) would cost P140,000.00; two (2) rolls of nylon rope (3" cir. X 240fl.), P42,750.00; one (1) binocular (7 x 50), P1,400.00, one (1) compass (6"), P4,000.00 and 50 pcs. of floats, P9,000.00 or a total of P197, 150.00;
- (g) Exhibit G - retainer agreement between Del Rosario and F. Sumulong Associates Law Offices stipulating an acceptance fee of P5,000.00, per appearance fee of P400.00, monthly retainer of P500.00, contingent fee of 20% of the total amount recovered and that attorney's fee to be awarded by the court should be given to Del Rosario; and
- (h) Exhibit H - price quotation issued by Seafgear Sales, Inc. dated April 10, 1987 to Del Rosario showing the cost of poly nettings as: 50 rolls of 400/18 3kts. 100md x 100mtrs., P70,000.00; 50 rolls of 400/18 5kts. 100md x 100mtrs., P81,500.00; 50 rolls of 400/18 8kts. 100md x 100mtrs., P116,000.00, and 50 rolls of 400/18 10kts. 100md x 100mtrs., P146,500 and banera (tub) at P65.00 per piece or a total of P414,065.00

The lower court held that the prevailing replacement value of P6,438,048.00 of the fishing boat and all its equipment would regularly increase at 30% every year from the date the quotations were given.

On the other hand, the lower court noted that petitioner only presented Lorenzo Lazaro, senior estimator at PNOCK Dockyard & Engineering Corporation, as sole witness and it did not bother at all to offer any documentary evidence to support its position. Lazaro testified that the price quotations submitted by private respondent were "excessive" and that as an expert witness, he used the quotations of his suppliers in making his estimates. However, he failed to present such quotations of prices from his suppliers, saying that he could not produce a breakdown of the costs of his estimates as it was "a sort of secret scheme." For this reason, the lower court concluded:

"Evidently, the quotation of prices submitted by the plaintiff relative to the replacement value of the fishing boat and its equipments in the tune of P6,438,048.00 which were lost due to the recklessness and imprudence of the herein defendants were not rebutted by the latter with sufficient evidence. The defendants through their sole witness Lorenzo Lazaro relied heavily on said witness' bare claim that the amount afore-said is excessive or bloated, but they did not bother at all to present any documentary evidence to substantiate such claim. Evidence to be believed, must not only proceed from the mouth of the credible witness, but it must be credible in itself. (Vda. de Bonifacio vs. B. L. T. Bus Co., Inc. L-26810, August 31, 1970)."

Aggrieved, petitioner filed a motion for the reconsideration of the lower court's decision contending that: (1) the lower court erred in holding it liable for damages; that the lower court did not acquire jurisdiction over the case by paying only P1,252.00 as docket fee; (2) assuming that plaintiff was entitled to damages, the lower court erred in awarding an amount greater than that prayed for in the second amended complaint; and (3) the lower court erred when it failed to resolve the issues it had raised in its memorandum.[16] Petitioner likewise filed a supplemental motion for reconsideration expounding on whether the lower court acquired jurisdiction over the subject matter of the case despite therein plaintiff's failure to pay the prescribed docket fee.[17]

On January 25, 1990, the lower court declined reconsideration for lack of merit.[18] Apparently not having received the order denying its motion for reconsideration, petitioner still filed a motion for leave to file a reply to private respondent's opposition to said motion.[19] Hence, on February 12, 1990, the lower court denied said motion for leave to file a reply on the ground that by the issuance of the order of January 25, 1990, said motion had become moot and academic.[20]

Unsatisfied with the lower court's decision, petitioner elevated the matter to the Court of Appeals which, however, affirmed the same in toto on October 14, 1992.[21] On petitioner's assertion that the award of P6,438,048.00 was not convincingly proved by competent and admissible evidence, the Court of Appeals ruled that it was not necessary to qualify Del Rosario as an expert witness because as the owner of the lost vessel, "it was well within his knowledge and competency to identify and determine the equipment installed and the cargoes loaded" on the vessel. Considering the documentary evidence presented as in the nature of market reports or quotations, trade journals, trade circulars and price lists, the Court of Appeals held, thus:

"Consequently, until such time as the Supreme Court categorically rules on the admissibility or inadmissibility of this class of evidence, the reception of these documentary exhibits (price quotations) as evidence rests on the sound discretion of the trial court. In fact, where the lower court is confronted with evidence which appears to be of doubtful admissibility, the judge should declare in favor of admissibility rather than of non-admissibility (The Collector of Palakadhari, 124 [1899], p. 43, cited in Francisco, Revised Rules of Court, Evidence, Volume VII, Part I, 1990 Edition, p. 18). Trial courts are enjoined to observe the strict enforcement of the rules of evidence which crystallized through constant use and practice and are very useful and effective aids in the search for truth and for the effective administration of justice. But in connection with evidence which may appear to be of doubtful relevancy or incompetency or admissibility, it is the safest policy to be liberal, not

rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court. If they are thereafter found relevant or competent, can easily be remedied by completely discarding or ignoring them. (Banaria vs. Banaria, et al., C.A. No. 4142, May 31, 1950; cited in Francisco, Supra)." [Underscoring supplied].

Stressing that the alleged inadmissible documentary exhibits were never satisfactorily rebutted by appellant's own sole witness in the person of Lorenzo Lazaro, the appellate court found that petitioner ironically situated itself in an "inconsistent posture by the fact that its own witness, admittedly an expert one, heavily relies on the very same pieces of evidence (price quotations) appellant has so vigorously objected to as inadmissible evidence." Hence, it concluded:

"x x x. The amount of P6,438,048.00 was duly established at the trial on the basis of appellee's documentary exhibits (price quotations) which stood uncontroverted, and which already included the amount by way of adjustment as prayed for in the amended complaint. There was therefore no need for appellee to amend the second amended complaint in so far as to the claim for damages is concerned to conform with the evidence presented at the trial. The amount of P6,438,048.00 awarded is clearly within the relief prayed for in appellee's second amended complaint."

On the issue of lack of jurisdiction, the respondent court held that following the ruling in *Sun Insurance Ltd. v. Asuncion*,^[22] the additional docket fee that may later on be declared as still owing the court may be enforced as a lien on the judgment.

Hence, the instant recourse.

In assailing the Court of Appeals' decision, petitioner posits the view that the award of P6,438,048 as actual damages should have been in light of these considerations, namely: (1) the trial court did not base such award on the actual value of the vessel and its equipment at the time of loss in 1977; (2) there was no evidence on extraordinary inflation that would warrant an adjustment of the replacement cost of the lost vessel, equipment and cargo; (3) the value of the lost cargo and the prices quoted in respondent's documentary evidence only amount to P4,336,215.00; (4) private respondent's failure to adduce evidence to support its claim for unrealized profit and business opportunities; and (5) private respondent's failure to prove the extent and actual value of damages sustained as a result of the 1977 collision of the vessels.^[23]

Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty.^[24] In actions based on torts or quasi-delicts, actual damages include all the natural and probable consequences of the act or omission complained of.^[25] There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses (*daño emergente*), and the other is the failure to receive as a benefit that which would have pertained to him (*lucro cesante*).^[26] Thus:

"Where goods are destroyed by the wrongful act of the defendant the plaintiff is entitled to their value at the time of destruction, that is, normally, the sum of money which he would have to pay in the market for identical or essentially similar goods, plus in a proper case damages for the loss of use during the period before replacement. In other words, in the case of profit-earning chattels, what has to be assessed is the value of the chattel to its owner as a going concern at the time and place of the loss, and this means, at least in the case of ships, that regard must be had to existing and pending engagements.x x x.

x x x. If the market value of the ship reflects the fact that it is in any case virtually certain of profitable employment, then nothing can be added to that value in respect of charters actually lost, for to do so would be

pro tanto to compensate the plaintiff twice over. On the other hand, if the ship is valued without reference to its actual future engagements and only in the light of its profit-earning potentiality, then it may be necessary to add to the value thus assessed the anticipated profit on a charter or other engagement which it was unable to fulfill. What the court has to ascertain in each case is the 'capitalised value of the vessel as a profit-earning machine not in the abstract but in view of the actual circumstances,' without, of course, taking into account considerations which were too remote at the time of the loss." [27] [Underscoring supplied].

As stated at the outset, to enable an injured party to recover actual or compensatory damages, he is required to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. [28] The burden of proof is on the party who would be defeated if no evidence would be presented on either side. He must establish his case by a preponderance of evidence which means that the evidence, as a whole, adduced by one side is superior to that of the other. [29] In other words, damages cannot be presumed and courts, in making an award must point out specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne. [30]

In this case, actual damages were proven through the sole testimony of private respondent's general manager and certain pieces of documentary evidence. Except for Exhibit B where the value of the 1,050 bañeras of fish were pegged at their September 1977 value when the collision happened, the pieces of documentary evidence proffered by private respondent with respect to items and equipment lost show similar items and equipment with corresponding prices in early 1987 or approximately ten (10) years after the collision. Noticeably, petitioner did not object to the exhibits in terms of the time index for valuation of the lost goods and equipment. In objecting to the same pieces of evidence, petitioner commented that these were not duly authenticated and that the witness (Del Rosario) did not have personal knowledge on the contents of the writings and neither was he an expert on the subjects thereof. [31] Clearly ignoring petitioner's objections to the exhibits, the lower court admitted these pieces of evidence and gave them due weight to arrive at the award of P6,438,048.00 as actual damages.

The exhibits were presented ostensibly in the course of Del Rosario's testimony. Private respondent did not present any other witnesses especially those whose signatures appear in the price quotations that became the bases of the award. We hold, however, that the price quotations are ordinary private writings which under the Revised Rules of Court should have been proffered along with the testimony of the authors thereof. Del Rosario could not have testified on the veracity of the contents of the writings even though he was the seasoned owner of a fishing fleet because he was not the one who issued the price quotations. Section 36, Rule 130 of the Revised Rules of Court provides that a witness can testify only to those facts that he knows of his personal knowledge.

For this reason, Del Rosario's claim that private respondent incurred losses in the total amount of P6,438,048.00 should be admitted with extreme caution considering that, because it was a bare assertion, it should be supported by independent evidence. Moreover, because he was the owner of private respondent corporation [32] whatever testimony he would give with regard to the value of the lost vessel, its equipment and cargoes should be viewed in the light of his self-interest therein. We agree with the Court of Appeals that his testimony as to the equipment installed and the cargoes loaded on the vessel should be given credence [33] considering his familiarity thereto. However, we do not subscribe to the conclusion that his valuation of such equipment, cargo and the vessel itself should be accepted as gospel truth. [34] We must, therefore, examine the documentary evidence presented to support Del Rosario's claim as regards the amount of losses.

The price quotations presented as exhibits partake of the nature of hearsay evidence considering that the persons who issued them were not presented as witnesses. [35] Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, has no probative value unless the

proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.[36] On this point, we believe that the exhibits do not fall under any of the exceptions provided under Sections 37 to 47 of Rule 130.[37]

It is true that one of the exceptions to the hearsay rule pertains to "commercial lists and the like" under Section 45, Rule 130 of the Revised Rules on Evidence. In this respect, the Court of Appeals considered private respondent's exhibits as "commercial lists." It added, however, that these exhibits should be admitted in evidence "until such time as the Supreme Court categorically rules on the admissibility or inadmissibility of this class of evidence" because "the reception of these documentary exhibits (price quotations) as evidence rests on the sound discretion of the trial court." [38] Reference to Section 45, Rule 130, however, would show that the conclusion of the Court of Appeals on the matter was arbitrarily arrived at. This rule states:

"Commercial lists and the like. - Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them there."

Under Section 45 of the aforesaid Rule, a document is a commercial list if: (1) it is a statement of matters of interest to persons engaged in an occupation; (2) such statement is contained in a list, register, periodical or other published compilation; (3) said compilation is published for the use of persons engaged in that occupation, and (4) it is generally used and relied upon by persons in the same occupation.

Based on the above requisites, it is our considered view that Exhibits B, C, D, E, F and H [39] are not "commercial lists" for these do not belong to the category of "other published compilations" under Section 45 aforequoted. Under the principle of ejusdem generis, "(w)here general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned." [40] The exhibits mentioned are mere price quotations issued personally to Del Rosario who requested for them from dealers of equipment similar to the ones lost at the collision of the two vessels. These are not published in any list, register, periodical or other compilation on the relevant subject matter. Neither are these "market reports or quotations" within the purview of "commercial lists" as these are not "standard handbooks or periodicals, containing data of everyday professional need and relied upon in the work of the occupation." [41] These are simply letters responding to the queries of Del Rosario. Thus, take for example Exhibit D which reads:

"January 20, 1987

PROFORMA INVOICE NO. PSPI-05/87-NAV

MARIA EFIGINIA FISHING CORPORATION
Navotas, Metro Manila

Attention: MR. EDDIE DEL ROSARIO

Gentlemen:

In accordance to your request, we are pleased to quote our Cummins Marine Engine, to wit.

Two (2) units CUMMINS Marine Engine model N855-M, 195 bhp.

at 1800 rpm., 6-cylinder in-line, 4-stroke cycle, natural aspirated, 5 ½ in. x 6 in. bore and stroke, 855 cu. In. displacement, keel-cooled, electric starting coupled with Twin-Disc Marine gearbox model MG-509, 4.5:1 reduction ratio, includes oil cooler, companion flange, manual and standard accessories as per attached sheet.

Price FOB Manila ----- P 580,000.00/unit

Total FOB Manila ----- P 1,160,000.00

V V V V V V V V

T E R M S : CASH

DELIVERY : 60-90 days from date of order.

VALIDITY : Subject to our final confirmation.

WARRANTY : One (1) full year against factory defect.

Very truly yours,
POWER SYSTEMS, INC.

(Sgd.)

E. D. Daclan"

To be sure, letters and telegrams are admissible in evidence but these are, however, subject to the general principles of evidence and to various rules relating to documentary evidence.[42] Hence, in one case, it was held that a letter from an automobile dealer offering an allowance for an automobile upon purchase of a new automobile after repairs had been completed, was not a "price current" or "commercial list" within the statute which made such items presumptive evidence of the value of the article specified therein. The letter was not admissible in evidence as a "commercial list" even though the clerk of the dealer testified that he had written the letter in due course of business upon instructions of the dealer.[43]

But even on the theory that the Court of Appeals correctly ruled on the admissibility of those letters or communications when it held that unless "plainly irrelevant, immaterial or incompetent," evidence should better be admitted rather than rejected on "doubtful or technical grounds,"[44] the same pieces of evidence, however, should not have been given probative weight. This is a distinction we wish to point out. Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to be considered at all.[45] On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.[46] Thus, a letter may be offered in evidence and admitted as such but its evidentiary weight depends upon the observance of the rules on evidence. Accordingly, the author of the letter should be presented as witness to provide the other party to the litigation the opportunity to question him on the contents of the letter. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect. As earlier stated, hearsay evidence, whether objected to or not, has no probative value. Thus:

"The courts differ as to the weight to be given to hearsay evidence admitted without objection. Some hold that when hearsay has been admitted without objection, the same may be considered as any other properly admitted testimony. Others maintain that it is entitled to no more consideration than if it had been excluded.

The rule prevailing in this jurisdiction is the latter one. Our Supreme Court held that although the question of admissibility of evidence can not be raised for the first time on appeal, yet if the evidence is hearsay it has no probative value and should be disregarded whether objected to or not. 'If no objection is made' - quoting Jones on Evidence - 'it (hearsay) becomes evidence by reason of the want of such objection even though its admission does not confer upon it any new attribute in point of weight. Its nature and quality remain the same, so far as its intrinsic weakness and incompetency to satisfy the mind are concerned, and as opposed to direct primary evidence, the latter always prevails.

The failure of the defense counsel to object to the presentation of incompetent evidence, like hearsay evidence or evidence that violates the rules of *res inter alios acta*, or his failure to ask for the striking out of the same

does not give such evidence any probative value. But admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not has no probative value." [47]

Accordingly, as stated at the outset, damages may not be awarded on the basis of hearsay evidence. [48]

Nonetheless, the non-admissibility of said exhibits does not mean that it totally deprives private respondent of any redress for the loss of its vessel. This is because in *Lufthansa German Airlines v. Court of Appeals*, [49] the Court said:

"In the absence of competent proof on the actual damage suffered, private respondent is `entitled to nominal damages which, as the law says, is adjudicated in order that a right of the plaintiff, which has been violated or invaded by defendant, may be vindicated and recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered." [Underscoring supplied].

Nominal damages are awarded in every obligation arising from law, contracts, quasi-contracts, acts or omissions punished by law, and quasi-delicts, or in every case where property right has been invaded. [50] Under Article 2223 of the Civil Code, "(t)he adjudication of nominal damages shall preclude further contest upon the right involved and all accessory questions, as between the parties to the suit, or their respective heirs and assigns."

Actually, nominal damages are damages in name only and not in fact. Where these are allowed, they are not treated as an equivalent of a wrong inflicted but simply in recognition of the existence of a technical injury. [51] However, the amount to be awarded as nominal damages shall be equal or at least commensurate to the injury sustained by private respondent considering the concept and purpose of such damages. [52] The amount of nominal damages to be awarded may also depend on certain special reasons extant in the case. [53]

Applying now such principles to the instant case, we have on record the fact that petitioner's vessel *Petroparcel* was at fault as well as private respondent's complaint claiming the amount of P692,680.00 representing the fishing nets, boat equipment and cargoes that sunk with the *M/V Maria Efigenia XV*. In its amended complaint, private respondent alleged that the vessel had an actual value of P800,000.00 but it had been paid insurance in the amount of P200,000.00 and, therefore, it claimed only the amount of P600,000.00. Ordinarily, the receipt of insurance payments should diminish the total value of the vessel quoted by private respondent in his complaint considering that such payment is causally related to the loss for which it claimed compensation. This Court believes that such allegations in the original and amended complaints can be the basis for determination of a fair amount of nominal damages inasmuch as a complaint alleges the ultimate facts constituting the plaintiff's cause of action. [54] Private respondent should be bound by its allegations on the amount of its claims.

With respect to petitioner's contention that the lower court did not acquire jurisdiction over the amended complaint increasing the amount of damages claimed to P600,000.00, we agree with the Court of Appeals that the lower court acquired jurisdiction over the case when private respondent paid the docket fee corresponding to its claim in its original complaint. Its failure to pay the docket fee corresponding to its increased claim for damages under the amended complaint should not be considered as having curtailed the lower court's jurisdiction. Pursuant to the ruling in *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, [55] the unpaid docket fee should be considered as a lien on the judgment even though private respondent specified the amount of P600,000.00 as its claim for damages in its amended complaint.

Moreover, we note that petitioner did not question at all the jurisdiction of the lower court on the ground of insufficient docket fees in its answers to both the amended complaint and the second amended complaint. It did so only in its motion for reconsideration of the decision of the lower court after it had received an adverse decision. As this Court held in *Pantranco North Express, Inc. v. Court of Appeals*, [56] participation in all stages of the case before the trial court, that included invoking its authority in asking for affirmative relief, effectively barred

petitioner by estoppel from challenging the court's jurisdiction. Notably, from the time it filed its answer to the second amended complaint on April 16, 1985,[57] petitioner did not question the lower court's jurisdiction. It was only on December 29, 1989[58] when it filed its motion for reconsideration of the lower court's decision that petitioner raised the question of the lower court's lack of jurisdiction. Petitioner thus foreclosed its right to raise the issue of jurisdiction by its own inaction.

WHEREFORE, the challenged decision of the Court of Appeals dated October 14, 1992 in CA-G. R. CV No. 26680 affirming that of the Regional Trial Court of Caloocan City, Branch 121, is hereby MODIFIED insofar as it awarded actual damages to private respondent Maria Efigenia Fishing Corporation in the amount of P6,438,048.00 for lack of evidentiary bases therefor. Considering the fact, however, that: (1) technically petitioner sustained injury but which, unfortunately, was not adequately and properly proved, and (2) this case has dragged on for almost two decades, we believe that an award of Two Million (P2,000,000.00)[59] in favor of private respondent as and for nominal damages is in order.

No pronouncement as to costs.

SO ORDERED.

Kapunan, and Purisima, JJ., concur.
Narvasa, C.J., (Chairman), on leave.

[1] Kierulf v. Court of Appeals, 269 SCRA 433 (1997); Article 2199, Civil Code.

[2] Bernardo v. Court of Appeals [Special Sixth Division], 275 SCRA 413 (1997); Development Bank of the Philippines v. Court of Appeals, 249 SCRA 331 (1995); Lufthansa German Airlines v. Court of Appeals, 243 SCRA 600 (1995); Sumalpong v. Court of Appeals, G. R. No. 123404, February 26, 1997; Del Rosario v. Court of Appeals, G. R. No. 118325, January 29, 1997; People v. Fabrigas, Jr., 261 SCRA 436 (1996).

[3] Southeastern College, Inc. V. Court of Appeals, et al., G. R. No. 126389, July 10, 1998.

[4] Development Bank of the Philippines v. Court of Appeals and Lydia Cuba, G. R. No. 118367, January 5, 1998; Barzaga v. Court of Appeals, 268 SCRA 105 (1997).

[5] People v. Gutierrez, 258 SCRA 70 (1996).

[6] Baliwag Transit, Inc. v. Court of Appeals, 256 SCRA 746 (1996).

[7] Rollo, pp. 49-52.

[8] Ibid., p. 53.

[9] Ibid., pp. 54-55.

[10] Ibid., p. 56.

[11] Ibid., pp. 58-61.

[12] Ibid., pp. 62-66.

[13] Ibid., p. 67.

[14] Ibid., p. 71.

[15] Presided by Judge Adoracion G. Angeles.

[16] Record of Civil Case No. C-9457, p. 408.

[17] Ibid., p. 464.

[18] Ibid., p. 477.

[19] Ibid., p. 478.

[20] Ibid., p. 486.

[21] Penned by Associate Justices Ricardo J. Francisco; Sempio-Diy and Galvez, JJ, concurring.

[22] 170 SCRA 274 (1989).

[23] Petition, pp. 2-3.

[24] TOLENTINO, CIVIL CODE OF THE PHILIPPINES, Vol. V, 1992 ed., p. 633.

[25] Art. 2202, Civil Code; Europa v. Hunter Garments Mfg. (Phil.), Inc., G.R. No. 72827, July 18, 1989, 175 SCRA 394, 397.

[26] TOLENTINO, supra, at p. 636 citing 8 Manresa 100.

[27] CLERK & LINDSELL ON TORTS, 17th ed., pp. 1489-1490.

[28] Fuentes, Jr. v. Court of Appeals, 323 Phil. 508, 519 (1996).

[29] Summa Insurance Corporation v. Court of Appeals, 323 Phil. 214, 227 (1996).

[30] Del Mundo v. Court of Appeals, 310 Phil 367, 376 (1995).

[31] Rollo, pp. 170-173.

[32] CA Decision, p. 4.

[33] Ibid.

[34] On this point, the Court of Appeals said: "Contrary to appellant's asseverations, Mr. Del Rosario need not be qualified as an expert witness, and at the same time on board the 'M/V Maria Efigenia', in order to ascertain what cargoes and equipment were on board the sunken vessel. Being the owner of appellee-corporation which in turn owned the ill-fated vessel, it was well within his knowledge and competency to identify and determine the equipment installed and the cargoes loaded on appellee's vessel. His testimony on these matters commands great weight and cannot be undermined or excluded by the simple fact of his absence at the time of actual collision, nor by his apparent relationship with herein appellee corporation. The mere fact that a witness is related to any of the parties does not necessarily indicate that said witness has falsely testified, if the witness' testimony is found to be reasonable, consistent, and not contradicted by evidence from any reliable source, and where it does not appear that the witness was guided by such relationship, or any ill-motive when he gave his testimony (People v. Maboab, 44 Off. Gaz. 564). Besides, appellee presented documentary exhibits in the form of price quotations from suppliers and pro-forma invoices to establish the current replacement value of the sunken vessel and the cargoes and equipment on board, whose admissibility were likewise challenged by appellant as being hearsay. x x x."

[35] People v. Narciso, 330 Phil. 527, 536 (1996).

[36] Philippine Home Assurance Corporation v. Court of Appeals, 327 Phil. 255, 267-268 (1996) citing Baguio v.

Court of Appeals, G.R. No. 93417, September 14, 1993, 226 SCRA 366, 370.

[37] These are: dying declaration, declaration against interest, act or declaration about pedigree, family reputation or tradition regarding pedigree; common reputation, part of the res gestae, entries in the course of business, entries in official records, commercial lists and the like, learned treatises and testimony or deposition at a former proceeding.

[38] CA Decision, p. 5.

[39] Exh. A is the certified true copy of the certificate of ownership of the vessel while Exh. G is the retainer agreement between Del Rosario and F. Sumulong Associates Law Offices.

[40] Republic v. Migriño, G.R. No. 89483, August 30, 1990, 189 SCRA 289, 296-297.

[41] FRANCISCO, supra.

[42] 32 C. J. S. 970.

[43] Bates v. General Steel Tank Co., Ala., App., 55 So.2d 213 (1951).

[44] CA Decision, p. 5.

[45] 2A WORDS AND PHRASES 8 citing Pickard v. Berryman, 142 S.W.2d 764, 768, 24 Tenn.App. 263.

[46] 34 WORDS AND PHRASES 116 citing State v. Scott, 175 P.2d 1016, 1021, 111 Utah 9.

[47] FRANCISCO, supra, at p. 529.

[48] See note 5.

[49] See note 2 for citation. Cf. Also Japan Airlines v. Court of Appeals, et al., G. R. No. 118664, August 7, 1998.

[50] Arts. 2222 & 1157, Civil Code.

[51] Robes-Francisco Realty & Development Corporation v. Court of First Instance of Rizal (Branch XXXIV), L-41093, October 30, 1978, 86 SCRA 59, 65 citing Fouraker v. Kidd Springs Boating and Fishing Club, 65 S.W.2d 796-797, citing C.J. 720, and a number of authorities.

[52] China Air Lines, Ltd. v. Court of Appeals, G.R. No. 459985, May 18, 1990, 185 SCRA 449, 460.

[53] Robes-Francisco Realty & Development Corporation v. Court of First Instance of Rizal (Branch XXXIV), supra, citing Northwest Airlines, Inc. v. Cuenca, 122 Phil. 403 (1965).

[54] See Villalon v. Buendia, 315 Phil. 663, 666-667 (1995).

[55] See note 22 for citation.

[56] G.R. No. 105180, July 5, 1993, 224 SCRA 477, 491.

[57] Record of Civil Case No. C-9457, p. 217.

[58] Ibid., p. 408.

[59] Note that under Article 2216 of the Civil Code, it is provided that -exemplary damages) is left to the discretion of the court, according to the circumstances of each case. [Underscoring supplied]

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