

LUDO AND LUYM CORPORATION, PETITIONER, VS. COURT OF APPEALS, GABISAN SHIPPING LINES, INC. AND/OR ANSELMO OLASIMAN RESPONDENTS.

G.R. No. 125483. February 01, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review[1] under Rule 45 of the Revised Rules of Court seeks to annul and set aside the decision[2] dated January 10, 1996 of the Court of Appeals which reversed and set aside the decision of the Regional Trial Court of Cebu City, Branch IX, and the resolution[3] dated June 11, 1996, denying petitioner's motion for reconsideration.

Petitioner Ludo & Luym Corporation is a domestic corporation engaged in copra processing with plant and business offices in Cebu City. Private Respondent Gabisan Shipping Lines was the registered owner and operator of the motor vessel MV Miguela, while the other private respondent, Anselmo Olasiman, was its captain.

Petitioner owns and operates a private wharf used by vessels for loading and unloading of copra and other processed products. Among its wharf's facilities are fender pile clusters for docking and mooring.

On May 21, 1990, at around 1:30 P.M., while MV Miguela was docking at petitioner's wharf, it rammed and destroyed a fender pile cluster. Petitioner demanded damages from private respondents. The latter refused. Hence, petitioner filed a complaint for damages before the Regional Trial Court of Cebu.

Petitioner's evidence during trial showed that on May 21, 1990, at 1:30 P.M., MV Miguela came to dock at petitioner's wharf. Ireneo Naval, petitioner's employee, guided the vessel to its docking place. After the guide (small rope) was thrown from the vessel and while the petitioner's security guard was pulling the big rope to be tied to the bolar, MV Miguela did not slow down. The crew did not release the vessel's anchor. Naval shouted "Reverse" to the vessel's crew, but it was too late when the latter responded, for the vessel already rammed the pile cluster. The impact disinclined the pile cluster and deformed the cable wires wound around it. Naval immediately informed the vessel's captain and its chiefmate of the incident, and instructed the guard-on-duty, Alfredo Espina, to make a spot report. The incident was reported to Atty. Du, petitioner's vice-president for legal and corporate affairs. Atty. Du in turn sent formal demand letters to private respondents. Marine surveyor Carlos Degamo inspected the damage on the pile cluster and found that one post was uprooted while two others were loosened and that the pile cluster was leaning shoreward. Degamo hired skin diver Marvin Alferez, who found that one post was broken at about 7 inches from the seabed and two other posts rose and cracked at the bottom. Based on these findings, Degamo concluded that the two raised posts were also broken under the seabed and estimated the cost of repair and replacement at P95,000.00.

Private respondents denied the incident and the damage. Their witnesses claimed that the damage, if any, must have occurred prior to their arrival and caused by another vessel or by ordinary wear and tear. They averred that MV Miguela started to slow down at 100 meters and the crew stopped the engine at 50 meters from the pier; that

Capt. Anselmo Olasiman did not order the anchor's release and chief mate Manuel Gabisan did not hear Naval shout "Reverse". Respondents claimed that Naval had no business in the vessels' maneuvering. When Naval informed the vessel's officers of the incident, Olasiman sent their bodega man, Ronilo Lazara, to dive on the same afternoon to check on the alleged damage. Lazara told Olasiman that there was no damage. However, during direct examination, Lazara testified that he found a crack on the side of the pile cluster, one post detached from the seabed at a distance of about 7 inches, and seashells and seaweeds directly underneath the uprooted post. There were scattered pieces of copra at the place where MV Miguela docked, which indicated the prior docking by other vessels. After MV Miguela left, another vessel docked in the same area. Petitioner did not prevent MV Miguela from departing. When chiefmate Gabisan went to Atty. Du, the latter told him not to mind the incident.

On rebuttal, petitioner presented Atty. Du who testified that Gabisan never went to his office after receiving the letter-complaint; that petitioner never received any reply to its demand letters; and that the first time Atty. Du saw Gabisan was during the pre-trial.

On May 14, 1993, the trial court disposed the case in favor of petitioner, thus:

WHEREFORE, premises considered, this court hereby renders judgment in favor of the plaintiff, ordering the defendants, jointly and severally, to pay the plaintiff the following:

- 1) Php 70,000.00 actual damages, plus interest at the rate of 12% per annum from the time the decision is received by defendants until fully paid;
- 2) Php 15,000.00 exemplary damages;
- 3) Php 15,000.00 attorney's fees;
- 4) Php 10,000.00 litigation expenses.

COSTS AGAINST THE DEFENDANTS.

SO ORDERED.[4]

In finding in favor of petitioner, the trial court found that it was able to prove by preponderance of evidence that MV Miguela rammed and damaged the pile cluster; that petitioner's witnesses, Naval and Espina, actually saw the incident; that respondents failed to refute the testimony of marine surveyor Degamo and skin diver Alferez on the damages; that the officers and crew of MV Miguela were negligent; and that respondents are solidarily liable for the damages. Upon private respondent's appeal, the Court of Appeals reversed the trial court on January 10, 1996, in its decision that reads:

WHEREFORE, in view of the foregoing, judgment is rendered REVERSING and SETTING aside the decision of the Court a quo, hereby entering a new one DISMISSING the Complaint for lack of merit.

No pronouncement as to costs.

SO ORDERED.[5]

The CA found that petitioner's eyewitness Naval was incompetent to testify on the negligence of the crew and officers of MV Miguela; that there were other vessels that used the wharf for berthing and petitioner's evidence did not positively prove that it was MV Miguela that rammed the pile cluster; that the photographs of the pile cluster taken after the incident showed no visible damages; that, as shown by private respondents' witness, there were seashells and seaweeds directly under the uprooted post, which indicated that the breaking happened a long time ago.

The CA denied the motion for reconsideration. Hence, this petition for review where petitioner assigns the

following errors:

- THE COURT OF APPEALS ACTED IN EXCESS OF ITS JURISDICTION WHEN IT WENT BEYOND THE ISSUES RAISED IN THE ASSIGNMENT OF ERRORS OF PRIVATE RESPONDENT.
- THE DECISION OF THE COURT OF APPEALS IS GROUNDED ON SPECULATION, SURMISES AND CONJECTURES AND HAS DEPARTED FROM THE RULES ON EVIDENCE.
- THE COURT OF APPEALS MISAPPREHENDED THE FACTS AND ITS FINDINGS IS TOTALLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD.
- THE COURT OF APPEALS DEPARTED FROM THE RULE OF RES IPSA LOQUITUR.[6]

The issues for resolution can be reduced into three:

- Did the CA go beyond the issues raised?
- Can this Court review factual questions in this case?
- Is the doctrine of res ipsa loquitur applicable to this case?

On the first issue, petitioner argues that private respondents did not assign as an error eyewitness Ireneo Naval's incompetence to testify on the negligence of MV Miguela's officers and crew. Private respondent's brief contained nothing but general statements and reproductions of excerpts of the transcript of stenographic notes (TSN) which could not pass for a valid assignment of errors.

We note that Naval's incompetence was not one of the assigned errors in private respondents' brief.[7] However, private respondents raised it in connection with the issue of their negligence, which appeared in the second assigned error. In reproducing the portion of the TSN consisting of Naval's cross examination, private respondents' counsel was indirectly attacking Naval's competence and invoking it vis a vis the trial court's finding, based on Naval's testimony, that MV Miguela was sailing at a speed unusual for a docking vessel.[8] The CA did not err in addressing the matter. An appellate court can consider an unassigned error on which depends the determination of the question in the properly assigned error.[9] The issue of negligence of MV Miguela's officers and crew depends significantly on the determination of whether Naval is competent to testify on the maneuvering of a docking vessel.

The second issue is whether or not we can review questions of fact. Petitioner, in its second and third assigned errors, claims that the appellate court relied on speculations and conjectures when it ruled that MV Miguela could not have rammed the pile cluster because of the presence of other vessels; that petitioner's evidence, corroborated by those of private respondents, is positive and sufficient to prove respondents' liability; that evidence on record showed the negligence and recklessness of MV Miguela's officers and crew; and that the crew were grossly incompetent and incapable to man the vessel.

Private respondents claim that the above are conclusions of fact which this Court may not review.

While the rule is that this Court is limited only to questions of law in a petition for review, there are exceptions, among which are when the factual findings of the Court of Appeals and the trial court conflict, and when the appellate court based its conclusion entirely on speculations, surmises, or conjectures. [10]

Our review of the records constrains us to conclude that indeed MV Miguela rammed and damaged petitioner's fender pile cluster. Naval and Espina witnessed the incident, saw the impact and heard cracking sounds thereafter. The trial court found them credible. We respect this observation of the trial court, for in the appreciation of testimonial evidence and attribution of values to the declaration of witnesses, it is the trial judge who had the

chance to observe the witnesses and was in a position to determine if the witnesses are telling the truth or not.[11] Further, private respondents' witnesses, Olasiman and Gabisan, acknowledged that Naval was at the pier waving a handkerchief to direct them to their berthing place.[12]

Private respondents' claim that they could not have rammed and damaged the pile cluster because other vessels used the same area for berthing is a mere speculation unworthy of credence.

Petitioner's witnesses, marine surveyor Degamo and diver Alferez, confirmed the damage. Degamo had eighteen years of experience as marine surveyor and belonged to an independent survey company. Alferez was hired and directly supervised by Degamo for the task.[13] The latter testified during trial that he examined the pile cluster at the portion above the water line by going near it and found that one cluster pile was moving, two were loose, and the whole pile cluster was leaning shoreward and misalligned.[14] Alferez, under oath, testified that he dived two or three times and saw one broken post and two slightly uprooted ones with a crack on each.[15]

On the other hand, private respondents' evidence on this matter was contradictory. As testified by Olasiman, when he asked Lazara on the result of his diving, the latter said that there was no damage.[16] However, when Lazara testified in court, he said he found a crack on the side of the pile cluster, with one pile no longer touching the seabed and directly underneath it were seashells and seaweeds. Further, he said that he informed the captain about this.[17] We find Lazara's testimony as an afterthought, lacking credibility. In addition, Leonilo Lazara, was a mere bodegero of MV Miguela. He could not possibly be a competent witness on marine surveys.[18]

Finally, is the doctrine of *res ipsa loquitur* applicable to this case? Petitioner argues that the Court of Appeals erred when it reversed the trial court for the latter's heavy reliance on Naval's testimony. The appellate court overlooked the fact that aside from Naval's testimony, the trial court also relied on the principle of *res ipsa loquitur* to establish private respondents' negligence.

The doctrine of *res ipsa loquitur* was explained in *Batiquin vs. Court of Appeals*, 258 SCRA 334 (1996), thus:

Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care.

The doctrine recognizes that parties may establish *prima facie* negligence without direct proof and allows the principle to substitute for specific proof of negligence. This is invoked when under the circumstances, direct evidence is absent and not readily available.[19]

In our view, all the requisites for recourse to this doctrine exist. First, MV Miguela was under the exclusive control of its officers and crew. Petitioner did not have direct evidence on what transpired within as the officers and crew maneuvered the vessel to its berthing place. We note the Court of Appeals' finding that Naval and Espina were not knowledgeable on the vessel's maneuverings, and could not testify on the negligence of the officers and crew. Second, aside from the testimony that MV Miguela rammed the cluster pile, private respondent did not show persuasively other possible causes of the damage.

Applying now the above, there exists a presumption of negligence against private respondents which we opine the latter failed to overcome. Additionally, petitioner presented tangible proof that demonstrated private respondents' negligence. As testified by Capt. Olasiman, from command of "slow ahead" to "stop engine", the vessel will still travel 100 meters before it finally stops. However, he ordered "stop engine" when the vessel was only 50 meters from the pier. Further, he testified that before the vessel is put to slow astern, the engine has to be restarted. However, Olasiman can not estimate how long it takes before the engine goes to slow astern after the engine is

restarted. From these declarations, the conclusion is that it was already too late when the captain ordered reverse. By then, the vessel was only 4 meters from the pier,[20] and thus rammed it.

Respondent company's negligence consists in allowing incompetent crew to man its vessel. As shown also by petitioner, both Captain Olasiman and Chief Mate Gabisan did not have a formal training in marine navigation. The former was a mere elementary graduate[21] while the latter is a high school graduate. Their experience in navigation[22] was only as a watchman and a quartermaster, respectively.

WHEREFORE, the petition is GRANTED. The decision and resolution of the Court of Appeals are ANNULLED AND SET ASIDE, and the decision of the Regional Trial Court of Cebu City, Branch IX, is hereby REINSTATED.

Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 9-46.

[2] Id. at 48-58.

[3] Id. at 60.

[4] Id. at 75-75-A.

[5] Id. at 57.

[6] Id. at 22.

[7] CA Records, pp. 27-28.

[8] Rollo, p. 73.

[9] Añonuevo vs. CA, 244 SCRA 28, 39 (1995).

[10] Severino Baricuatro, Jr. vs. CA & Nemenio et al., G.R. No. 105902, February 9, 2000, pp. 9-10.

[11] PNB vs. CA and Consuelo Yu, GR. No. 81524, February 4, 2000, p.11.

[12] TSN, December 11, 1991, pp. 29-30; February 27, 1992, p. 14.

[13] TSN, November 25, 1991, pp. 20-21.

[14] TSN, November 25, 1991, pp. 16-19.

[15] TSN, August 12, 1991, pp. 4-6.

[16] TSN, February 27, 1992, p. 8.

[17] TSN, September 2, 1992, pp. 9-11.

[18] TSN, February 27, 1992, p. 6.

[19] Batiquin vs. CA, 258 SCRA 334, 345, (1996).

[20] TSN, February 27, 1992, pp. 15-23.

[21] Id. at 2.

[22] TSN, Dec. 11, 1991, pp. 22-23.

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