

F.F. CRUZ & COMPANY, INC., PETITIONER, VS. PHILIPPINE IRON CONSTRUCTION AND MARINE WORKS, INC., AND/OR ANCHOR METALS CORP., RESPONDENTS.*G.R. No. 188144. August 30, 2017*

Ponente: JARDELEZA, J.

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These are consolidated petitions for review on certiorari challenging the Decision[1] dated February 25, 2009 and Resolution[2] dated June 8, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 86460. The CA held that Anchor Metals Corporation (AMC) is liable to pay F.F. Cruz and Company (F.F. Cruz) for the damage caused by AMC's vessels to the barges owned by F.F. Cruz, but mitigated the former's liability due to F.F. Cruz's contributory negligence. Both petitions principally challenge the factual findings of the CA: in G.R. No. 188144, F.F. Cruz contests the finding that it was guilty of contributory negligence; in G.R. No. 188301, AMC questions its liability for actual damages.

The Department of Public Works and Highways (DPWH) engaged the services of F.F. Cruz to construct the government pier located in Brooke's Point, Palawan. Sometime in September 1988, F.F. Cruz brought its tugboat M/T "Imma" (Imma), Barge 609, Barge 1001, and Barge Piling Rig "Pilipino" (Pilipino) to the site. [3]

On November 4, 1988, tugboat M/T "Jasaan" (Jasaan) docked at Brooke's Point for the purpose of towing Barge "Florida" (Florida).[4] AMC owned Florida and leased Jasaan from Philippine Iron Construction & Marine Works, Inc. (PICMW) through a bareboat charter agreement.[5]

In the evening of November 4, 1988, typhoon Welpring hit Brooke's Point. F.F. Cruz's Barge 609 and Pilipino sank, while Barge 1001 collided with the driven piles at the construction site.[6] That same evening, Jasaan towed Florida to a safer place because the latter's anchor line was cut off. In the process, however, the rudder cable snapped and both Jasaan and Florida drifted towards the seashore.[7]

The following day, the master of Imma, Antonio Bundal (Bundal), filed a marine protest alleging that Jasaan and Florida were responsible for the damage to F.F. Cruz's vessels and the driven piles. He alleged that there was an allision[8] between Jasaan and Barge 1001, which caused the latter to hit the driven piles. In turn, Florida bumped Barge 609 causing the latter to eventually sink. Pilipino likewise hit the concrete piles as a result of the allision.[9] The master of Jasaan, Capt. Daniel Pino (Capt. Pino), also filed a marine protest, reporting that both Jasaan and Florida were pushed ashore as a result of the typhoon, causing damages to both vessels.[10]

The Board of Marine Inquiry (BMI) absolved PICMW, AMC, Capt. Pino, and Florida's patron Fausto dela Riarte of any administrative liability. It found that Jasaan and Florida maintained a safe distance of 800 to 900 meters from F.F. Cruz's vessels. Instead, the BMI recommended that Bundal and the patrons of Barge 609, 1001, and Pilipino be faulted for their failure to transfer their barges to a safe distance from the driven piles.[11] The Philippine Coast Guard affirmed the recommendations of the BMI.[12]

F.F. Cruz filed a complaint for damages with the Regional Trial Court (RTC) of Quezon City against both AMC and PICMW. The RTC found that there was "clear, positive and credible evidence presented that [Jasaan] and [Florida] bumped and hit the vessels of [F.F. Cruz]."[13] It also held PICMW to be solidarity liable because Jasaan was not seaworthy due to the vessel's lack of a functioning radio equipment and defective rudder.[14] Accordingly, the RTC ordered AMC and PICMW to pay solidarily F.F. Cruz the sum of P6,168,028.50 as actual damages and P500,000.00 as attorney's fees and litigation expenses, plus costs of suit.[15]

AMC and PICMW filed separate notices of appeal. AMC insisted that the findings of the BMI should be controlling, i.e., that no allision took place, and it should therefore be absolved of any civil liability.[16] Meanwhile, PICMW questioned the finding that Jasaan was not seaworthy.[17] In its 24- page Decision, the CA closely examined the parties' respective evidence. It found that Jasaan and Florida could not have maintained a safe distance of 800 to 900 meters from F.F. Cruz's vessels because it was established by the captain of Jasaan himself that he caused Jasaan to move in order to tow Florida to a safer place after the latter's anchor line was cut. The CA also noted that the testimonies of the witnesses for F.F. Cruz were consistent with one another and support the contents of the marine protest filed by Imma's master. Nonetheless, the CA concurred with the BMI finding that F.F. Cruz failed to properly secure Barge 609 and Barge 1001 at the time of the typhoon and that these vessels were located very near the driven piles. Thus, F.F. Cruz should share equally bear the damages caused to Filipino and the driven piles. Finally, it absolved PICMW from any liability because the contract it entered into with AMC was a bareboat charter, which means that AMC is effectively considered the owner for the duration of the voyage.[18] F.F. Cruz and AMC filed their respective motions for reconsideration, which the CA denied.

On July 30, 2009, F.F. Cruz filed its petition for review,[19] docketed as G.R. No. 188144. AMC filed its own petition for review[20] on August 13, 2009, docketed as G.R. No. 188301. On October 26, 2009, we consolidated the two petitions.[21]

We deny the petitions.

Section 1 of Rule 45 of the Rules of Court limits the scope of the Supreme Court's reviews on certiorari. It provides:

Filing of petition with Supreme Court." — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.[22] (Emphasis supplied.)

A petition for review under Rule 45 is, thus, limited only to questions of law. Factual questions are not the proper subject of an appeal by certiorari. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. We are confined to the review of errors of law that may have been committed in the judgment under review.[23] "It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court because x x x this Court is not a trier of facts; it reviews only questions of law." [24]

Over time, we have entertained petitions for review raising factual questions in certain narrow and limited instances.[25] One such exception is when the factual findings of the CA are contrary to those of the trial court. The presence of such circumstance alone, however, does not automatically warrant departure from the general

rule. In *Uniland Resources v. Development Bank of the Philippines*,^[26] we explained:

It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence.^[27] (Citation omitted.)

A conflict between the factual findings of the CA and the trial court only provides prima facie basis for a recourse to the Supreme Court. But before we even give due course to a petition under Rule 45 which raises factual issues—much less undertake a complete reexamination of the records—it is incumbent upon the petitioner to clearly show that manifestly correct findings have been unwarrantedly rejected or reversed by the CA. "[O]nly a showing, on the face of the record, of gross or extraordinary misperception or manifest bias in the [CA]'s reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province."^[28] Both *F.F. Cruz* and *AMC* failed to show that their respective petitions meet this standard.

At the core of the factual dispute is the CA's treatment of the BMI report. The CA partially relied on the report when it held *F.F. Cruz* liable for contributory negligence, but disagreed with the BMI's findings that *AMC* was without any fault. We find that the CA properly considered the BMI report in line with prevailing jurisprudence.

In *Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*,^[29] we held that the "findings of BMI are not deemed always binding on the courts."^[30] The BMI's exoneration of the vessel's officers and crew merely concerns their respective administrative liabilities. It does not in any way operate to absolve the common carrier from its civil liabilities arising from its failure to exercise extraordinary diligence, the determination of which properly belongs to the courts.^[31] As may be clearly deduced from our statement in *Aboitiz*, there are instances when the BMI's findings are considered binding. As we explained in *Philippine American General Insurance Co., Inc. v. MGG Marine Services, Inc.*:^[32]

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 to 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.^[33] (Citation omitted.)

Simply put, the rule is that the BMI's findings are binding and conclusive on the courts when it is supported by substantial evidence. This is consistent with the elementary principle in administrative law that findings of fact by administrative tribunals are conclusive when supported by substantial evidence.^[34]

In finding that *F.F. Cruz* was guilty of contributory negligence, the CA relied on the factual findings set forth in the BMI report. The pertinent portions of the report detailed how *F.F. Cruz* failed to observe the proper standard of diligence in view of the imminent arrival of typhoon *Welpring*:

10. Proper perusal of Exhibit "A-1" shows that only [Pilipino] was well secured with her mooring lines and anchors immediately before the typhoon passed Brooke's Point, Palawan:

x x x

11. From the above observations, it appears that Barge 609 and Barge 1001 were not individually or separately well secured at the time the strong typhoon "W[e]lpring" was hitting the area of Palawan particularly Brooke['s] Point. So that if the mooring lines at fore-ends of said vessels which are numbered 2 and 3 respectively as shown in Exhibit A-1 snapped, as indeed it did, the [Pilipino] would have been affected. Barge 609 and Barge 1001 starboard and port sides respectively tied to the port side of [Pilipino]'s 5-ton anchors which are numbered 7 and 8. So if the fore-ends mooring lines of Barge 609 and Barge 1001 parted away from Anchors Nos. 2 and 3, Anchors Nos. 7 and 8 of [Pilipino] would be overloaded and would have a tendency to drag and its mooring lines subjected to undue tension stresses. The cutting off of the fore-end mooring line of Barge 1001 had resulted to her sudden swinging towards the aft portion of [Pilipino] resulting to the bumping/ramming against the latter. x x x

12. The F.F. Cruz's vessels were located very near the driven piles of Brooke's Point Pier under construction by F.F. Cruz & Co. In fact[,] before the typhoon "W[e]lpring" came on November 4, 1988, the vessels were still engaged in the actual driving of the posts/piles. The Barges did not change their position except Barge 609 which was required by P.P.A. to vacate the causeway to give way for M/T Jasaan and Barge Florida to dock; Barge 609 then proceeded to the anchorage and dropped anchor at her position as indicated in Exhibit A-1; they only double their preparation of the previous typhoon "Unsang."

The crew did not move the [b]arges to keep away from the driven concrete piles to avoid the unfinished pier from being hit by their vessels in case the anchors dragged or the mooring lines are cut off at the height of the typhoon. So when the fore-end mooring lines of the barges were cut off or dragged because of the strong winds and big waves, the vessels bumped/rammed the driven piles of the unfinished pier thus damaging their hulls resulting to the sinking of Barge 609 and [Pilipino]. Because of the ramming/bumping/smashing by the F.F. Cruz's vessels, the driven piles that were hit were destroyed and/or had fallen down mercilessly.

x x x

14. x x x [A]s admitted by no other than the Project Engineer of the ongoing project at Brooke's Point x x x and the patrons of the F.F. Cruz's vessels, (M/T Imma, [Pilipino], [Barge] 609 and [Barge] 1001), they did riot anymore change the original positions of the vessels or move the vessels at the anchorage, relying only upon their previous preparations when typhoon "Unsang" hit the Philippines x x x.[35] (Emphasis supplied.)

In finding that F.F. Cruz was negligent, the BMI clearly identified the evidentiary basis in support of its conclusion. The CA cannot thus be faulted for relying on the BMI's factual findings to support its own conclusion that F.F. Cruz was guilty of contributory negligence because such findings are supported by substantial evidence.

With regard to the exoneration of AMC, however, the CA correctly disregarded certain portions of the BMI report because they were based entirely on conjecture instead of being grounded on substantial evidence. In absolving AMC, the BMI merely stated that:

The Board cannot believe the foregoing version of F.F. Cruz & Co. because no master/captain with vast experience as mariner, like Captain Pino of M/T Jasaan, would maneuver his vessel to go a longer travel with more resistance by the forces of wind and waves, when in fact there is a shorter distance that his vessels could travel with less effort and no possibility at all that they would hit another vessel in the recess of maneuvering towards the beach for safety. x x x [36]

Such presumption is unwarranted given the consistent testimonies of F.F. Cruz's witnesses that they saw Jasaan, with Florida in tow, heading towards the direction of their vessels at the height of typhoon Welpring. In contrast, the CA's conclusion that AMC's vessels were responsible for the allision were based on the positive testimonies of F.F. Cruz's witnesses and the admissions of Jasaan's captain and Florida's patron that they indeed moved during

the typhoon. On this score, the findings of the CA are consistent with the trial court.

In sum, we find no gross or extraordinary misperception or manifest bias on the part of the CA when it found that AMC is the immediate and proximate cause of the allision, but that F.F. Cruz is partly responsible for the damage to Pilipino and the driven piles. We further restate one of the exceptions to the general rule that the Court is not a trier of facts: when the findings are contrary to that of the trial court as a result of its gross or extraordinary misperception of evidence or manifest bias.

WHEREFORE, the petitions are DENIED. The Decision dated February 25, 2009 and Resolution dated June 8, 2009 of the Court of Appeals in CA-G.R. CV No. 86460 are AFFIRMED.

SO ORDERED.

Del Castillo, (Acting Chairperson),[***] and Tijam, JJ., concur.
Serenio, C.J., and Leonardo-De Castro, J., on official leave.

[***] Designated Acting Working Chairperson per Special Order No. 2473 dated August 24, 2017.

[1] Rollo (G.R. No. 188144), pp. 56-79. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Josefina Guevara-Salonga and Romeo F. Barza concurring.

[2] Id. at 81-82.

[3] Id. at 13, 56.

[4] Id. at 13-14, 57; rollo (G.R. No. 188301), pp. 46-47.

[5] Rollo (G.R. No. 188144), pp. 95-97.

[6] Id. at 57, 92-93.

[7] Id. at 72; rollo (G.R. No. 188301), pp. 335-336.

[8] Defined as "the running of one ship upon another ship that is stationary —distinguished from collision." See <https://www.merriam-webster.com/dictionary/allision>, last accessed on August 3, 2017.

[9] Rollo (G.R. No. 8144), pp. 68-70.

[10] Id. at 70-71.

[11] Rollo (G.R. No. 188301), pp. 355-357.

[12] Id. at 171-181.

[13] Rollo (G.R. No. 188144), p. 94.

[14] Id. at 93-94.

[15] Id. at 94.

[16] Id. at 60-62.

[17] Id. at 68.

[18] Id. at 74-77.

[19] Id. at 11-55.

[20] Rollo (G.R. No. 188301), pp. 41-101

[21] Rollo (G.R. No. 188144), p. 103.

[22] As amended by A.M. No. 07-7-12-SC, December 12, 2007.

[23] *Far Eastern Surety and Insurance Co., Inc. v. People of the Philippines*, 721 Phil. 760, 769 (2013).

[24] *Diokno v. Cacdac*, 553 Phil. 405 (2007). Citation omitted.

[25] Several instances when this Court may review findings of fact of the Court of Appeals on appeal by certiorari, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Metropolitan Bank and Trust Company v. Fadcor, Inc.*, G.R. No. 197970, January 25, 2016, 781 SCRA 561, 566-567. Citation omitted.)

[26] 277 Phil. 839 (1991).

[27] Id. at 844.

[28] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 212, citing *Fernan v. Court of Appeals*, G.R. No. 43356, January 30, 1990, 181 SCRA 546, 550. Italics supplied.

[29] 522 Phil. 523 (2006).

[30] Id. at 531. (Citation omitted.)

[31] Id.

[32] 428 Phil. 705 (2002)

[33] Id. at 715-716.

[34] *Barcelona v. Lim*, 734 Phil. 766, 792 (2014).

[35] Rollo (G.R. No. 188301), pp. 351-355

[36] Id. at 350.

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