

LORENZO SHIPPING CORPORATION, PETITIONER, VS. NATIONAL POWER CORPORATION, RESPONDENT.

G.R. No. 181683. October 07, 2015

Ponente: LEONEN, J.

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LEONEN, J.:

These consolidated Petitions for Review on Certiorari[1] are offshoots of the Court of Appeals' disposition of CA-G.R. CV No. 76295. The Petition docketed as G.R. No. 181683 was filed by Lorenzo Shipping Corporation (Lorenzo Shipping) while the Petition docketed as G.R. No. 184568 was filed by National Power Corporation.

In its September 14, 2007 Decision,[2] the Court of Appeals reversed and set aside the February 18, 2002 Decision of the Regional Trial Court and entered another judgment ordering Lorenzo Shipping to pay National Power Corporation the amount of P876,286.00 as actual damages and P50,000.00 as attorney's fees and expenses of litigation.[3]

In its February 12, 2008 Amended Decision,[4] the Court of Appeals amended its September 14, 2007 Decision to award National Power Corporation the amount of P300,000.00 as temperate damages in lieu of the original award of P876,286.00 as actual damages.

In its September 17, 2008 Resolution,[5] the Court of Appeals denied National Power Corporation's Motion for Reconsideration.

The February 18, 2002 Decision[6] of the Regional Trial Court dismissed National Power Corporation's Complaint for damages against Lorenzo Shipping.[7]

Lorenzo Shipping is the owner and operator of the commercial vessel MV Lorcon Luzon.[8] National Power Corporation is the owner of Power Barge 104, "a non-propelled power plant barge." [9]

On March 20, 1993, Power Barge 104 was berthed and stationed at the Makar Wharf in General Santos City when the MV Lorcon Luzon "hit and rammed Power Barge 104." [10]

At the time of the incident, Captain Mariano Villarias (Captain Villarias) served as the Master of the MV Lorcon Luzon. However, the MV Lorcon Luzon was then being piloted by Captain Homer Yape (Captain Yape), a Harbor Pilot from the General Santos City pilotage district.[11] As underscored by Lorenzo Shipping, the MV Lorcon Luzon was under Captain Yape's pilotage as it was mandatory to yield navigational control to the Harbor Pilot while docking.[12]

Testifying before the Board of Marine Inquiry, Captain Villarias recalled that while the MV Lorcon Luzon was under Captain Yape's pilotage, he nevertheless "always" [13] remained at the side of Captain Yape. He likewise affirmed that he heard and knew of Captain Yape's orders, "because I have to repeat his order." [14]

As the MV Lorcon Luzon was docking, Captain Yape ordered the vessel to proceed "slow ahead," making it move at the speed of about one (1) knot. As it moved closer to dock, Captain Yape gave the order "dead slow

ahead," making the vessel move even slower. He then ordered the engine stopped.[15]

As the MV Lorcon Luzon moved "precariously close"[16] to the wharf, Captain Yape ordered the vessel to move backward, i.e., go "slow astern," and subsequently "full astern." Despite his orders, the engine failed to timely respond. Thus, Captain Yape ordered the dropping of the anchor. Despite this, the MV Lorcon Luzon rammed into Power Barge 104.[17]

Following this incident, Nelson Homena, Plant Manager of Power Barge 104, filed a Marine Protest before the Board of Marine Inquiry. Captain Villarias also filed his own Marine Protest. For his part, Captain Yape filed a Marine Accident Report. The Board of Marine Inquiry conducted joint hearings on the Marine Protests and Captain Yape's report.[18]

To forestall the prescription of its cause of action for damages, National Power Corporation filed before the Quezon City Regional Trial Court a Complaint for Damages against Lorenzo Shipping.[19] In this Complaint, National Power Corporation recalled the damage resulting from the ramming, as follows:

4. Due to the force and impact of the ramming, the three (3) nylon ropes of 4 inches [sic] diameter each securing the barge at the Makar Wharf-Philippines [sic] Ports Authority Pier was instantaneously ripped off and the take [-] off tower of the barge swayed causing flash over on the 69 KV line tripping the line and isolated General Santos City from the Mindanao Grid. Consequently, the General Santos Power Plant, Power Barge 102, interconnected with Power Barge 104, all tripped off causing total blackout in General Santos City and its underlying areas;
5. Immediate investigation revealed that the ramming resulted to severe damage to Ballast Tank No. 1 and metal deformation with approximate area of two (2) sq. meters. The crack, 25 mm. [b]y 460 mm. [o]ccurred two (2) meters above the crater line and another one, 75 mm. by 310 mm. on the water line caused a leak of waste oil into the sea . . .;
6. In addition to the physical damage caused to the Power Barge 104, plaintiff suffered generation losses as a result of the tripping off of the line and the failure of Power Barge 104 to generate electricity immediately after the accident[.][20]

Lorenzo Shipping filed a Motion to Dismiss grounded on the Regional Trial Court's alleged lack of jurisdiction over the subject matter and National Power Corporation's failure to exhaust administrative remedies. Lorenzo Shipping underscored that the dispute was supposedly within the jurisdiction of the Board of Marine Inquiry/Philippine Coast Guard.[21] The Regional Trial Court denied Lorenzo Shipping's Motion to Dismiss.[22]

On November 7, 1997, Lorenzo Shipping filed its Answer. It emphasized that at the time of the incident, the MV Lorcon Luzon was commandeered by an official Harbor Pilot to whom it was "mandatory . . . to yield operational control";[23] thus, any liability should be attributed to the Harbor Pilot and not to the company. It added that "Makar Wharf is a berthing place only for self-propelled vessel [sic]."[24] As Power Barge 104 was not a self-propelled vessel, it "had no right to lash itself on the Maka[r] Wharf. . . . [and] it assumed the risk of such ramming because [of] its improper presence[.]"[25] Lastly, Lorenzo Shipping pointed out that National Power Corporation's action was barred by laches as four (4) years had lapsed before it filed its Complaint.[26]

The Regional Trial Court issued the Decision[27] dated February 18, 2002 absolving Lorenzo Shipping of liability. It concluded that National Power Corporation failed to establish Lorenzo Shipping's negligence. It underscored that while the ramming was found to have been the result of the engine's stoppage, no malfunctioning was recorded before and after the incident. The Regional Trial Court further stated that Lorenzo Shipping was sued in its capacity as the employer of Captain Villarias and that any liability it incurred would have been only subsidiary. Nevertheless, as Lorenzo Shipping supposedly exercised due diligence in its selection and supervision

of Captain Villarias, no liability could be attributed to it.[28]

National Power Corporation appealed before the Court of Appeals.

The Court of Appeals rendered the Decision[29] dated September 14, 2007 reversing and setting aside the February 18, 2002 Decision of the Regional Trial Court and entering another judgment ordering Lorenzo Shipping to pay National Power Corporation the amount of P876,286.00 as actual damages and P50,000.00 as attorney's fees and expenses of litigation.[30]

The Court of Appeals reasoned that while the MV Lorcon Luzon was under compulsory pilotage, Captain Villarias, the vessel's Master, remained to be its overall commander. It added that he was remiss in his duties as he did nothing in the crucial moments when Captain Yape's orders to go astern appeared to not have been heeded.[31] It cited Article 2180 of the Civil Code[32] in that an employer's liability is primary and not subsidiary. It further noted that Lorenzo Shipping failed to show that it exercised due diligence in the selection and supervision of Captain Villarias.[33]

Lorenzo Shipping filed a Motion for Reconsideration.

The Court of Appeals then issued the Amended Decision dated February 12, 2008.[34] Noting that the amount of actual damages was not proven by National Power Corporation, it awarded National Power Corporation the amount of P300,000.00 as temperate damages in lieu of actual damages. The awards for attorney's fees and litigation expenses were sustained.

National Power Corporation then filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated September 17, 2008.[35]

On March 31, 2008, Lorenzo Shipping filed the Petition for Review on Certiorari[36] docketed as G.R. No. 181683. It reiterated its position that no liability could be attributed to it as the MV Lorcon Luzon was under compulsory pilotage and that National Power Corporation assumed risk when it berthed a non-propelled vessel in the Makar Wharf.[37] It added that even assuming that it was at fault, the award of P300,000.00 as temperate damages was still improper. It claimed that, from the text of Article 2224 of the Civil Code,[38] temperate damages can be awarded only in cases where pecuniary loss may have been incurred, but whose exact amount, through the nature of the injury suffered, e.g., injury to commercial credit or business goodwill, cannot be ascertained. It argued that National Power Corporation was well in a position to adduce proof of the exact amount of damage it incurred, but failed to do so.[39]

On November 24, 2008, National Power Corporation filed its Comment[40] to Lorenzo Shipping's Petition. It maintained that it was Lorenzo Shipping that must be held liable and that it was able to show by "competent testimonial and documentary evidence"[41] that it must be compensated for actual damages in the amount of P876,826.00. On April 7, 2009, Lorenzo Shipping filed its Reply.[42]

In the meantime, on November 18, 2008, National Power Corporation filed its own Petition for Review on Certiorari[43] docketed as G.R. No. 184568, arguing how it had supposedly proven by competent evidence that it was entitled to actual damages in the amount of P876,826.00. Lorenzo Shipping filed its Comment[44] on February 2, 2009. National Power Corporation filed its Reply[45] on June 22, 2009.

In the Resolution[46] dated February 9, 2009, this court consolidated the Petitions docketed as G.R. Nos. 181683 and 184568.

For resolution are the following issues:

First, whether Lorenzo Shipping Corporation is liable for the damage sustained by Power Barge 104 when the

MV Lorcon Luzon rammed into it, considering that at the time of the ramming, the MV Lorcon Luzon was under mandatory pilotage by Captain Yape; and

Second, assuming that liability is to be attributed to Lorenzo Shipping, what damages, if any, may be awarded to National Power Corporation.

I

It is not disputed that the MV Lorcon Luzon, a vessel owned and operated by Lorenzo Shipping, rammed into Power Barge 104 while attempting to dock at the Makar Wharf. Likewise, it is not disputed that when it rammed into Power Barge No. 104, the MV Lorcon Luzon was being piloted by Captain Yape. What is in dispute is whether Captain Yape's pilotage suffices to absolve Lorenzo Shipping of liability.

A Master's designation as the commander of a vessel is long-settled. This court's citation in *Yu Con v. Ipil*[47] of General Review of Legislation and Jurisprudence explains that "Master" and "Captain" are synonymous terms:

"The name of captain or master is given, according to the kind of vessel, to the person in charge of it.

"The first denomination is applied to those who govern vessels that navigate the high seas or ships of large dimensions and importance, although they be engaged in the coastwise trade.

"Masters are those who command smaller ships engaged exclusively in the coastwise trade.

"For the purposes of maritime commerce, the words 'captain' and 'master' have the same meaning; both being the chiefs or commanders of ships.[48]

Likewise, in *Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission*:[49]

A master or captain, for purposes of maritime commerce, is one who has command of a vessel. A captain commonly performs three (3) distinct roles: (1) he is a general agent of the shipowner; (2) he is also commander and technical director of the vessel; and (3) he is a representative of the country under whose flag he navigates. Of these roles, by far the most important is the role performed by the captain as commander of the vessel; for such role (which, to our mind, is analogous to that of "Chief Executive Officer" [CEO] of a present-day corporate enterprise) has to do with the operation and preservation of the vessel during its voyage and the protection of the passengers (if any) and crew and cargo. In his role as general agent of the shipowner, the captain has authority to sign bills of lading, carry goods aboard and deal with the freight earned, agree upon rates and decide whether to take cargo. The ship captain, as agent of the shipowner, has legal authority to enter into contracts with respect to the vessel and the trading of the vessel, subject to applicable limitations established by statute, contract or instructions and regulations of the shipowner. To the captain is committed the governance, care and management of the vessel. Clearly, the captain is vested with both management and fiduciary functions.[50] (Emphasis supplied, citations omitted)

This notwithstanding, there are recognized instances when control of a vessel is yielded to a pilot. Section 8 of Philippine Ports Authority (PPA) Administrative Order No. 03-85, otherwise known as the Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports,[51] enumerates instances when vessels are subjected to compulsory pilotage:

Sec. 8. Compulsory Pilotage Service — For entering a harbor and anchoring thereat, or passing through rivers or straits within a pilotage district, as well as docking and undocking at any pier/wharf, or shifting from one berth or another, every vessel engaged in coastwise and foreign trade shall be under compulsory pilotage.

However, in the Ports of Manila and Cebu, and in such other ports as may be allowed by this Authority, Ship Captains may pilot their vessels engaged in coastwise trade provided they meet / comply with the following

minimum qualifications / requirements:

- a) Must be properly licensed as a Harbor Pilot by the Philippine Coast Guard for Manila, Cebu and other authorized ports;
- b) Must have been a Master of an interisland vessel for at least three (3) years prior to his application with the PPA;
- c) Must be certified by a government physician as physically and mentally fit.

Vessels maneuvered by a Special Harbor Pilot shall be exempt from the payment of all pilotage fees.[52]

The second paragraph of Section 8 identifies an instance when control of a vessel need not be yielded to a pilot. Section 9 further enumerates exceptions to compulsory pilotage:

Sec. 9. Exemptions - In the following cases, pilotage service is not compulsory:

a)

Vessels engaged in coastwise trade undocking at all ports, except at the ports of Manila, Cebu, Iloilo, Tacloban, Davao, Zamboanga, Pulupandan, Masinloc, and San Fernando,

b)

Government vessels,

c)

Vessels of foreign governments entitled to courtesy,

d)

Vessels that are authorized by BOT to engage in daily ferry service plying between two places within a port or between two ports,

e)

Phil. Flag vessels engaged in coastwise trade that depart from an anchorage,

f)

Vessels calling at private ports whose owners have formally waived the requirements of compulsory pilotage.[53]

Section 32(f) of PPA Administrative Order No. 03-85 specifies the foremost responsibility of a Harbor Pilot, that is, the direction of the vessel being piloted. In addition, Section 32 (f) spells out the duration within which the Harbor Pilot is to fulfill this responsibility. It likewise provides that the Master's failure to carry out the Harbor Pilot's orders is a ground for absolving the Harbor Pilot of liability:

Sec. 32. Duties and Responsibilities of the Pilots or Pilots' Association. — The duties and responsibilities of the Harbor Pilot shall be as follows:

....

f)

A pilot shall be held responsible for the direction of a vessel from the time he assumes his work as a pilot thereof until he leaves it anchored or berthed safely; Provided, however, that his responsibility shall cease at

the moment the Master neglects or refuses to carry out his order.[54]

Consistent with the yielding of control to a pilot, Section 11 of PPA Administrative Order No. 03-85 makes the Harbor Pilot liable for damage caused by his or her negligence or fault. The same provision, however, emphasizes that "overall command" of the vessel remains in the Master of the vessel:

Sec. 11. Control of Vessels and Liability for Damage. — On compulsory pilotage grounds, the Harbor Pilot providing the service to a vessel shall be responsible for the damage caused to a vessel or to life and property at ports due to his negligence or fault. He can be absolved from liability if the accident is caused by force majeure or natural calamities provided he has exercised prudence and extra diligence to prevent or minimize the damage.

The Master shall retain overall command of the vessel even on pilotage grounds whereby he can countermand or overrule the order or command of the Harbor Pilot on board. In such event, any damage caused to a vessel or to life and property at ports by reason of the fault or negligence of the Master shall be the responsibility and liability of the registered owner of the vessel concerned without prejudice to recourse against said Master.

Such liability of the owner or Master of the vessel or its pilots shall be determined by competent authority in appropriate proceedings in the light of the facts and circumstances of each particular case.[55]

Accordingly, it is settled that Harbor Pilots are liable only to the extent that they can perform their function through the officers and crew of the piloted vessel.[56] Where there is failure by the officers and crew to adhere to their orders, Harbor Pilots cannot be held liable.[57] In *Far Eastern Shipping Co. V. Court of Appeals*,^[58] this court explained the intertwined responsibilities of pilots and masters:

[W]here a compulsory pilot is in charge of a ship, the master being required to permit him to navigate it, if the master observes that the pilot is incompetent or physically incapable, then it is the duty of the master to refuse to permit the pilot to act. But if no such reasons are present, then the master is justified in relying upon the pilot, but not blindly. Under the circumstances of this case, if a situation arose where the master, exercising that reasonable vigilance which the master of a ship should exercise, observed, or should have observed, that the pilot was so navigating the vessel that she was going, or was likely to go, into danger, and there was in the exercise of reasonable care and vigilance an opportunity for the master to intervene so as to save the ship from danger, the master should have acted accordingly. The master of a vessel must exercise a degree of vigilance commensurate with the circumstances.[59] (Citations omitted)

Thus, contrary to Lorenzo Shipping's assertion, the MV Lorcon Luzon's having been piloted by Captain Yape at the time of the ramming does not automatically absolve Lorenzo Shipping of liability. Clearing it of liability requires a demonstration of how the Master, Captain Villarias, conducted himself in those moments when it became apparent that the MV Lorcon Luzon's engine had stopped and Captain Yape's orders to go "slow astern" and "full astern" were not being heeded.

II

As noted by the Court of Appeals, Captain Villarias was remiss in his duties. In his testimony before the Board of Marine Inquiry, Captain Villarias admitted that about six (6) minutes had passed before he even realized that there was an engine failure, let alone acted on this fact:

Significantly, Captain Mariano Villarias before the Board of Marine Inquiry testified as follows:

"Atty. Tapel:

Now, during the time of that accident, Mr. Witness, how did you know that the cause of the ramming on Power Barge No. 104 was due to engine failure?

Capt Villarias:

There was no response upon the order or the harbor pilot from slow to full eastern [sic] engine.

Atty. Tepal:

Do you want to tell this Honorable Board that before the ramming incident there was an order from the harbor pilot for slow eastern [sic] engine and there was no response?

Capt Villarias:

Yes, there was an order.

Atty. Tepal:

Where were you at that time, Mr. Witness?

Capt. Villarias:

I am always [at] the side of the harbor pilot.

Atty. Tepal:

Have you heard the harbor pilot issuing the orders?

Capt. Villarias:

Yes, because I have to repeat his order.

Atty. Tepel (sic):

Now, when there was no response[,] who is supposed to respond to the order of the harbor pilot?

Capt. Vilalrias:

It was the engine department.

Atty Tapel (sic):

Who in the engine department is supposed to respond to the order of the harbor pilot?

Capt. Villarias:

The second engineer and the chief engineer. The engineer on duty.

Atty. Tepal:

And because there was no response from the engine department[,] you concluded that there was an engine failure which caused the ramming of Napocor Power Barge?

Capt. Villarias:

Almost six (6) minutes there is no response before I know that there was an engine failure."[60]

In the Reply it filed in G.R. No. 181683, Lorenzo Shipping attempts to douse the significance of Captain Villarias' inaction for six (6) minutes as follows:

The Court of Appeals held that Capt. Villarias was remiss in his duties because he just stood besides [sic] the harbour pilot waiting for a response from the engine department. He could have called the attention of Capt. Yape on his miscalculations in the docking maneuvers of the vessel.

But the Court of Appeals assumed that the unfolding circumstances on the water that approached the wharf were in slow motion and permitted the vessel's captain to have time to examine the situation and deliberate on it, make a judgment that the pilot had given a wrong command, wrest from him control of the vessel, and enable the crew down in its belly, at the time tuned to the voice of the pilot, to realize that the latter's authority had been superseded and that the command had reverted to the captain. As it were, no evidence was presented to show that the captain and the crew had all the time they needed to arrest the momentum of the vessel to which the pilot had directed it.[61]

We disagree.

In the first place, six (6) minutes cannot be characterized as so quick and fleeting that it deprived Captain Villarias and his crew of "the time they needed to arrest the momentum of the vessel." [62] By way of reference, an entire song of average length (or longer) could have played in Captain Villarias' head within those six (6) minutes. The vessel had been performing the tedious task of berthing and had been moving so fast that it was about to collide with the docks in the wharf. Given these circumstances, it was only reasonable for Captain Villarias, precisely because he was the vessel's Master, to remain vigilant, to support and supplement Captain Yape's orders, and to take evasive and counter measures should Captain Yape's attempts to safely berth prove to be ineffectual. The Court of Appeals' observation is well-taken: "Even just a minute without any response from the concerned department could have alarmed him." [63]

Lorenzo Shipping counters the observations of the Court of Appeals by attempting to paint a picture of absurdity. It describes the confluence of events as needing to have been in "slow motion" if the crew were to timely and properly react. It conjures images of Captain Villarias "wrest[ing] from [Captain Yape] control of the vessel" [64] and the crew thrown into a confused frenzy as they had to listen to Captain Villarias' voice.

This manner of arguing fails to impress. To reiterate, six (6) minutes were more than enough time for Captain Villarias to have done something to remedy the situation. It is not for us to hypothesize on whether the measures he took would have been effectual. It remains that for six minutes, he did nothing. As Master of the MV Lorcon Luzon, he should have been on his toes, keen and ready to make decisions in a split second, especially in an evidently precarious situation. His failure to timely act is too glaring to ignore.

Moreover, both Captain Villarias and Captain Yape must be presumed to have been disciplined officers who knew fully well how to conduct themselves in such a situation. There is no basis for contemplating a scenario where the Pilot and the Master are battling for control of the MV Lorcon Luzon.

So, too, the crew must be presumed to have been trained to follow the Master's commands. It is ridiculous to think that merely hearing Captain Villarias' voice in lieu of Captain Yape's would throw the crew into paralyzed confusion. Besides, from Captain Villarias' quoted testimony, the crew was already listening to both his and Captain Yape's voices. He admitted that he repeated Captain Yape's orders. The crew was, thus, properly disposed to heed instructions coming from him. If at all, his failure to timely act despite the crew's presumptive readiness to heed his command only highlights his negligence.

III

Equally futile is Lorenzo Shipping's claim that National Power Corporation must bear its own losses as it assumed the risk of injury when it moored a non-propelled or stationary barge in the Makar Wharf.

It is pointless to even consider this. Apart from Lorenzo Shipping's own self-serving assertions, there is no basis for holding that Power Barge 104's presence in the Makar Wharf was improper and tantamount to an assumption of risk. Lorenzo Shipping could have very easily adduced proof attesting to Makar Wharf's supposedly being

exclusive to self-propelled vessels. It did not. Nowhere in any of its submissions to this court did Lorenzo Shipping annex a copy of the appropriate regulation, if any, that restricts the use of Makar Wharf to self-propelled vessels or absolutely prohibits National Power Corporation from using it as a berthing place for a power barge.

If at all, the MV Lorcon Luzon's ramming of a stationary object is even more damaging to Lorenzo Shipping's cause. As explained in *Far Eastern Shipping*:^[65]

We start our discussion of the successive issues bearing in mind the evidentiary rule in American jurisprudence that there is a presumption of fault against a moving vessel that strikes a stationary object such as a dock or navigational aid. In admiralty, this presumption does more than merely require the ship to go forward and produce some evidence on the presumptive matter. The moving vessel must show that it was without fault or that the collision was occasioned by the fault of the stationary object or was the result of inevitable accident. It has been held that such vessel must exhaust every reasonable possibility which the circumstances admit and show that in each, they did all that reasonable care required. In the absence of sufficient proof in rebuttal, the presumption of fault attaches to a moving vessel which collides with a fixed object and makes a *prima facie* case of fault against the vessel. Logic and experience support this presumption:

The common sense behind the rule makes the burden a heavy one. Such accidents simply do not occur in the ordinary course of things unless the vessel has been mismanaged in some way. It is not sufficient for the respondent to produce witnesses who testify that as soon as the danger became apparent everything possible was done to avoid an accident. The question remains, How then did the collision occur? The answer must be either that, in spite of the testimony of the witnesses, what was done was too little or too late or, if not, then the vessel was at fault for being in a position in which an unavoidable collision would occur.^[66] (Emphasis supplied, citations omitted)

IV

We sustain the Court of Appeals' award to National Power Corporation of P300,000.00 as temperate damages.

Article 2199 of the Civil Code spells out the basic requirement that compensation by way of actual damages is awarded only to the extent that pecuniary loss is proven:

Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

The standard for proving pecuniary loss was explained in *PNOC Shipping and Transport Corp. v. Court of Appeals*,^[67] as follows:

A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved. 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. The claimant is duty-bound to point out specific facts that afford a basis for measuring whatever compensatory damages are borne. A court cannot merely rely on speculations, conjectures, or guesswork as to the fact and amount of damages as well as hearsay or uncorroborated testimony whose truth is suspect.^[68] (Citations omitted)

National Power Corporation bewails the Court of Appeals' observation that the basis of its claims was "not properly receipted."^[69] It counters that it was able to show by "competent testimonial and documentary evidence"^[70] that it must be compensated for actual damages in the amount of P876,826.00. It recalls these pieces of evidence:

- Testimony of Mr. Nelson Homena, manager of Power Barge 104 [who] testified on the damages [sic]

sustained by said barge as a result of the ramming incident caused by the negligence of M/V Lorcon Luzon.

- The "Total Incidental Cost for Drydock and Repair" prepared by the Philippine Shipyard and Engineering Corporation ("PHILSECO") dated 14 October 1993 was presented which clearly enumerated and itemized the actual damages [sic] sustained by Power Barge 104 and repaired by PHILSECO.

- NPC Disbursement Voucher No. 093-121304 in the amount of P6,775,839.02 covering a period up to 14 January 1994 as proof of payment made by [National Power Corporation] to PHILSECO for drydocking repairs of Power Barge 104.[71]

However, Lorenzo Shipping pointed out fatal flaws in these pieces of evidence. These flaws led the Court of Appeals to reconsider its earlier award of actual damages to National Power Corporation.

Regarding the "Total Incidental Cost for Drydock and Repair," which was National Power Corporation's Exhibit "F" before the Regional Trial Court, Lorenzo Shipping underscored that when the Regional Trial Court ruled on National Power Corporation's Formal Offer of Evidence, it denied the admission of Exhibit "F" for not having been identified nor authenticated. It emphasized that no witness came forward to attest to its authenticity and due execution, let alone allowed himself or herself to be cross-examined on these points.[72]

Regarding Nelson Homena's testimony, Lorenzo Shipping emphasized that all he indicated was how he and a certain Mr. Neri estimated the cost of damage to be at about P1,000,000.00.[73]

Regarding Disbursement Voucher No. 093-121304, Lorenzo Shipping pointed out that while this attests to expenses paid to PHILSECO, it was silent on the exact cost paid for the repair of Power Barge 104.[74]

Nowhere in any of its submissions to this court—whether in its Comment in G.R. No. 181683 or in its Petition and/or Reply in G.R. No. 184568—did National Power Corporation rebut the flaws noted by Lorenzo Shipping. Instead, it merely insisted on how actual damages are awarded on the basis of the "best obtainable evidence,"[75] and how it has supposedly presented "competent testimonial and documentary evidence"[76] to prove its claims.

National Power Corporation's posturing fails to impress.

It is basic that any material presented as evidence will not be considered unless duly admitted by the court before which it is presented. Just as basic is that a private document offered as authentic evidence shall not be admitted unless its due execution and authenticity are established in the manner specified by Rule 132, Section 30 of the Revised Rules on Evidence:

Section 20. Proof of private document. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

A bill of expenses, such as National Power Corporation's Exhibit "F", is considered a private document as it does not fall under what the Revised Rules on Evidence defines to be public documents.[77] Accordingly, for it to have been admitted by the Regional Trial Court as authentic, Rule 132, Section 30 of the Revised Rules on Evidence must have been complied with. National Power Corporation failed in this respect. Thus, in the words of the Regional Trial Court, it:

- 3. Denies the admission of Exhibit "F" and its submarkings for not having been properly identified.[78]

It is of no consequence that the substance or contents of Exhibit "F" are such that they specify an amount. It is of no consequence that it is purportedly of such evidentiary weight that it could definitely establish National Power Corporation's claims.

Admissibility of evidence and weight accorded to evidence are two distinct affairs. Rule 128, Section 3 of the Revised Rules on Evidence governs admissibility and provides that "[e]vidence is admissible when it is relevant to the issue and is not excluded by the law of these rules." When evidence has "such a relation to the fact in issue as to induce belief in its existence or non-existence,"[79] it is said to be relevant. When evidence is not excluded by law or by the Rules, it is said to be competent.

The weight accorded to evidence is properly considered only after evidence has been admitted. To this end, courts evaluate evidence in accordance with the rules stipulated by Rule 133 of the Revised Rules on Evidence,[80] consistent with basic precepts of rationality and guided by judicially established standards. It is improper to even speak of evidentiary weight when the piece of evidence in question has not even been admitted.

Exhibit "F" was ruled to have been inadmissible for failing to comply with Rule 132, Section 20 thus, it failed the standard of competency. Consistent with this, reliance on National Power Corporation's Exhibit "F" and its contents, so as to establish the extent of National Power Corporation's pecuniary loss, is misplaced. Not having been admitted, Exhibit "F" does not form part of the body of evidence worthy of judicial consideration.

As National Power Corporation cannot rely on the "Total Incidental Cost for Drydock and Repair," it is left to rely on the testimony of Nelson Homena and on NPC Disbursement Voucher No. 093-121304.

However, as pointed out by Lorenzo Shipping, these pieces of evidence fall short of the standard required for proving pecuniary loss, which shall be the basis for awarding actual damages. As regards Nelson Homena's testimony, all he did was give an estimate of P1,000,000.00. Certainly, a mere estimate does not suffice as proof of actual pecuniary loss. As regards NPC Disbursement Voucher No. 093-121304, all it attests to is a release of funds in favor of PHILSECO in the total amount of P6,775,839.02, covering no specific transaction but a period extending from January 14, 1994.

V

Clearly, National Power Corporation failed to establish the precise amount of pecuniary loss it suffered. Nevertheless, it remains that Power Barge 104 sustained damage—which may be reckoned financially—as a result of the MV Lorcon Luzon's ramming into it. National Power Corporation suffered pecuniary loss, albeit its precise extent or amount had not been established. Accordingly, we sustain the Court of Appeals' conclusion that National Power Corporation is entitled to temperate damages.

Articles 2224 and 2225 of the Civil Code govern temperate damages:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

Article 2225. Temperate damages must be reasonable under the circumstances.

Banking on Article 2224's text, which references "the nature of the case," Lorenzo Shipping asserts that temperate damages can be awarded only in cases where pecuniary loss may have been incurred, but whose exact amount, through the nature of the injury suffered, e.g., injury to commercial credit or business goodwill, cannot be ascertained. It argues that because the circumstances of this case are such that National Power Corporation could have pleaded and proved a specific—i.e., ascertained—amount of pecuniary loss but failed to do so, temperate

damages should not be awarded.

Lorenzo Shipping is proposing an erroneous, narrow, and unduly restrictive construction of Article 2224.

This case is not the first instance that this court was confronted with the ostensibly limiting language of Article 2224. In *Republic of the Philippines v. Tuvera*,^[81] this court already debunked the notion that temperate damages are appropriate only in those cases in which pecuniary loss cannot, "by its nature," be ascertained:

Temperate or moderate damages avail when "the court finds that some pecuniary loss has been suffered but its amount can not from the nature of the case, be proved with certainty." The textual language might betray an intent that temperate damages do not avail when the case, by its nature, is susceptible to proof of pecuniary loss; and certainly the Republic could have proved pecuniary loss herein. Still, jurisprudence applying Article 2224 is clear that temperate damages may be awarded even in instances where pecuniary loss could theoretically have been proved with certainty.

In a host of criminal cases, the Court has awarded temperate damages to the heirs of the victim in cases where the amount of actual damages was not proven due to the inadequacy of the evidence presented by the prosecution. These cases include *People v. Oliano*, *People v. Suplito*, *People v. De la Tongga*, *People v. Briones*, and *People v. Plazo*. In *Viron Transportation Co., Inc. v. Delos Santos*, a civil action for damages involving a vehicular collision, temperate damages were awarded for the resulting damage sustained by a cargo truck, after the plaintiff had failed to submit competent proof of actual damages.^[82] (Citations omitted)

In resolving this case, we have had to sift through the parties' competing claims as to who exactly is liable and to what extent. Reduced to its fundamentals, however, this case remains to be about damage sustained by property owned by National Power Corporation when the MV Lorcon Luzon rammed into it. This damage is susceptible to financial reckoning. Unfortunately for National Power Corporation, it failed to establish the precise amount of its pecuniary loss. This vice of precision notwithstanding, it would be improper to completely turn a blind eye to the loss suffered by National Power Corporation and to deny it, as Lorenzo Shipping suggests, of any form of recompense. Under these circumstances, we sustain the Court of Appeals' award of temperate damages.

WHEREFORE, the consolidated Petitions are DENIED. The Amended Decision dated February 12, 2008 and Resolution dated September 17, 2008 of the Court of Appeals in CA-G.R. CV No. 76295 are AFFIRMED.

All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.

Brion, (Acting Chairperson), Peralta,^[*] Del Castillo, and Villarama, Jr.,^[**] JJ., concur.

[*] Designated acting member per S.O. No. 2223 dated September 29, 2015.

[**] Designated acting member per S.O. No. 2086 dated June 29, 2015.

[1] The Petitions were filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo (G.R. No. 181683), pp. 31—47. The Decision was penned by Associate Justice Jose Catral Mendoza (now Associate Justice of this court) and concurred in by Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals Manila.

[3] *Id.* at 46.

[4] *Id.* at 49-52. The Decision was penned by Associate Justice Jose Catral Mendoza (now Associate Justice of

this court) and concurred in by Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals Manila.

[5] Rollo (G.R. No. 184568), pp. 44-48. The Resolution was penned by Associate Justice Jose Catral Mendoza (now Associate Justice of this court) and concurred in by Associate Justice Andres B. Reyes, Jr. and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals Manila.

[6] Id. at 50, Court of Appeals Decision dated September 14, 2007.

[7] Id.

[8] Rollo (G.R. No. 181683), p. 32.

[9] Id. at 31-32, Court of Appeals Decision dated September 14, 2007.

[10] Id. at 32.

[11] Rollo (G.R. No. 184568), p. 22, Petition for Review on Certiorari.

[12] Rollo (G.R. No. 181683), pp. 36-37, Court of Appeals Decision dated September 14, 2007.

[13] Id. at 41.

[14] Id.

[15] Rollo (G.R. No. 184568) p. 22, Petition for Review on Certiorari.

[16] Id.

[17] Id.

[18] Id. at 24.

[19] Id.

[20] Rollo (G.R. No. 181683), pp. 32-33, Court of Appeals Decision dated September 14, 2007.

[21] Id. at 33-34.

[22] Id. at 36.

[23] Id.

[24] Id. at 37.

[25] Id.

[26] Id.

[27] Rollo (G.R. No. 184568), p. 50, Court of Appeals Decision dated September 14, 2007.

[28] Id. at 56-57.

[29] Id. at 31-47.

[30] Id. at 46, Court of Appeals Decision dated September 14, 2007.

[31] Id. at 39-43.

[32] Article 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions,

but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody. The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[33] Rollo (G.R. No. 181683), pp. 43-45, Court of Appeals Decision dated September 14, 2007.

[34] Id. at 49-52.

[35] Rollo (G.R. No. 184568), pp. 44-48.

[36] Rollo (G.R. No. 181683), pp. 9-24.

[37] Id. at 15-20, Petition for Review on Certiorari.

[38] Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

[39] Rollo (G.R. No. 181683), pp. 20-23, Petition for Review on Certiorari.

[40] Id. at 90-109.

[41] Id. at 103, Comment.

[42] Id. at 131-141.

[43] Rollo (G.R. No. 184568), pp. 16-35.

[44] Id. at 77-90.

[45] Id. at 98-105.

[46] Id. at 73.

[47] 41 Phil. 770 (1916) [Per J. Araullo, En Banc].

[48] Id. at 781, citing General Review of Legislation and Jurisprudence, Vol. 2, p. 168.

[49] G.R. No. 115286, August 11, 1994, 235 SCRA 268 [Per J. Feliciano, Third Division].

[50] Id. at 276.

[51] The Rules and Regulations Governing Pilotage Service, the Conduct of Pilots and Pilotage Fees in Philippine Ports is dated March 21, 1985, 81 O.G. No. 18, 1872-1887.

[52] Id. at 1873.

[53] Id. at 1873-1874.

[54] Id. at 1882-1883.

[55] Id. at 1874.

[56] See *Yap Tico and Co. v. Anderson*, 34 Phil. 626 (1916) [Per J. Johnson, Second Division].

[57] Id.

[58] 357 Phil. 703 (1998) [Per J. Regalado, En Banc].

[59] Id. at 747.

[60] Rollo (G.R. No. 181683), pp. 41-42, Court of Appeals Decision dated September 14, 2007.

[61] Id. at 133, Reply.

[63] Id.

[62] Id.

[64] Id. at 131.

[65] 357 Phil. 703 (1998) [Per J. Regalado, En Banc].

[66] Id. at 726.

[67] 358 Phil. 38 (1998) [Per J. Romero, Third Division].

[68] Id. at 43-44.

[69] Rollo (G.R. No. 184568), p. 41, Court of Appeals Amended Decision dated February 12, 2008.

[70] Rollo (GR. No. 181683), p. 103, Comment.

[71] Id. at 30, Reply.

[72] Id. at 83-84, Comment.

[73] Id. at 84.

[74] Id.

[75] Id. at 98, Reply.

[76] Id. at 103.

[77] Section 19. Classes of Documents. — For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledge before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

[78] Rollo (G.R. No. 184568), p. 83, Comment.

[79] Section 4. Relevancy; collateral matters. — Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue.

[80] REV. RULES ON EVID., Rule 133 is entitled Weight and Sufficiency of Evidence.

[81] 545 Phil. 21 (2007) [Per J. Tinga, Second Division].

[82] Id. at 58-59.

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