

SAN MIGUEL CORPORATION, PETITIONER, VS. HEIRS OF SABINIANO INGUIITO, AND JULIUS OUANO, RESPONDENTS.

G.R. No. 141716. July 04, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

San Miguel Corporation entered into a Time Charter Party Agreement with Julius Ouano, doing business under the name and style J. Ouano Marine Services. Under the terms of the agreement, SMC chartered the M/V Doña Roberta owned by Julius Ouano for a period of two years, from June 1, 1989 to May 31, 1991, for the purpose of transporting SMC's beverage products from its Mandaue City plant to various points in Visayas and Mindanao. Pertinent portions of the Time Charter Party Agreement state:

1. OWNER [i.e., Ouano] warrants ownership, title and interest over the vessel DOÑA ROBERTA and represents that on the date the vessel is placed at CHARTERER's San Miguel Corporation] disposal the following shall be the accurate or approximate description of the particulars and capacities of the vessel and her equipment:

xxx xxx xxx.

2. That for and in consideration of the premises hereinafter stipulated, the OWNER hereby lets, demises and the CHARTERER hereby hires the use and service of the aforementioned vessel;

xxx xxx xxx.

4. OWNER warrants that the vessel is seaworthy and in proper, useful and operational condition and in the event that CHARTERER finds any defect in the vessel with regards to its working order, condition and function, CHARTERER shall immediately notify OWNER of this fact;

xxx xxx xxx.

9. There shall be no employer-employee relations between the OWNER and/or its vessel's crew on one hand and the CHARTERER on the other. The crew of the vessel shall continue to be under the employ, control and supervision of the OWNER. Consequently, damage or loss that may be attributable to the crew, including loss of the vessel used shall continue to be the responsibility of, and shall be borne, by the OWNER; the OWNER further covenants to hold the CHARTERER free from all claims and liabilities arising out of the acts of the crew and the condition of the vessel;

10. The OWNER shall undertake to pay all compensation of all the vessel's crew, including the benefits, premia and protection in accordance with the provisions of the New Labor Code and other applicable laws and decrees and the rules and regulations promulgated by competent authorities as well as all of the SSS premium. Thus, it is understood that the crew of the vessel shall and always remain the employees of the OWNER;

11. The OWNER shall be responsible to and shall indemnify the CHARTERER for damages and losses arising from the incompetence and/or negligence of, and/or the failure to observe the required extra-ordinary diligence

by the crew. It shall be automatically liable to the CHARTERER for shortlanded shipment and wrong levels, the value of which shall be withheld from the OWNER's collectibles with the CHARTERER. However, in the case of wrong levels, CHARTERER shall immediately reimburse OWNER after the former's laboratory shall be able to determine that the bottles were never opened after it left the Plant;

xxx xxx xxx.

On November 11, 1990, during the term of the charter, SMC issued sailing orders to the Master of the MN Doña Roberta, Captain Sabiniano Inguito, instructing him as follows:

1. Sail for Opol, Cagayan 0500H Nov. 12, 1990, or as soon as loading of FGS is completed, with load:

SEE BILL OF LADING

2. You are expected to arrive Opol 0900H Nov. 13, 1990.
3. You are expected to depart Opol 0900H Nov. 14, 1990, or as soon as loading of empties is completed, back to Mandaue.
4. You are expected to arrive Mandaue 1300H Nov. 15, 1990.
5. In case you need cash advance, send your request thru radio addressed to us for needed authority.
6. Maintain communications and keep us posted of your developments.
7. Observe weather condition, exercise utmost precautionary measures.

BON VOYAGE AND GOOD LUCK.[1]

In accordance with the sailing orders, Captain Inguito obtained the necessary sailing clearance from the Philippine Coast Guard.[2] Loading of the cargo on the M/V Doña Roberta was completed at 8:30 p.m. of November 11, 1990. However, the vessel did not leave Mandaue City until 6:00 a.m. of the following day, November 12, 1990.

Meanwhile, at 4:00 a.m. of November 12, 1990, typhoon Ruping was spotted 570 kilometers east-southeast of Borongan, Samar, moving west-northwest at 22 kilometers per hour in the general direction of Eastern Visayas. The typhoon had maximum sustained winds of 240 kilometers per hour near the center with gustiness of up to 280 kilometers per hour.[3]

At 7:00 a.m., November 12, 1990, one hour after the M/V Doña Roberta departed from Mandaue City and while it was abeam Cawit Island off Cebu, SMC Radio Operator Rogelio P. Moreno contacted Captain Inguito through the radio and advised him to take shelter. Captain Inguito replied that they will proceed since the typhoon was far away from them, and that the winds were in their favor.[4]

At 2:00 p.m., while the vessel was two kilometers abeam Boljoon Point, Moreno again communicated with Captain Inguito and advised him to take shelter. The captain responded that they can manage.[5] Hearing this, Moreno immediately tried to get in touch with Rico Ouano to tell him that Captain Inguito did not heed their advice. However, Rico Ouano was out of his office, so Moreno left the message with the secretary.[6]

Moreno again contacted Captain Inguito at 4:00 p.m. of November 12, 1990. By then the vessel was already 9.5 miles southeast of Balicasag Island heading towards Sulauan Point. The sky was cloudy with southwesterly winds and the sea was choppy.[7] Moreno reiterated the advice and pointed out that it will be difficult to take shelter after passing Balicasag Island because they were approaching an open sea. Still, the captain refused to heed his advice.[8]

At 8:00 p.m., the vessel was 38 miles southeast of Balicasag Island. West-southwest winds were prevailing. At 10:00 p.m., the M/V Doña Roberta was 25 miles approaching Sulauan Point.[9] Moments later, power went out in Moreno's office and resumed at 11:40 p.m. He immediately made a series of calls to the M/V Doña Roberta but he failed to get in touch with anyone in the vessel.[10]

At 1:15 a.m., November 13, 1990, Captain Inguito called Moreno over the radio and requested him to contact Rico Ouano, son of Julius Ouano, because they needed a helicopter to rescue them. The vessel was about 20 miles west of Sulauan Point.[11]

Upon being told by SMC's radio operator, Rico Ouano turned on his radio and read the distress signal from Captain Inguito. When he talked to the captain, the latter requested for a helicopter to rescue them.[12] Rico Ouano talked to the Chief Engineer who informed him that they can no longer stop the water from coming into the vessel because the crew members were feeling dizzy from the petroleum fumes.[13]

At 2:30 a.m. of November 13, 1990, the M/V Doña Roberta sank. Out of the 25 officers and crew on board the vessel, only five survived, namely, Fernando Bucod, Rafael Macairan, Chenito Sugabo, Ramil Pabayo and Gilbert Gonzaga.[14]

On November 24, 1990, shipowner Julius Ouano, in lieu of the captain who perished in the sea tragedy, filed a Marine Protest.[15]

The heirs of the deceased captain and crew, as well as the survivors,[16] of the ill-fated M/V Doña Roberta filed a complaint for tort against San Miguel Corporation and Julius Ouano, docketed as Civil Case No. 2472-L of the Regional Trial Court of Lapu-Lapu City, Branch 27.[17]

Julius Ouano filed an answer with cross-claim,[18] alleging that the proximate cause of the loss of the vessel and its officers and crew was the fault and negligence of SMC, which had complete control and disposal of the vessel as charterer and which issued the sailing order for its departure despite being forewarned of the impending typhoon. Thus, he prayed that SMC indemnify him for the cost of the vessel and the unrealized rentals and earnings thereof.

In its answer to the complaint[19] and answer to the cross-claim,[20] SMC countered that it was Ouano who had the control, supervision and responsibilities over the navigation of the vessel. This notwithstanding, and despite his knowledge of the incoming typhoon, Ouano never bothered to initiate contact with his vessel. Contrary to his allegation, SMC argued that the proximate cause of the sinking was Ouano's breach of his obligation to provide SMC with a seaworthy vessel duly manned by competent crew members. SMC interposed counterclaims against Ouano for the value of the cargo lost in the sea tragedy.

After trial, the court a quo rendered judgment finding that the proximate cause of the loss of the M/V Doña Roberta was attributable to SMC. Thus, it disposed of the case as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

1. Declaring defendant San Miguel Corporation and its acts or omissions as having produced the proximate cause which resulted in the death of the crew members of MN Doña Roberta at past midnight of November 12, 1990 during the height of super typhoon "Ruping" and as such said defendant is hereby ordered and sentenced to pay to the heirs of the deceased crew members the following sum[s] plus 12% per annum from the filing of the Complaint:

A. For loss of life. P50,000.00 each of the deceased crew members, namely: Sabiniano Inguito Felipe Pusa, Abundio Galon, Isidro Celetaria, Henry Cabigas, Pedro Abayon, Simeon Asentista, Norman Loon,

Leonardo Presbitero, Renato Suscano, Antonio Du, George Basilgo, Isagani Dayondon;

B. For loss of earnings based on life expectancy less 50% representing estimated living expenses except for the apprentices as they were presumed at the time of their deaths to be dependent on their parents:

Name Total loss of earnings

1. Sabiniano, Inguito (sic) P1,740,000 (50% x P3,480,000)
2. Pusa, Felipe P 1,200,000 (50% x P2,400,000)
3. Galon, Abundio P 825,000 (50% x P 1,650,000)
4. Celetaria, Isidro P 600,000 (50% x P1,200,000)
5. Cabigas, Henry P 930,000 (50% x P 1,860,000)
6. Abayon, Pedro P 660,000 (50% x P 1,320,000)
7. Asentista, Simeon P 500,000 (50% x P1,000,000)
8. Loon, Norman P 550,000 (50% x P 1,100,000)
9. Presbitero, Leonardo P 460,000 (50% x P 920,000)
10. Suscano, Renato P 460,000 (50% x P 920,000)
11. Du, Antonio P 480,000 (50% x P 960,000)
12. Basilgo, George P 120,000 (Apprentice)
13. Dayondon, Isagani P 120,000 (Ditto)

Total: P8,645,000

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C. P300,000.00 for moral damages and P200,000.00 for exemplary damages for the heirs of each of the deceased crew members of the M/V Doña Roberta named in the Amended Complaint including survivor Gilbert Gonzaga;

D. To pay plaintiffs' counsel attorney's fees in the sum of P500,000.00;

2. Under the cross-claim of defendant, Ouano, San Miguel Corporation is further ordered and sentenced to pay defendant cross-claimant Engr. Julius C. Ouano the total sum of P32,893,300.00 plus 12% per annum from the filing of his crossclaim, broken down as follows:

- 1) P9.8 million for the value of the total loss of the vessel M/V Doña Roberta;
- 2) P1,833,300.00 for unrealized rental earnings (P3,666,600.00 less 50% for operating expenses and taxes) from November 19, 1990 to May 31, 1991 as stipulated in the Charter Party Agreement;
- 3) P21,000,000.00 for unrealized earnings of M/V Doña Roberta based on the expected additional lifetime of the vessel estimated at seven (7) years (42,000,000.00 less 50% for operating expenses and taxes);
- 4) P250,000.00 for and as attorney's fees and P 10,000.00 as expenses of litigation;

3. The counter-claims against plaintiffs and the cross-claim of defendant San Miguel Corporation against

defendant Engr. Julius C. Ouano are hereby dismissed for lack of merit.

With costs against defendant San Miguel Corporation.

SO ORDERED.[21]

Both SMC and Ouano appealed to the Court of Appeals, docketed as CA-G.R. CV No. 48296. SMC argued that as mere charterer, it did not have control of the vessel and that the proximate cause of the loss of the vessel and its cargo was the negligence of the ship captain. For his part, Ouano complained of the reduced damages awarded to him by the trial court.

On December 10, 1998, the Court of Appeals rendered the decision subject of the instant petitions for review, to wit:

WHEREFORE, judgment is hereby rendered, modifying the decision appealed from, declaring defendant-appellants San Miguel Corporation and Julian C. Ouano jointly and severally liable to plaintiffs-appellees, except to the heirs of Capt. Sabiniano Inguito, for the following reduced amounts:

- a. P50,000.00 death indemnity (loss of life) for each of the deceased officers and crew of M/V Doña Roberta.
- b. Loss of earning for each of the deceased officers and crew, in the amount awarded by the trial court.
- c. P100,000.00 moral damages and P50,000.00 exemplary damages for each deceased officer and crew members, including Gilbert Gonzaga.
- d. P300,000.00 attorney's fees to plaintiffs-appellees.
- e. The counter-claims of defendants-appellants against plaintiffs-appellees are dismissed.
- f. The cross-claims of defendants-appellants SMC and Julius Ouano against each other are likewise dismissed.
- g. Costs against defendants-appellants.

SO ORDERED.[22]

SMC and Ouano filed separate motions for reconsideration, which were denied by the Court of Appeals for lack of merit.[23]

Petitioner SMC, in G.R. No. 141716, raises the following arguments:

I.

SMC COULD NOT BE A TORTFEASOR CONSIDERING THE UNDISPUTED FACT THAT:

- A. SMC HAS NO LEGAL OR CONTRACTUAL DUTY TO INFORM OUANO ABOUT THE SITUATION OF THE VESSEL.
- B. EVEN WITHOUT SUCH DUTY, SMC NEVERTHELESS EXERCISED THE NECESSARY DEGREE OF PRUDENCE BY INFORMING OUANO ABOUT INGUITO'S REFUSAL TO TAKE SHELTER.
- C. THE COURT OF APPEALS ITSELF FOUND THAT THE PROXIMATE CAUSE OF THE LOSS OF THE VESSEL WAS INGUITO'S FAILURE TO HEED SMC'S ADVICE TO TAKE SHELTER, AND INGUITO WAS AN EMPLOYEE OF OUANO AND NOT OF SMC.

II.

UNDER THE CHARTER, OUANO WAS RESPONSIBLE AND UNDERTOOK TO INDEMNIFY SMC FOR ALL DAMAGES ARISING FROM THE NEGLIGENCE OF HIS CREW, PARTICULARLY INGUITO.[24]

Meanwhile, petitioner Ouano, in G.R. No. 142025, anchors his petition on the following assignment of errors:

First Error

The Court of Appeals committed serious error of law and/or grave abuse of discretion in not finding that the Charter Party between SMC and Ouano is legally and in fact a demise charter, an issue raised by petitioner from the very start in the Trial Court

Second Error

The Court of Appeals committed serious error of law and/or grave abuse of discretion in not finding that Capt. Inguito, master of the ill-fated M/V Doña Roberta, was legally and in fact an agent/servant of SMC demise charterer as correctly characterized by the Trial Court

Third Error

The Court of Appeals committed serious error of law and/or grave abuse of discretion in completely disregarding or suppressing the findings of fact of the Trial Court on the issues of possession and control of M/V Doña Roberta by SMC and its actions relating thereto as demise charterer/owner pro hac vice which led to the tragedy and in not declaring that said actions of SMC constituted the proximate cause of the sinking and loss of the vessel and the death of most of its crew members

Fourth Error

The Court of Appeals committed serious error of law and/or grave abuse of discretion in finding Ouano at fault in the sinking of M/V Doña Roberta against the evidence on record which is largely undisputed

Fifth Error

The Court of Appeals committed serious error of law and/or grave abuse of discretion insofar as it failed to find and declare respondent SMC's tort or negligence as the proximate cause which resulted in the sinking and total loss of M/V Doña Roberta as well as the death of its officers and crew members and correspondingly in not awarding to petitioner Ouano the sums of money as awarded by the Trial Court in the dispositive part of its decision dated 10 December 1998.

Sixth Error

In any event, the Court of Appeals committed serious error of law and/or grave abuse of discretion in not declaring and holding petitioner Ouano not liable for the claims of private respondents heirs of Sabiniano Inguito, et al. and SMC under the well-established principle in Maritime Law that the owner's liability sinks with the vessel.[25]

The two petitions were consolidated.

In deciding the cases at bar, the Court of Appeals correctly resolved the issues with an initial discussion of the definition and kinds of charter parties. Preliminarily, a charter party is a contract by virtue of which the owner or the agent of a vessel binds himself to transport merchandise or persons for a fixed price. It has also been defined as a contract by virtue of which the owner or the agent of the vessel leases for a certain price the whole or a portion of the vessel for the transportation of goods or persons from one port to another.[26]

A charter party may either be a (1) bareboat or demise charter or (2) contract of affreightment. Under a demise or bareboat charter, the charterer mans the vessel with his own people and becomes, in effect, the owner of the ship for the voyage or service stipulated, subject to liability for damages caused by negligence.[27]

In a contract of affreightment, on the other hand, the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for special service to be rendered by the owner of the vessel. Under such contract the ship owner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire.[28] Otherwise put, a contract of affreightment is one by which the owner of a ship or other vessel lets the whole or part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight.

A contract of affreightment may be either time charter, wherein the leased vessel is leased to the charterer for a fixed period of time, or voyage charter, wherein the ship is leased for a single voyage. In both cases, the charterer provides for the hire of the vessel only, either for a determinate period of time or for a single or consecutive voyage, the ship owner to supply the ship's store, pay for the wages of the master of the crew, and defray the expenses for the maintenance of the ship.

If the charter is a contract of affreightment, which leaves the general owner in possession of the ship as owner for the voyage, the rights and the responsibilities of ownership rest on the owner. The charterer is free from liability to third persons in respect of the ship.[29]

We concur with the findings of the Court of Appeals that the charter party in these cases was a contract of affreightment, contrary to petitioner Ouano's protestation that it was a demise charter, as shown by the following stipulations in the Time Charter Party Agreement:

9. There shall be no employer-employee relations between the OWNER and/or its vessel's crew on one hand and the CHARTERER on the other. The crew of the vessel shall continue to be under the employ, control and supervision of the OWNER. Consequently, damage or loss that may be attributable to the crew, including loss of the vessel used shall continue to be the responsibility of, and shall be borne, by the OWNER; the OWNER further covenants to hold the CHARTERER free from all claims and liabilities arising out of the acts of the crew and the condition of the vessel;

10. The OWNER shall undertake to pay all compensation of all the vessel's crew, including the benefits, premia and protection in accordance with the provisions of the New Labor Code and other applicable laws and decrees and the rules and regulations promulgated by competent authorities as well as all of the SSS premium. Thus, it is understood that the crew of the vessel shall and always remain the employees of the OWNER;

11. The OWNER shall be responsible to and shall indemnify the CHARTERER for damages and losses arising from the incompetence and/or, negligence of, and/or the failure to observe the required extraordinary diligence by the crew. It shall be automatically liable to the CHARTERER for shortlanded shipment and wrong levels, the value of which shall be withheld from the OWNER's collectibles with the CHARTERER. However, in the case of wrong levels, CHARTERER shall immediately reimburse OWNER after the former's laboratory shall be able to determine that the bottles were never opened after it left the Plant;

It appearing that Ouano was the employer of the captain and crew of the M/V Doña Roberta during the term of the charter, he therefore had command and control over the vessel. His son, Rico Ouano, even testified that during the period that the vessel was under charter to SMC, the Captain thereof had control of the navigation of all voyages.[30]

Under the foregoing definitions, as well as the clear terms of the Charter Party Agreement between the parties, the charterer, SMC, should be free from liability for any loss or damage sustained during the voyage,[31] unless it be

shown that the same was due to its fault or negligence.

The evidence does not show that SMC or its employees were amiss in their duties. The facts indubitably establish that SMC's Radio Operator, Rogelio P. Moreno, who was tasked to monitor every shipment of its cargo, contacted Captain Inguito as early as 7:00 a.m., one hour after the M/V Doña Roberta departed from Mandaue, and advised him to take shelter from typhoon Ruping. This advice was reiterated at 2:00 p.m. At that point, Moreno thought of calling Ouano's son, Rico, but failed to find him. At 4:00 p.m., Moreno again advised Captain Inguito to take shelter and stressed the danger of venturing into the open sea. The Captain insisted that he can handle the situation.

That evening, Moreno tried in vain to contact the captain. Later at 1:15 a.m., Captain Inguito himself radioed a distress signal and asked that the same be relayed to Rico Ouano.

In contrast to the care exercised by Moreno, Rico Ouano tried to communicate with the captain only after receiving the S.O.S. message. Neither Ouano nor his son was available during the entire time that the vessel set out and encountered foul weather. Considering that the charter was a contract of affreightment, the shipowner had the clear duty to ensure the safe carriage and arrival of goods transported on board its vessels. More specifically, Ouano expressly warranted in the Time Charter Party that his vessel was seaworthy.

For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew.[32] Seaworthiness is defined as the sufficiency of the vessel in materials, construction, equipment, officers, men, and outfit, for the trade or service in which it is employed.[33] It includes the fitness of a ship for a particular voyage with reference to its physical and mechanical condition, the extent of its fuel and provisions supply, the quality of its officers and crew, and its adaptability for the time of voyage proposed.[34]

In the assailed decision, the Court of Appeals found that the proximate cause of the sinking of the vessel was the negligence of Captain Sabiniano Inguito, thus:

It appears that the proximate cause of the sinking of the vessel was the gross failure of the captain of the vessel to observe due care and to heed SMC's advices to take shelter. Gilbert Gonsaga, Chief Engineer of Doña Roberta, testified that the ship sank at 2:30 in the early morning of November 13th. On the other hand, from the time the vessel left the port of Mandaue at six o'clock in the morning, Exh "15 SMC", Exh "16 SMC", Exh "17 SMC" and Exh "18 SMC" would show that Captain Sabiniano Inguito was able to contact the radio operator of SMC. He was fully apprised of typhoon "Ruping" and its strength. Due diligence dictates that at any time before the vessel was in distress, he should have taken shelter in order to safeguard the vessel and its crew. Gonsaga testified that at 7:00 a.m. of November 12, 1990, he was able to talk to the captain and inquired from him what the message was of the radio operator of SMC. The captain answered that they would take shelter in Tagbilaran if the wind would grow stronger. But Gonsaga was surprised when they did not take shelter and, instead, proceeded with the voyage.

Gonsaga further testified that at 7:00 in the evening of November 12, 1990, he went up to the office of the captain when the wind was getting stronger and asked him, "What is this captain, the wind is already very strong and the waves are very big, what is the message of SMC?" The captain plotted the position of the typhoon and said that the typhoon is still very far per the data supplied by SMC.

It is very clear that Captain Sabiniano Inguito had sufficient time within which to secure his men and the vessel. But he waited until the vessel was already in distress at 1:15 in the early morning of November 13m, 1990 to seek help in saving his men and the vessel. In any event, Capt. Inguito had full control and responsibility, whether to follow a sailing order or to take shelter when already at sea. In fact, there was an incident when a sailing order

was issued by SMC to Inguito but he decided not to proceed with the voyage because of a tropical storm.[35]

The foregoing factual conclusions are binding on us. Settled is the rule that findings of fact of the Court of Appeals are conclusive and are not reviewable by this Court,[36] unless the case falls under any of the recognized exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[37] None of these exceptions obtain in the case at bar.

We likewise agree with the Court of Appeals that Ouano is vicariously liable for the negligent acts of his employee, Captain Inguito. Under Articles 2176 and 2180 of the Civil Code, owners and managers are responsible for damages caused by the negligence of a servant or an employee, the master or employer is presumed to be negligent either in the selection or in the supervision of that employee. This presumption may be overcome only by satisfactorily showing that the employer exercised the care and the diligence of a good father of a family in the selection and the supervision of its employee.[38]

Ouano miserably failed to overcome the presumption of his negligence. He failed to present proof that he exercised the due diligence of a bonus paterfamilias in the selection and supervision of the captain of the M/V Doña Roberta. Hence, he is vicariously liable for the loss of lives and property occasioned by the lack of care and negligence of his employee.

However, we cannot sustain the appellate court's finding that SMC was likewise liable for the losses. The contention that it was the issuance of the sailing order by SMC which was the proximate cause of the sinking is untenable. The fact that there was an approaching typhoon is of no moment. It appears that on one previous occasion, SMC issued a sailing order to the captain of the M/V Doña Roberta, but the vessel cancelled its voyage due to typhoon.[39] Likewise, it appears from the records that SMC issued the sailing order on November 11, 1990, before typhoon "Ruping" was first spotted at 4:00 a.m. of November 12, 1990.[40]

Consequently, Ouano should answer for the loss of lives and damages suffered by the heirs of the officers and crew members who perished on board the M/V Doña Roberta, except Captain Sabiniano Inguito. The award of damages granted by the Court of Appeals is affirmed only against Ouano, who should also indemnify SMC for the cost of the lost cargo, in the total amount of P10,278,542.40.[41]

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals in CA-G.R. CV No. 48296 is MODIFIED as follows: Julius C. Ouano is ordered to pay each of the deceased officers and crew of the M/V Doña Roberta, except Captain Sabiniano Inguito, death indemnity in the amount of P50,000.00 and damages for loss of earnings in the amounts awarded by the trial court. Further, Julius C. Ouano is ordered to pay each deceased officer and crew members, except Captain Sabiniano Inguito, including Gilbert Gonzaga, P100,000.00 as moral damages, P50,000.00 as exemplary damages and P300,000.00 as attorney's fees. Finally, Julius C. Ouano is ordered to pay San Miguel Corporation the sums of P10,278,542.40 as actual damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Exhs. “B”, “2-Ouano”, “2-SMC”.

[2] Exhs. “8-Ouano”, “8-SMC”.

[3] Exh. “29-SMC”.

[4] Exh. “15-SMC”; TSN, September 13, 1993, pp. 18-19, 23.

[5] Exh. “16-SMC”; TSN, September 13, 1993, pp. 27-31, September 14, 1993, p. 4.

[6] TSN, September 14, 1993, p. 5.

[7] Exh. “17-SMC”.

[8] TSN, September 14, 1993, pp. 6, 9.

[9] Exh. “18-SMC”.

[10] TSN, September 14, 1993, p. 11.

[11] *Ibid.*, p. 12.

[12] TSN, May 11, 1993, pp. 65-66.

[13] TSN, September 14, 1993, pp. 14-15.

[14] TSN, July 29, 1992, pp. 32-34.

[15] Exh. “17-Ouano”.

[16] Sabiniano Inguito, Felipe Pusa, Abundio Galon, Isidro Celetaria, Henry Cabigas, Pedro Abayon, Simeon Asentista, Norman Loon, George Basilgo, Flaviano Wabena, Leonardo Presbitero, Renato Suscano, Isagani Dayondon, Antonio Du and Gilbert Gonzaga.

[17] Record, pp. 1-11.

[18] *Ibid.*, pp. 40-47.

[19] *Ibid.*, pp. 263-287.

[20] *Ibid.*, pp. 114-137.

[21] *Ibid.*, pp. 443-460, at 458-460; penned by Executive Judge Teodoro K. Risos.

[22] Rollo, G.R. No. 141716, pp. 69-97, at 96-97; Associate Justice Ruben T. Reyes, ponente, Associate Justices Salome A. Montoya and Eloy R. Bello, Jr., concurring.

[23] Resolution dated January 19, 2000; Rollo, G.R. No. 141716, pp. 99-100.

[24] Rollo, G.R. No. 141716, p. 32.

[25] Rollo, G.R. No. 142025, pp. 13-14.

[26] 4 Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, 277 [1993].

- [27] Caltex (Philippines), Inc. v. Sulpicio Lines, Inc., 315 SCRA 709, 716-717 [1999].
- [28] National Food Authority v. Court of Appeals, 311 SCRA 700, 708 [1999].
- [29] Caltex (Philippines), Inc. v. Sulpicio Lines, Inc., *supra*.
- [30] TSN, May 11, 1993, p. 58.
- [31] Caltex (Philippines), Inc. v. Sulpicio Lines, Inc., *supra*, at 717 [1999].
- [32] Caltex (Philippines), Inc. v. Sulpicio Lines, Inc., *supra*, at 719.
- [33] Bouvier's Law Dictionary, Third Revision.
- [34] Webster's Third New International Dictionary, 1993.
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