

ALESON SHIPPING LINES, PETITIONER, VS. CGU INTERNATIONAL INS. PLC. AND CANDANO SHIPPING LINES, INC., RESPONDENTS.

G.R. NO. 217311. July 15, 2020

Ponente: LEONEN, J.

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LEONEN, J.:

This resolves a petition for review assailing the Decision and Resolution of the Court of Appeals in CA-G.R. CV. No. 95628, which held Aleson Shipping Lines, Inc. (Aleson Shipping) liable for the damages resulting from a vessel collision.

In 2002, Candano Shipping Lines, Inc. (Candano Shipping) signed a time charter agreement with Apo Cement Corporation (Apo Cement) over the former's vessel, M/V Romeo. The agreement was executed for the delivery of Apo Cement's cargo consisting of cement from Cebu to Albay.[1]

M/V Romeo was loaded with 31,250 bags of cement, equivalent to 1,250 metric tons. The cargo was insured with CGU International Insurance (CGU Insurance).[2]

On July 14, 2002, at around 12 midnight, M/V Romeo was on its way out of the pier in Apo channel when it collided with M/V Aleson Carrier 5 (M/V Aleson), which was owned by Aleson Shipping.[3] M/V Aleson's front hull hit the side of M/V Romeo.[4] As a result, a gaping hole in the mid-section of M/V Romeo caused it to instantly sink, taking with it the bags of cement worth P3,427,500.[5]

Apo Cement demanded payment from Candano Shipping and Aleson Shipping, but to no avail; hence, it made an insurance claim with CGU Insurance, which was granted.[6]

CGU Insurance then filed a case against Candano Shipping and Aleson Shipping before the Regional Trial Court, claiming actual damages and attorney's fees.[7]

Aleson Shipping denied liability and asserted that only Candano Shipping should be held liable because the latter's vessel, M/V Romeo, was at fault in the collision.[8] On the other hand, its officers and crew at M/V Aleson have exercised diligence and care to avoid the incident.[9]

Meanwhile, Candano Shipping maintained that M/V Romeo was seaworthy and that it exercised extraordinary diligence in the care and custody of the cargo, and in the operation of the vessel. It blamed Aleson Shipping for the incident, claiming that Aleson Shipping was careless in command of M/V Aleson Carrier 5.[10]

Further, Candano Shipping argued that the complaint should be dismissed, because CGU Insurance failed to observe the arbitration clause under the time charter.[11]

CGU Insurance's surveyor and investigator, Teodoro R. Lopez (Lopez), testified that based on his interviews with the Chief Engineer of M/V Romeo and the stevedores and supervisor of the port, M/V Aleson hit and caused an opening at the mid-section of M/V Romeo.[12]

Lopez found that the port authority instructed M/V Aleson to wait until M/V Romeo has cleared the last buoy, but

M/V Aleson still proceeded to enter the pier. In an interview with the captain of Apo Cement's tug boat, Lopez likewise learned that the Captain of M/V Romeo asked the Captain of M/V Aleson to slow down, but the latter did not heed instructions.[13]

Captain Ramil Fermin Cabeltes (Captain Cabeltes) of M/V Aleson testified for Aleson Shipping. He narrated that the sea was calm during the incident and acknowledged that the Apo channel cannot accommodate two (2) vessels at a time.[14] When M/V Aleson was about to enter the pier, he admitted that he failed to verify from the radio operator whether it can proceed to enter the pier. He merely relied on the message relayed to him by a crew that M/V Aleson must "standby for proceeding to port." [15]

Further, while Captain Cabeltes initially claimed that he did not know any vessel present at the pier, he later admitted that he knew M/V Romeo was loading cargo at that time. Moreover, when M/V Aleson was in stop position, he neither contacted nor used its horn to signal the M/V Romeo. He likewise admitted that there was still around 200 meters of space on the right side of the vessel where he can maneuver to avoid the mishap, but he did not do so, fearing that M/V Aleson will run aground.[16]

Maria Tessie Jadulco Flores (Flores), operations manager of Candano Shipping, claimed that M/V Aleson was at fault in the collision. She averred that under the rule of the Apo channel, the vessel going out of the wharf has the right of way, and vessels which are about to enter must wait until the wharf is cleared. Hence, M/V Aleson should have waited until M/V Romeo exited the pier.[17]

Flores added that due to the incident, M/V Romeo's master of the vessel died instantly. While 14 members of the crew survived, two (2) remained missing. She further narrated that M/V Romeo was no longer retrieved due to the depth of the sea, while M/V Aleson remained afloat.[18]

In its Decision,[19] the Regional Trial Court found Aleson Shipping solely liable for the collision. Thus:

WHEREFORE, in view of the foregoing considerations, this Court hereby FINDS in favor of the plaintiff against the defendant ALESON, hence it hereby ORDERS defendant ALESON, to pay plaintiff the sum of Philippine Pesos: THREE MILLION THREE HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED FIFTY (P3,368,750.00) with interest at 6% percent per annum from date hereof until the finality of this decision and 12% per annum from finality of this decision until fully paid and attorney's fee of P50,000.00 plus cost of suit.

The complaint against Candano is hereby DISMISSED in accordance with the provision of Article 826 of the Code of Commerce. It states: "If a vessel would collide with another, through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered after expert appraisal.

Finally, the counterclaims filed by defendant Aleson against defendant Candano are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.[20] (Emphasis in the original)

The trial court ruled that under Article 1733 of the New Civil Code, Aleson Shipping and Candano Shipping are bound to observe extraordinary diligence as common carriers. If there was loss, destruction, or deterioration of the goods it carries, common carriers are presumed responsible, unless they can prove that they observed extraordinary diligence.[21] Aleson Shipping failed to overcome this presumption. On the other hand, Candano Shipping appeared to have observed the diligence required.[22]

The trial court admitted in evidence the testimonies of Flores and Lopez which were treated as part of *res gestae*, being startling statements made immediately by persons who were near and at the place of the incident.[23]

Moreover, it relied on the testimony of Captain Cabeltes, who admitted several lapses in his duty as the captain of M/V Aleson.[24]

Based on the evidence, the impact of the collision was strong, as M/V Aleson created a gaping hole on the side of M/V Romeo, causing the vessel to instantly sink after five (5) minutes. The trial court noted that Captain Cabeltes of M/V Aleson failed to wait until M/V Romeo has exited from the wharf, and merely assumed that it can enter the port when he knew for a fact that there was a vessel loading at that time. Moreover, Captain Cabeltes of M/V Aleson admitted that the collision could have been avoided if only he maneuvered the vessel; but he chose not to, fearing that M/V Aleson may be aground.[25]

In its Appeal, Aleson Shipping maintained that it was not at fault in the collision. It claimed that Captain Cabeltes exerted all efforts to avoid the collision, and that the trial court twisted his testimony to make Aleson Shipping liable.[26]

Further, it claimed that M/V Aleson dropped its anchor at some 3,200 meters from the pier while waiting for their turn to approach the loading berth. Captain Cabeltes could not see the loading bay from its position and, thus, relied on the instructions of the port operators, who relayed that it can already proceed to the loading bay.[27] It then went towards the pier at a slow speed of two (2) knots, while M/V Romeo was navigating at full speed.[28]

Aleson Shipping claimed that this version of the story is more believable, as it coincides with Lopez's testimony which confirmed that the collision site was three (3) kilometers away from the pier's last buoy. Thus, the trial court erred in its observation that M/V Aleson failed to wait until M/V Romeo has exited the last buoy.[29]

Moreover, Aleson Shipping claimed that it was M/V Romeo that failed to maneuver the vessel to avoid the collision.[30] The trial court faulted Aleson Shipping for its failure to blow its horn, but there was no need to signal M/V Romeo, since both ships have communicated with each other and have explicitly agreed to do a port-to-port passing to avoid a collision. Further, sending a sound signal would only do more harm than good, since the master's instructions to the crew will not be heard over the horn's sound.[31]

Aleson Shipping argued that the testimony of Captain Cabeltes must be given credence because of all the witnesses, only he has first-hand knowledge of what transpired before, during, and after the collision. On the other hand, Candano Shipping failed to present any of the surviving crew of M/V Romeo.[32]

Further, Aleson Shipping asserted that the trial court erred in relying on hearsay testimony and in applying the res gestae rule.[33] Candano Shipping's witness, Flores, was incompetent to testify on matters regarding the collision.[34] She admitted to having no personal knowledge of the incident, and even though she was not presented as an expert witness, the trial court allowed her to inject her opinion as to who is at fault between the two (2) vessels.[35]

Similarly, Aleson Shipping claimed that the trial court erred in considering the testimony of Lopez as part of res gestae because, as the inspector, he only had secondary information and none of the sources of these information were present at the site of the incident.[36]

The Court of Appeals affirmed the decision of the lower court.[37] Thus:

IN VIEW OF ALL THESE, the Appeal is DENIED. The Decision of the lower court is AFFIRMED.

SO ORDERED.[38] (Emphasis in the original)

The appellate court further held that it found no strong and cogent reason to depart from the conclusions and findings of the trial court.[39] It ruled that the evidence defeats Aleson Shipping's arguments. As the records bare, the collision was due to the fault of M/V Aleson's Captain. Despite being informed that M/V Romeo was loading

at the pier, M/V Aleson still proceeded to enter. Captain Cabeltes likewise failed to blow its horn to alert M/V Romeo.[40]

Considering Captain Cabeltes' testimony, the Court of Appeals found that there is sufficient evidence to ascribe fault to Aleson Shipping. Hence, Aleson Shipping's argument assailing the testimony of Flores is irrelevant.[41]

Aleson Shipping moved for the reconsideration of the decision, but it was denied.[42]

In this Petition, petitioner argues that the lower courts erred in applying the law on common carriers in determining its liability, considering that it has no contract of carriage with respondent CGU Insurance or Apo Cement.[43]

It explains that in claiming subrogation rights, respondent CGU Insurance can only have as much rights and causes of action as Apo Cement, which springs from the contract of insurance. Thus, it cannot be sued based on contract, because it is a complete stranger to the time charter between respondent Candano Shipping and Apo Cement, as well as to the contract of insurance between respondents.[44]

Thus, petitioner claims that respondent CGU Insurance's action against it is based on maritime tort governed by the Code of Commerce.[45] It follows that there can be no presumption of negligence against petitioner. It is not a common carrier under a contract of carriage which must exercise extraordinary diligence. Moreover, the doctrine of last clear chance will not then be applicable in this case, because under Article 827 of the Code of Commerce, if both vessels may be blamed, both shall be jointly responsible for the damages.[46]

Necessarily, the trial court erred in applying laws and jurisprudence on common carriers, because the cause of action in this case is based on maritime tort and not on the breach of contract of carriage.[47]

Petitioner further claims that respondent Candano Shipping was solely at fault for the collision which was due to the error and negligence of its officers and crew. On the other hand, petitioner asserts that it exercised ordinary diligence—the degree of diligence demanded from it under the Code of Commerce.[48]

When it saw M/V Romeo, M/V Aleson immediately requested for a port-to-port passing to avoid collision which the former granted.[49] Still, M/V Romeo did not change course. In its last attempt to avoid the collision, Captain Cabeltes ordered to stop M/V Aleson's engine, but to no avail.[50]

For the sake of argument that it was negligent, petitioner avers that it should be made solidarily liable with respondent Candano Shipping under Article 827 of the Code of Commerce.[51]

Further, petitioner questions the application of the *res gestae* rule to admit the testimonies of respondents' witnesses.[52]

In particular, witness Floras, who admitted to having no personal knowledge on the incident, was allowed to inject her own opinion as to who between the two (2) vessels was at fault. Petitioner claims this is against Rule 130, Section 48 of the Rules of Court, which provides that the opinion of a witness is inadmissible unless presented as an expert witness.[53]

Moreover, it alleges that Lopez's testimony was mere hearsay. As respondents' surveyor, the information he proffered were obtained from the witnesses to the incident. Thus, these testimonies do not qualify as part of *res gestae*. [54]

Lastly, petitioner maintains that Captain Cabeltes' testimony cannot be rejected for being self-serving, considering that respondents were given the opportunity to cross-examine the witness in court.[55]

In its Comment, respondent CGU Insurance avers that the petition must be denied because it raises only questions

of facts, which are not within the ambit of a Rule 45 petition. Further, findings of facts in this case must be deemed final and conclusive since the findings of the trial court are affirmed by the appellate court.[56]

Further, petitioner's claim that Captain Cabletes' testimony was misconstrued by the trial court is baseless.[57] As shown by the evidence, it was M/V Aleson that hit M/V Romeo. Petitioner claims that M/V Romeo failed to maneuver the vessel to avoid the collision. But, as the lower courts found, the front hull of M/V Aleson rammed and hit the portside section of M/V Romeo.[58]

Respondent also claims that it is not true that the collision could have been avoided if there was a port-to-port passing, considering that the Apo channel cannot accommodate two (2) vessels at a time.[59]

Further, it alleges that Captain Cabletes gave an inconsistent testimony. The trial judge, who had witnessed and observed the demeanor of Captain Cabletes, concluded that his testimony was not quite straightforward.[60]

For instance, Captain Cabletes claimed that it was his first time in the Apo channel when the incident happened, but later retracted this statement and said that he has navigated the port at least eight (8) times.[61] Further, he testified that he did not know any vessels around the area at that time, but contradicted himself by saying that he knew M/V Romeo was about to exit the channel. Lastly, he agreed during trial that a bigger vessel like M/V Romeo is harder to maneuver than a small vessel like M/V Aleson, which does not have any cargo, but again, retracted this statement later on.[62]

Apart from these inconsistent statements, it claimed that Captain Cabletes made several admissions demonstrating his and his crew's negligence. Primarily, he admitted that the radio message allegedly stating that M/V Aleson can proceed to the channel was only relayed to him by his crew, and that he did not verify this information with the channel operator.[63] His testimony further shows that the instruction from the operator is to "stand by," which, in maritime parlance, merely meant to start the engine, and not to the actual moving of the vessel.[64]

Moreover, Captain Cabletes admitted that M/V Aleson had sufficient time to maneuver the vessel to avoid the collision. He testified that from the time he knew the radio message, it had more or less 20 to 30 minutes to reach the pier.[65] Even when Captain Cabletes saw that M/V Romeo did not alter its course, he did not attempt to call the latter nor to blow the vessel's horn to warn M/V Romeo.[66] Petitioner points out that this is against the Collision Regulations, which states that when maneuvering is authorized or required, sound blasts are required to signal their course of action to the other vessel.[67]

Lastly, petitioner argues that Captain Cabletes had the last clear chance to avoid the collision. He divulged during his testimony that he had more or less 200 meters to maneuver the vessel, but chose not to, fearing that M/V Aleson would run aground.[68]

In a separate Comment, respondent Candano Shipping points out that the petition raises purely questions of fact. While petitioner questions the applicable law, what petitioner actually seeks is the reversal of the factual findings of the trial court.[69]

Respondent Candano Shipping asserts that the decision and findings of the trial court should not be disturbed, because it is based on evidence and is in accordance with the law. Petitioner argues that respondents' evidence must be rejected for being hearsay, but in reality, it only rejects the finding of liability which is based on the testimony of its own witness.[70]

Lastly, respondent Candano Shipping argues that it is immaterial whether the lower courts erred in applying the presumption of negligence against common carriers, because it is clear from the evidence on record that only petitioner is at fault for the collision.[71]

The case raises the following issues for resolution:

First, whether or not the petition may raise questions of fact;

Second, whether or not the testimonies of respondents' witnesses are inadmissible for being hearsay; and

Third, whether or not there is cause of action against the petitioner. Subsumed under this are the following issues: (1) whether or not the lower courts erred in applying the civil law provisions on common carriers; and (2) whether or not the petitioner exercised the degree of diligence required.

I

As a rule, only questions of law may be raised in a Rule 45 petition. This Court is not a trier of facts, and it will not delve into factual questions already settled by the lower courts.[72] While this rule admits exceptions, the party must demonstrate and prove that the petition falls under the exceptions.[73]

Here, the petition's resolution necessarily requires a re-evaluation of the lower courts' factual findings. To resolve petitioner's liability, this Court is being asked to assess and weigh the evidence. Failing to allege and demonstrate that this petition is an exception to the rule, We are bound to affirm the lower courts' factual findings.

In any case, even if this Court proceeds to resolve the petition, it must still be denied.

II

Generally, a witness can only give a testimony with respect to matters of which he or she has personal knowledge.[74] Testimonies which are hearsay are inadmissible as evidence. The rules, however, allow for certain exceptions. One of which is when the evidence is part of *res gestae*. [75] Rule 130, Section 42 states:

SECTION 42. Part of *res gestae*. — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*. [76]

Res gestae refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." [77] It contemplates statements that were "voluntarily and spontaneously made so nearly contemporaneous as to be in the presence of the transaction which they illustrate and explain, and were made under such circumstances as necessarily to exclude the idea of design or deliberation[.]" [78]

There are two (2) acts which form part of the *res gestae*: (1) in spontaneous exclamations where the *res gestae* is the startling occurrence; and (2) in verbal acts where *res gestae* is the statement accompanying the equivocal act. [79]

To be admissible under the first class of *res gestae*, the following elements must be present: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; (3) that the statements made must concern the occurrence in question and its immediately attending circumstances. [80]

Under the second class of *res gestae*, the following requisites must be present: 1) the principal act to be characterized must be equivocal; (2) the equivocal act must be material to the issue; (3) the statement must accompany the equivocal act; and (4) the statements give a legal significance to the equivocal act. [81]

In general, the test is whether or not an act, declaration, or exclamation is "so intimately interwoven or connected

with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony." [82]

The element of spontaneity is critical because the admissibility of *res gestae* is premised on human experience. The rule presumes that an utterance made, immediately following a strong and stressful stimulus, is an honest and uncontrolled reaction. In *People v. Cudal*, [83] this Court explained:

The spontaneity of the utterance and its logical connection with the principal event, coupled with the fact that the utterance was made while the declarant was still "strong" and subject to the stimulus of the nervous excitement of the principal event, are deemed to preclude contrivance, deliberation, design or fabrication, and to give to the utterance an inherent guaranty of trustworthiness. The admissibility of such exclamation is based on experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him. [84] (Citations omitted)

However, there is no fixed rule in determining the time interval within which the statement must be made for it to be deemed spontaneous. The factual parameters of each case will require a different resolution. [85] Nevertheless, the following factors may guide courts in determining whether there is spontaneity in the declarant's statements, to wit: (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself. [86]

Here, petitioner assails the admissibility of witnesses Lopez and Flores' testimony, because they did not have personal knowledge of what immediately transpired before, during, and after the collision of the vessels. [87] It claims that this is an erroneous application of the *res gestae* rule. We disagree.

Res gestae is one of the exceptions to the hearsay rule. It contemplates testimonial evidence on matters not personally witnessed by the witness, but is relayed to him or her by a declarant.

Here, it appears that petitioner misconstrued the rule in assailing the application of *res gestae* merely on the basis that the testimonies are hearsay.

The testimonies of the witnesses satisfy the requirements of the rule, in that: (1) the collision of the vessels and sinking of M/V Romeo is a startling occurrence; (2) the statements made are with respect to the collision; and (3) the statements of the declarants were made immediately after the incident.

As testified to by Lopez and Flores, when the collision happened in midnight of July 14, 2002, they immediately went to the pier the following day, which was a few hours after the incident. The people they interviewed witnessed the incident. In particular, Lopez was able to interview M/V Romeo's Chief Engineer, along with the stevedores and the port's supervisors, [88] while Flores's testimony was based on the narration of M/V Romeo's chief mate. [89]

These declarants witnessed a collision and a sinking of a vessel which almost claimed their lives. The spontaneity of their statements with respect to the incident satisfies the rule on *res gestae*, making these testimonies admissible even if the declarants were not presented in the witness stand.

In any case, even if this Court disregards the testimonies of Flores and Lopez, the remaining evidence still supports a finding of petitioners' liability.

III

A vessel, functioning as a common carrier, may be held liable for damages under Article 1759 of the Civil Code. It states:

ARTICLE 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.[90]

Further, a vessel is "bound to observe extraordinary diligence in the vigilance over the goods" it transports.[91] *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*[92] explains:

Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.

In maritime transportation, a bill of lading is issued by a common carrier as a contract, receipt and symbol of the goods covered by it. If it has no notation of any defect or damage in the goods, it is considered as a "clean bill of lading." A clean bill of lading constitutes prima facie evidence of the receipt by the carrier of the goods as therein described.[93] (Citations omitted)

The high degree of diligence exacted by the law creates a presumption against common carriers when goods are lost, destroyed or deteriorated. To overcome this presumption, common carriers must prove that they exercised extraordinary diligence in the handling and transportation of the goods.[94]

In *Regional Container Lines of Singapore v. The Netherlands Insurance Co. (Philippines)*,[95] this Court summarized the rules on the liability of a common carrier:

- (1) Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case;
- (2) In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and
- (3) In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they observed extraordinary diligence.[96] (Citation omitted)

In cases where cargos are lost, destroyed, or deteriorated, an action based on the contract of carriage may be filed against the shipowner of the vessel based on Civil Code provisions on common carrier.

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For instance, in *Eastern Shipping Lines, Inc.*, this Court held a shipowner liable because as a common carrier, the shipowner failed to observe extraordinary diligence in the transportation of goods required under Article 1734. It held that based on the bills of lading issued, the shipowner received the cargo in good condition, and their arrival in bad order at their destination constitutes a presumption that the carrier was negligent.[97]

Similarly, in cases of damages resulting from maritime collision, the Civil Code provisions on common carrier are applicable if the cause of action is based on contract of carriage.

In *Maritime Co. of the Philippines v. Court of Appeals*,^[98] an insurer-subrogee filed an action for damages against the shipowner based on a bill of lading. In this case, Acme Electrical and National Development Company and Maritime Company (the Company) executed a bill of lading for the transport of 800 packages of PVC compound loaded on the latter's vessel, SS Doña Nati. While in transit, the goods were damaged after SS Dona Nati was rammed by M/V Yasushima Maru. Rizal Surety, the insurer of the packages, paid the value of the lost goods and filed an action for damages against the Company.

The trial court dismissed the complaint and held that the case should have been filed against the owner of M/V Yasushima Maru, who was at fault in the collision. It ruled that under the Code of Commerce, the vessel at fault should be made responsible for the damage to the cargo; hence, Rizal Surety has no cause of action against the Company.^[99]

Ultimately, this ruling was reversed. This Court held that Rizal Surety has a cause of action against the Company based on their contract. Further, this Court ruled that as the subrogee, Rizal Surety has a cause of action against the Company based on the contract of carriage as evidenced by the bill of lading. Since there are specific provisions in the Civil Code regulating the liability of a common carrier, it follows that the Code of Commerce, which only applies supplementarily, need not be applied. Thus, Rizal Surety's rights are to be determined by the Civil Code and not the Code of Commerce. This Court then ruled that under Article 1734 of the Civil Code, the Company is a common carrier bound to exercise extraordinary diligence in the transport of the cargo. Failing to do so, it was held responsible for the loss of goods.^[100]

However, if the cause of action is based on maritime tort, the provisions of the Code of Commerce are applicable. An action based on quasi-delict resulting from maritime collision is not specifically regulated by the Civil Code, but by the Code of Commerce.^[101] Thus, if the cause of action is based on quasi-delict and not on contract, the rules provided by the Code of Commerce applies.

This was clarified in *National Development Company v. Court of Appeals and Development Insurance & Surety Corporation*.^[102] In this case, Development Insurance filed an action for damages against National Development Company and Maritime Company (the Company). Similarly, the insured cargo loaded on the latter's vessel SS Dona Nati were lost after the vessel was rammed by M/V Yasushima Maru. The trial and appellate courts ruled in favor of the Development Insurance. The lower courts held the Company liable under Article 827 of the Code of Commerce and concluded that both vessels are at fault.

This Court affirmed the ruling and held that the provisions of the Code of Commerce on collision applies. Specifically, under Article 827, if the collision is imputable to both vessels, the vessels are solidarily liable for the damages. In disregarding the Civil Code provisions on common carrier, this Court held that the Code of Commerce must be applied because maritime "collision falls among matters not specifically regulated by the Civil Code[.]"^[103] It appears, however, that the cause of action in this case was based on tort and not contract. This Court held:

Moreover, the Court held that both the owner and agent (Naviero) should be declared jointly and severally liable, since the obligation which is the subject of the action had its origin in a tortious act and did not arise from contract. Consequently, the agent, even though he may not be the owner of the vessel, is liable to the shippers and owners of the cargo transported by it, for losses and damages occasioned to such cargo, without prejudice, however, to his rights against the owner of the ship, to the extent of the value of the vessel, its equipment, and the freight.^[104] (Citations omitted)

Taking into consideration the ruling of this Court in these cases, the applicable law in resolving complaints for damages would depend on the complainant's cause of action. If the action is based on contract of carriage, the Civil Code provisions on common carrier are applicable. On the other hand, if the cause of action is based on tort, the provisions of the Code of Commerce on vessel collision would govern.

Here, the cause of action of respondent CGU Insurance against petitioner is not based on the time charter but on tort. Petitioner is not a common carrier with respect to any of the parties.

Accordingly, the applicable provisions are found in Articles 826 and 827 of the Code of Commerce, which state:

ARTICLE 826. If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after an expert appraisal.

ARTICLE 827. If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the losses and damages suffered by their cargoes.

To be cleared of liability under these provisions, a vessel must show that it exercised ordinary diligence.[105] This level of diligence is the diligence which "an ordinary prudent man would exercise with regard to his own property." [106]

Applying this standard to petitioner, this Court finds that it failed to observe the diligence by the law. Based on the testimony of its own witness, M/V Aleson was recklessly operated. Captain Cabeltes admitted that M/V Romeo was still in the pier when M/V Aleson was about to enter the Apo channel. Despite knowledge of this information, Captain Cabeltes failed to act with caution. He himself declared that he was informed by the pier operator to standby and to not enter the wharf yet, but it still proceeded.[107]

He later recanted this statement and claimed that a message was relayed to him saying that he may enter the wharf already. Nevertheless, he confessed that he did not verify the veracity of the message.

In his testimony:

Atty. Abesames:

Q. Were you the one who personally received that radio message?

Witness:

A. Iyong duty officer.

Q. Did you verify if that message was correct?

A. Sinabi niya sa akin na, Sir, tumawag iyong Apo, papasok na tayo.

Q. So you had a radio officer?

A. Iyong in-charge na duly sa bridge. Everytime may duty ako sa bridge. Iyong ma-duty diyan, pay may tawag iyong Apo Cement na papasok, sabihin mo sa akin. Gisingin mo ako ako dahil matulog ako. Paggising sa akin, Sir, tumawag, Sir, papasok na raw tayo. Ganoon.

Q. So you did not go, take the radio personally to confirm whether that radio advice was correct or not?

A. Everytime ganoon man kami, Hang trip na kami do on medyo mat a gal lang na byahe, every time ganoon sila tumatawag tapos hindi ko na kino-conjirm.[108] (Emphasis supplied)

This nonchalant attitude towards his duty demonstrates Captain Cabeltes' lack of caution in commanding M/V Aleson. Due diligence demands that Captain Cabeltes ensures that every decision he made is deliberate and calculated to guarantee the safety of M/V Aleson and nearby vessels. As the captain, he is required under the law "[t]o be on deck at the time of sighting land and to take command on entering and leaving ports[.]" [109] Instead,

Captain Cabeltes slept in and waited for his crew to confirm whether they can proceed to enter. Thus, it is highly imprudent that Captain Cabeltes piloted the vessel to the pier without personally verifying if M/V Romeo had already exited.

Moreover, even if Captain Cabeltes admittedly had the chance to avoid the collision, he chose not to maneuver M/V Aleson, because he was worried that the vessel would run aground.[110] This is despite his acknowledgment that M/V Aleson was easier to maneuver than M/V Romeo because the latter was a bigger vessel and was fully loaded at that time.[111] His testimony reveals:

Q. So, most probably when you saw for the first time that there was an outgoing vessel when you were already going towards Apo wharf, more or less, you concluded that it was the M/V "Romeo"?

A. Opo, Sir.

Q. And you knew it was fully loaded. It . . . just came from loading?

A. Opo, Sir.

.....

Q. It was a lot bigger than your vessel?

A. Yes, Sir.

.....

Q. And as a master mariner or as the captain of the vessel or as a seafarer, you would understand and you would agree with me that a fully loaded big vessel is much harder to maneuver than a small vessel that does not carry anything?

A. Tama po.

Q. Because at that time you saw it for the first time and when you made that request for a port to port passing, you knew already that given the things you see the courses of your vessel, you will meet each other?

A. Yes, Sir.

Q. That early, you knew of the danger of collision, correct?

A. Yes, Sir, dahil head on kami, nakaganito ang mga barko namin eh.[112] (emphasis supplied)

He likewise acknowledged that he failed to send sound signals to M/V Romeo in violation of the rules of navigation.[113]

Further, Captain Cabeltes' claim that M/V Aleson was navigating slowly is contradicted by evidence. The strong impact of the collision is evidenced by the gaping hole created by the front hull of M/V Aleson, which has caused M/V Romeo to instantly sink within five (5) minutes. Further, the impact and location of the collision readily confirms that M/V Aleson was not navigating slowly as Captain Cabeltes claims.[114]

Petitioner's contention that Captain Cabeltes's testimony was twisted and misinterpreted by the lower courts fails to convince. It is a settled rule that the lower court's appreciation of the witnesses' testimony deserves the highest respect because it "is best equipped to make the assessment of the witnesses' credibility and demeanor on the witness stand[.]"[115] Absent any showing of clear misappreciation, the trial court's findings are generally not disturbed by this Court. In any case, petitioner did not address how Captain Cabeltes's testimony was misappreciated when his clear statements on record support the finding of the lower courts.

Considering the evidence and the relevant law, this Court finds no cogent reason to depart from the ruling of the lower courts. With respect to respondent Candano Shipping, this Court affirms the findings of the lower courts which held that respondent Candano Shipping exercised the required diligence as a common carrier. As

established in the trial court, M/V Romeo was, in all respects, seaworthy and with full complement of officers and crew.[116] The testimony likewise confirmed that M/V Romeo called and requested M/V Aleson to slow down, because it had the right of way. On the other hand, petitioner must be held liable for the damages caused by its vessel, M/V Aleson. Despite petitioner's contention, this Court is not convinced that Captain Cabeltes exercised ordinary diligence in commanding M/V Aleson.

Petitioner failed to show that the trial and appellate courts overlooked or misconstrued significant evidence that would alter the resolution of the case. To reiterate, findings of the trial court, especially when affirmed by the Court of Appeals, deserve great respect and are binding upon this Court. In this case, a review of the evidence and law fails to compel this Court to disregard the factual findings of the lower courts.

WHEREFORE, premises considered, the petition for review is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV. No. 95628 is AFFIRMED.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and Gaerlan, JJ. concur.

[1] Rollo, p. 89.

[2] Id. at 89-90.

[3] Id. at 90 and 95.

[4] Id. at 95.

[5] Id. at 90.

[6] Id.

[7] Id. at 89.

[8] Id. at 90.

[9] Id.

[10] Id. at 91.

[11] Id.

[12] Id. at 92-93.

[13] Id.

[14] Id. at 95.

[15] Id. at 94.

[16] Id.

[17] Id. at 95.

[18] Id.

[19] Id. at 89-99. The May 17, 2010 Decision was penned by Judge Cesar O. Untalan of the Regional Trial Court of Makati City, Branch 149.

[20] Id. at 98-99.

[21] Id. at 96. citing *Aboitiz Shipping Corporation v. New India Assurance Co., Ltd.*, 557 Phil. 679 (2007) [Per J. Quisumbing, Second Division].

[22] Id.

[23] Id. citing *Phoenix Construction, Inc. v. Intermediate Appellate Court*, 232 Phil. 327 (1987) [Per J. Feliciano, First Division].

[24] Id. at 99-98.

[25] Id. at 97-98.

[26] Id. at 117-118.

[27] Id.

[28] Id. at 119.

[29] Id. at 120.

[30] Id. at 121.

[31] Id. at 124.

[32] Id. at 125.

[33] Id.

[34] Id. at 128.

[35] Id. at 127-128.

[36] Id. at 129.

[37] Id. at 210-224. The May 20, 2014 Decision was penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes of the Twelfth Division of the Court of Appeals, Manila.

[38] Id. at 223.

[39] Id. at 220-223.

[40] Id. at 217.

[41] Id. at 219.

[42] Id. at 237-238. The January 29, 2015 Resolution was penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes of the Special Former Twelfth Division of the Court of Appeals, Manila.

[43] Id. at 15-16.

[44] Id. at 15.

[45] Id.

[46] Id. at 16.

[47] Id. at 17.

[48] Id. at 18.

[49] Id.

[50] Id. at 19.

[51] Id.

[52] Id. at 20.

[53] Id. at 20-21.

[54] Id. at 21.

[55] Id. at 22.

[56] Id. at 255.

[57] Id. at 259.

[58] Id. at 260.

[59] Id.

[60] Id.

[61] Id.

[62] Id. at 261.

[63] Id. at 261-262.

[64] Id. at 265-267.

[65] Id. at 265.

[66] Id. at 263.

[67] Id. at 271-272.

[68] Id. at 272.

[69] Id. at 302.

[70] Id. at 302-303.

[71] Id. at 303.

[72] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

[73] Id. at 184.

[74] RULES OF COURT, Rule 130, SEC. 36 provides:

SECTION 36. Testimony generally confined to personal knowledge; hearsay excluded. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

- [75] *People v. Feliciano, Jr.*, 734 Phil. 499, 527 (2014) [Per J. Leonen, Third Division].
- [76] RULES OF COURT, Rule 130, SEC. 42.
- [77] *People v. Feliciano, Jr.*, 734 Phil. 499, 528 (2014) [Per J. Leonen, Third Division], citing *People v. Salafrancay Bello*, 682 Phil. 470 (2012) [Per J. Bersamin, First Division].
- [78] *People v. Estibaly Calungsag*, 748 Phil. 850, 868 (2014) [Per J. Reyes, Third Division] citing *People v. Ner*, 139 Phil. 390 (1969) [Per J. Concepcion, En Banc].
- [79] *Talidano v. Falcon Maritime & Allied Services, Inc.*, 580 Phil. 256, 270 (2008) [Per J. Tinga, Second Division].
- [80] *Ilocos Norte Electric Co. v. Court of Appeals*, 258-A Phil. 565, 576-577 (1989) [Per J. Paras, Second Division].
- [81] *Talidano v. Falcon Maritime & Allied Services, Inc.*, 580 Phil. 256, 271 (2008) [Per J. Tinga, Second Division].
- [82] *People v. Feliciano, Jr.*, 734 Phil. 499, 528 (2014) [Per J. Leonen, Third Division].
- [83] 536 Phil. 1164 (2006) [Per J. Carpio-Morales, Third Division].
- [84] *Id.* at 1176.
- [85] *People v. Nartea*, 74 Phil. 8 (1942) [Per J. Ozaeta, First Division].
- [86] *Belbis, Jr. y Competente v. People*, 698 Phil. 706, 717-718 (2012) [Per J. Peralta, Third Division].
- [87] *Rollo*, pp. 20-22.
- [88] *Id.* at 91-92.
- [89] *Id.* at 95.
- [90] CIVIL CODE, Art. 1759.
- [91] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, 601 Phil. 454, 463 (2009) [Per J. Tinga, Second Division].
- [92] 750 Phil. 95 (2015) [Per J. Perez, First Division].
- [93] *Id.* at 110-111.
- [94] *Id.* at 112-113.
- [95] 614 Phil. 485 (2009) [Per J. Brion, Second Division].
- [96] *Id.* at 491-492 citing *Central Shipping Co. Inc. v. Insurance Company of North America*, 481 Phil. 868 (2004) [Per J. Panganiban, Third Division].
- [97] *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*, 750 Phil. 95 (2015) [Per J. Perez, First Division].
- [98] 253 Phil. 50 (1989) [Per J. Narvasa, First Division],
- [99] *Id.*

[100] Id.

[101] National Development Co. v. Court of Appeals, 247 Phil. 560 (1988) [Per J. Paras, Second Division]; see also CIVIL CODE, Art. 1766 which provides:

ARTICLE 1766. In all matters not regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws.

[102] 247 Phil. 560 (1988) [Per J. Paras, Second Division].

[103] Id. at 570.

[104] Id. at 573.

[105] CIVIL CODE, Art. 1173 provides:

ARTICLE 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

[106] Wildvalley Shipping Co., Ltd. v. Court of Appeals, 396 Phil. 383, 397 (2000) [Per J. Buena, Second Division].

[107] Rollo, p. 217.

[108] Id. at 261-262. TSN dated May 22, 2008.

[109] CODE OF COMMERCE, Article 612 (7) provides:

7. To be on deck at the time of sighting land and to take command on entering and leaving ports, canals, roadsteads, and rivers, unless there is a pilot on board discharging his duties. He shall not spend the night away from the vessel except for serious causes or by reason of official business.

[110] Rollo, p. 218.

[111] Id. at 94.

[112] Id. at 263-264. TSN dated May 22, 2008.

[113] Id. at 217.

[114] Id. at 97.

[115] Marcelo v. Court of Appeals, 401 Phil. 976, 988 (2000) [Per J. De Leon, Jr., Second Division]

[116] Rollo. p. 91.

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