

**THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC.,
PETITIONER, VS. MGG MARINE SERVICES, INC. AND DOROTEO
GAERLAN, RESPONDENTS.**

G.R. No. 135645. March 08, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for review seeks the reversal of the Decision, dated September 23, 1998, of the Court of Appeals in CA-G.R. CV No. 43915,[1] which absolved private respondents MCG Marine Services, Inc. and Doroteo Gaerlan of any liability regarding the loss of the cargo belonging to San Miguel Corporation due to the sinking of the M/V Peatheray Patrick-G owned by Gaerlan with MCG Marine Services, Inc. as agent.

On March 1, 1987, San Miguel Corporation insured several beer bottle cases with an aggregate value of P5,836,222.80 with petitioner Philippine American General Insurance Company.[2] The cargo were loaded on board the M/V Peatheray Patrick-G to be transported from Mandaue City to Bislig, Surigao del Sur.

After having been cleared by the Coast Guard Station in Cebu the previous day, the vessel left the port of Mandaue City for Bislig, Surigao del Sur on March 2, 1987. The weather was calm when the vessel started its voyage.

The following day, March 3, 1987, M/V Peatheray Patrick-G listed and subsequently sunk off Cawit Point, Cortes, Surigao del Sur. As a consequence thereof, the cargo belonging to San Miguel Corporation was lost.

Subsequently, San Miguel Corporation claimed the amount of its loss from petitioner.

Upon petitioner's request, on March 18, 1987, Mr. Eduardo Sayo, a surveyor from the Manila Adjusters and Surveyors Co., went to Taganauan Island, Cortes, Surigao del Sur where the vessel was cast ashore, to investigate the circumstances surrounding the loss of the cargo. In his report, Mr. Sayo stated that the vessel was structurally sound and that he did not see any damage or crack thereon. He concluded that the proximate cause of the listing and subsequent sinking of the vessel was the shifting of ballast water from starboard to portside. The said shifting of ballast water allegedly affected the stability of the M/V Peatheray Patrick-G.

Thereafter, petitioner paid San Miguel Corporation the full amount of P5,836,222.80 pursuant to the terms of their insurance contract.

On November 3, 1987, petitioner as subrogee of San Miguel Corporation filed with the Regional Trial Court (RTC) of Makati City a case for collection against private respondents to recover the amount it paid to San Miguel Corporation for the loss of the latter's cargo.

Meanwhile, the Board of Marine Inquiry conducted its own investigation of the sinking of the M/V Peatheray Patrick-G to determine whether or not the captain and crew of the vessel should be held responsible for the incident.[3] On May 11, 1989, the Board rendered its decision exonerating the captain and crew of the ill-fated

vessel for any administrative liability. It found that the cause of the sinking of the vessel was the existence of strong winds and enormous waves in Surigao del Sur, a fortuitous event that could not have been foreseen at the time the M/V Peatheray Patrick-G left the port of Mandaue City. It was further held by the Board that said fortuitous event was the proximate and only cause of the vessel's sinking.

On April 15, 1993, the RTC of Makati City, Branch 134, promulgated its Decision finding private respondents solidarily liable for the loss of San Miguel Corporation's cargo and ordering them to pay petitioner the full amount of the lost cargo plus legal interest, attorney's fees and costs of suit.[4]

Private respondents appealed the trial court's decision to the Court of Appeals. On September 23, 1998, the appellate court issued the assailed Decision, which reversed the ruling of the RTC. It held that private respondents could not be held liable for the loss of San Miguel Corporation's cargo because said loss occurred as a consequence of a fortuitous event, and that such fortuitous event was the proximate and only cause of the loss.[5]

Petitioner thus filed the present petition, contending that:

(A)

IN REVERSING AND SETTING ASIDE THE DECISION OF RTC BR. 134 OF MAKATI CITY ON THE BASIS OF THE FINDINGS OF THE BOARD OF MARINE INQUIRY, APPELLATE COURT DECIDED THE CASE AT BAR NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT;

(B)

IN REVERSING THE TRIAL COURT'S DECISION, THE APPELLATE COURT GRAVELY ERRED IN CONTRADICTING AND IN DISTURBING THE FINDINGS OF THE FORMER;

(C)

THE APPELLATE COURT GRAVELY ERRED IN REVERSING THE DECISION OF THE TRIAL COURT AND IN DISMISSING THE COMPLAINT.[6]

Common carriers, from the nature of their business and for reasons of public policy, are mandated to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them.[7] Owing to this high degree of diligence required of them, common carriers, as a general rule, are presumed to have been at fault or negligent if the goods transported by them are lost, destroyed or if the same deteriorated.[8]

However, this presumption of fault or negligence does not arise in the cases enumerated under Article 1734 of the Civil Code:

Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

- (1) Flood, storm, earthquake, lightning or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act or omission of the shipper or owner of the goods;
- (4) The character of the goods or defects in the packing or in the containers;
- (5) Order or act of competent public authority.

In order that a common carrier may be absolved from liability where the loss, destruction or deterioration of the goods is due to a natural disaster or calamity, it must further be shown that the such natural disaster or calamity was the proximate and only cause of the loss;[9] there must be “an entire exclusion of human agency from the cause of the injury of the loss.”[10]

Moreover, even in cases where a natural disaster is the proximate and only cause of the loss, a common carrier is still required to exercise due diligence to prevent or minimize loss before, during and after the occurrence of the natural disaster, for it to be exempt from liability under the law for the loss of the goods.[11] If a common carrier fails to exercise due diligence--or that ordinary care which the circumstances of the particular case demand[12] --to preserve and protect the goods carried by it on the occasion of a natural disaster, it will be deemed to have been negligent, and the loss will not be considered as having been due to a natural disaster under Article 1734 (1).

In the case at bar, the issues may be narrowed down to whether the loss of the cargo was due to the occurrence of a natural disaster, and if so, whether such natural disaster was the sole and proximate cause of the loss or whether private respondents were partly to blame for failing to exercise due diligence to prevent the loss of the cargo.

The parties do not dispute that on the day the M/V Peatheray Patrick-G sunk, said vessel encountered strong winds and huge waves ranging from six to ten feet in height. The vessel listed at the port side and eventually sunk at Cawit Point, Cortes, Surigao del Sur.

The Court of Appeals, citing the decision of the Board of Marine Inquiry in the administrative case against the vessel’s crew (BMI--646-87), found that the loss of the cargo was due solely to the existence of a fortuitous event, particularly the presence of strong winds and huge waves at Cortes, Surigao del Sur on March 3, 1987:

x x x

III. WHAT WAS THE PROXIMATE CAUSE OF SINKING?

Evidence shows that when "LCT Peatheray Patrick-G" left the port of Mandawe, Cebu for Bislig, Surigao del Sur on March 2, 1987 the Captain had observed the fair atmospheric condition of the area of the pier and confirmed this good weather condition with the Coast Guard Detachment of Mandawe City. However, on March 3, 1987 at about 10:00 o'clock in the evening, when the vessel had already passed Surigao Strait. the vessel started to experience waves as high as 6 to 7 feet and that the Northeasterly wind was blowing at about five (5) knot velocity. At about 11:00 o'clock P.M. when the vessel was already about 4.5 miles off Cawit Point, Cortes, Surigao del Sur, the vessel was discovered to be listing 15 degrees to port side and that the strength of the wind had increased to 15 knots and the waves were about ten (10) feet high [Ramilo TSN 10-27-87 p. 32). Immediately thereafter, emergency measures were taken by the crew. The officers had suspected that a leak or crack might had developed at the bottom hull particularly below one or two of the empty wing tanks at port side serving as buoyancy tanks resulting in ingress of sea water in the tanks was confirmed when the Captain ordered to use the cargo pump. The suction valves to the said tanks of port side were opened in order to suck or draw out any amount of water that entered into the tanks. The suction pressure of the pump had drawn out sea water in large quantity indicating therefore, that a leak or crack had developed in the hull as the vessel was continuously batted and pounded by the huge waves. Bailing out of the water through the pump was done continuously in an effort of the crew to prevent the vessel from sinking. but then efforts were in vain. The vessel still continued to list even more despite the continuous pumping and discharging of sea water from the wing tanks indicating that the amount of the ingress of sea water was greater in volume that that was being discharged by the pump. Considering therefore, the location of the suspected source of the ingress of sea water which was a crack or hole at the bottom hull below the buoyancy tank's port side which was not accessible (sic) for the crew to check or control the flow of sea water into the said tank. The accumulation of sea water aggravated by the continuous pounding, rolling and pitching of the vessel against huge waves and strong northeasterly wind, the Captain then had no other recourse except to order abandonment

to save their lives.[13]

The presence of a crack in the ill-fated vessel through which water seeped in was confirmed by the Greutzman Divers who were commissioned by the private respondents to conduct an underwater survey and inspection of the vessel to determine the cause and circumstances of its sinking. In its report, Greutzman Divers stated that “along the port side platings, a small hole and two separate cracks were found at about midship.”[14]

The findings of the Board of Marine Inquiry indicate that the attendance of strong winds and huge waves while the M/V Peatheray Patrick-G was sailing through Cortes, Surigao del Norte on March 3, 1987 was indeed fortuitous. A fortuitous event has been defined as one which could not be foreseen, or which though foreseen, is inevitable.[15] An event is considered fortuitous if the following elements concur:

xxx (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligations, must be independent of human will; (b) it must be impossible to foresee the event which constitutes the caso fortuito, or if it can be foreseen, it must be impossible to avoid; (c) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor. xxx[16]

In the case at bar, it was adequately shown that before the M/V Peatheray Patrick-G left the port of Mandaue City, the Captain confirmed with the Coast Guard that the weather condition would permit the safe travel of the vessel to Bislig, Surigao del Sur. Thus, he could not be expected to have foreseen the unfavorable weather condition that awaited the vessel in Cortes, Surigao del Sur. It was the presence of the strong winds and enormous waves which caused the vessel to list, keel over, and consequently lose the cargo contained therein. The appellate court likewise found that there was no negligence on the part of the crew of the M/V Peatheray Patrick-G, citing the following portion of the decision of the Board of Marine Inquiry:

I. WAS LCT PEATHERAY PATRICK-G SEAWORTHY WHEN SHE LEFT THE PORT OF MANDAWA, CEBU AND AT THE TIME OF SINKING?

Evidence clearly shows that the vessel was propelled with three (3) diesel engines of 250 BHP each or a total of 750 BHP. It had three (3) propellers which were operating satisfactorily from the time the vessel left the port of Mandawe up to the time when the hull on the double bottom tank was heavily flooded (sic) by uncontrollable entry of sea water resulting in the stoppage of engines. The vessel was also equipped with operating generator pumps for emergency cases. This equipment was also operating satisfactorily up to the time when the engine room was heavily flooded (sic) with sea water. Further, the vessel had undergone emergency drydocking and repair before the accident occurred (sic) on November 9, 1986 at Trigon Shipyard, San Fernando, Cebu as shown by the billing for the Drydocking and Repair and certificate of Inspection No. 2588-86 issued by the Philippine coast Guard on December 5, 1986 which expired on November 8, 1987.

LCT Peatheray Patrick-G was skippered by Mr. Manuel P. Ramilo, competent and experienced licensed Major Patron who had been in command of the vessel for more than three (3) years from July 1984 up to the time of sinking March 3, 1987. His Chief Mate Mr. Mariano Alalin also a licensed Major Patron had been the Chief Mate of " LCT Peatheray Patrick-G" for one year and three months at the time of the accident. Further Chief Mate Alalin had commanded a tanker vessel named M/T Mercedes of MGM Corporation for almost two (2) years from 1983-1985 (Alalin TSN-4-13-88 pp. 32-33).

That the vessel was granted SOLAS clearance by the Philippine Coast Guard on March 1, 1987 to depart from Mandawe City for Bislig, Surigao del Sur as evidenced by a certification issued to D.C. Gaerlan Oil Products by Coast Guard Station Cebu dated December 23, 1987.

Based on the foregoing circumstances, "LCT Peatheray Patrick-G" should be considered seaworthy vessel at the time she undertook that fateful voyage on March 2, 1987.

To be seaworthy, a vessel must not only be staunch and fit in the hull for the voyage to be undertaken but also must be properly equipped and for that purpose there is a duty upon the owner to provide a competent master and a crew adequate in number and competent for their duty and equals in disposition and seamanship to the ordinary in that calling. (Ralph 299 F-52, 1924 AMC 942). American President 2td v. Ren Fen Fed 629. AMC 1723 LCA 9 CAL 1924).[17]

Overloading was also eliminated as a possible cause of the sinking of the vessel, as the evidence showed that its freeboard clearance was substantially greater than the authorized freeboard clearance.[18]

Although the Board of Marine Inquiry ruled only on the administrative liability of the captain and crew of the M/V Peatheray Patrick-G, it had to conduct a thorough investigation of the circumstances surrounding the sinking of the vessel and the loss of its cargo in order to determine their responsibility, if any. The results of its investigation as embodied in its decision on the administrative case clearly indicate that the loss of the cargo was due solely to the attendance of strong winds and huge waves which caused the vessel accumulate water, tilt to the port side and to eventually keel over. There was thus no error on the part of the Court of Appeals in relying on the factual findings of the Board of Marine Inquiry, for such factual findings, being supported by substantial evidence are persuasive, considering that said administrative body is an expert in matters concerning marine casualties.[19]

Since the presence of strong winds and enormous waves at Cortes, Surigao del Sur on March 3, 1987 was shown to be the proximate and only cause of the sinking of the M/V Peatheray Patrick-G and the loss of the cargo belonging to San Miguel Corporation, private respondents cannot be held liable for the said loss.

WHEREFORE, the assailed Decision of the Court of Appeals is hereby AFFIRMED and the petition is hereby DENIED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.

[1] The Philippine American General Insurance Co., Plaintiff-Appellee, vs. MCG Marine Services and Doroteo Gaerlan, Defendants-Appellants.

[2] The terms and conditions of the contract of insurance are set forth in Marine Risk Note No. 0322788 issued by petitioner in favor of San Miguel Corporation.

[3] The administrative case against the vessel's crew was docketed as case no. BMI-646-87.

[4] Decision dated April 15, 1993 of the Regional Trial Court of Makati City, Branch 134, in Civil Case No. 18197, pp. 3-4; Rollo, pp. 31-32.

[5] Decision of the Court of Appeals, pp. 4-8, Id., at 24-28.

[6] Petition, Id., at 8-9.

[7] Article 1733, par. 1, Civil Code.

[8] Articles 1734 and 1735, Civil Code.

[9] Article 1739, Civil Code.

[10] V TOLENTINO, CIVIL CODE OF THE PHILIPPINES ANNOTATED 299 (1992 ed.).

[11] Article 1739, Civil Code; Yobido vs. Court of Appeals, 281 SCRA 1 (1997).

[12] See *Compania Maritama vs. Insurance Company of North America*, 12 SCRA 213 (1964).

[13] Decision of the Court of Appeals, pp. 6-7, *Rollo*, pp. 26-27.

[14] Report, Exhibit “1,” Records, p. 134; see also Exhibit “1-B,” Records, p. 136.

[15] Article 1174, Civil Code.

[16] *Yobido vs. Court of Appeals*, *supra*, at 9.

[17] *Id.*, at 4-6; *Id.*, at 24-26.

[18] *Id.*, at 6; *Id.*, at 26.

[19] See *Vasquez vs. Court of Appeals*, 138 SCRA 553, 559 (1985).

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