

JAIME C. TIAMPO, PLAINTIFF AND APPELLANT, VS. EUSEBIO VILLANUEVA AND JULIANA MELLIZA, DEFENDANTS AND APPELLEES. MACONDRAY & CO., INC., DEFENDANT AND APPELLANT.

G.R. No. 36826. February 10, 1933

Ponente: HULL, J.

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HULL, J.:

Plaintiff, as the owner of the lorch Cataluña, brought suit in the Court of First Instance of Iloilo against Eusebio Villanueva and Juliana Melliza as owners of the launch Fredy, and defendant, Macondray & Co., Inc., as general agent for the motorship Tai Yin.

On December 6, 1930 there was a collision between the Tai Yin and the lorch Cataluña, while being towed by the Fredy, as a result of which the Cataluña was sunk and became a total loss. After trial, in the Court of First Instance, plaintiff was given judgment against Macondray & Co., Inc., for seven thousand pesos (P7,000). Plaintiff had claimed ten thousand pesos (P10,000), and appealed from the amount of the judgment. Macondray & Co., Inc., likewise appealed on the ground that the motorship Tai Yin was not at fault.

Due to the death of the stenographer it was impossible to secure a transcript of the stenographic notes, and to avoid the necessity of a new trial, the attorneys entered into a stipulation to the effect that the case should be submitted to this court on Exhibit D. Exhibit D is an administrative proceeding by the port authorities on the protests that were duly filed immediately after the collision, and contains a transcript of the testimony taken by a board of investigation appointed by the Acting Collector of Customs of Iloilo. While normally the report of a marine board is not admissible in evidence (*Ortiz vs. Compañia Maritima*, 7 Phil., 507), the stipulation between the parties submits this report for our consideration. When the administrative papers were forwarded to the Collector of Customs he appointed a board of review, and in their report, they stated:

"In the morning of the accident in question and before the occurrence thereof, the m/s Tai Yin was anchored in the stream, Iloilo Harbor (Guimaras Strait) near the mouth of the Iloilo River. To the north of said motorship's anchorage was the s/s Diana Dollar and still farther north was the s/s Silver Sandal, both anchored. The s/s Takaoka Maru was anchored away to starboard near Guimaras Island. Sometime after 5 a. m., m/s Tai Yin hove up anchor and started at slow speed ahead towards the North Entrance of Guimaras Strait passing between the s/s Diana Dollar and the shore under the direction of Port Pilot Ramon Garriz. The motorship's captain and second officer, and Captain Rafael Xaudaro, a local coastwise pilot, were on the bridge with said pilot. At that juncture, the lorch or sail vessel Cataluña was sighted off the motorship's port bow with sails set apparently southward bound, heading on a course opposite to but clear off the motorship's. When they were at a distance of about 500 or 600 feet apart, the Cataluña was taken in tow by launch Fredy and both tug and tow, without giving any warning signal, swung to port across the bow of the m/s Tai Yin towards the s/s Takaoka Maru. As said maneuver was made when the tug and tow in question were at such distance from the said motorship that collision was imminent, the said motorship gave one blast signifying her course to starboard.

The launch Fredy, however, disregarded such signal and continued on her course to port whereupon the m/s Tai Yin promptly reversed her engines at full speed giving the regulation signal of three blasts. Notwithstanding said maneuver, however, the port bow of the m/s Tai Yin struck the starboard side of lorch Cataluña causing the latter to sink.

"There is no question that when the m/s Tai Yin and lorch Cataluña came in sight of each other when both were underway, they were following opposite courses that ran clear off each other. Under the circumstances both vessels should have maintained their respective courses until one or the other or both had passed clear off each other. The maneuver of launch Fredy to port across the bow of the oncoming motorship was against all rules of seamanship and was a gross violation of the Rules of the Road as it unnecessarily provoked and thereby caused the present collision. When the launch Fredy initiated and continued her maneuver to port, the m/s Tai Yin, with the shore close to her port side and the steamer Diana Dollar and Silver Sandal off her starboard side and bow, and in view of her tonnage and draft, could not have possibly executed any safe and reasonable maneuver to avoid collision, or at least minimize the effects thereof, other than to reverse her engines at full speed which she did promptly. Such temerary maneuver of launch Fredy across the bow of the m/s Tai Yin may be attributed to no cause other than to the negligence of her patron who either failed to notice the presence and approach of the m/s Tai Yin, as may be deduced from his testimony, or failed to sense the extreme danger of his act, evidently believing, in his manifest ignorance of navigation rules, that he had the right of way and expecting the much larger and more cumbersome vessel to keep clear.

"In view of all the foregoing, the undersigned find the patron of the launch Fredy responsible for the present collision between her tow, lorch Cataluña and m/s Tai Yin."

After a careful review of the evidence, we are of the opinion that the board of review made as clear a statement of the facts as it is possible to make from the meager evidence of record.

The conclusions of the board of review, from the facts as found by them, are in accord with the decisions of this court. The general rule is well stated in *Verzosa and Ruiz, Rementeria y Cia. vs. Lim and Siy Cong Bieng & Co.* (45 Phil, 416, 421).

"* * * Among rules applicable to navigation none is better founded on reason and experience than that which requires the navigating officers of any vessel to assume that an approaching vessel will observe the regulations prescribed for navigation (*G. Urrutia & Co. vs. Baco River Plantation Co.*, 26 Phil., 632, 637). Any other rule would introduce guess work into the control of ships and produce uncertainty in the operation of the regulations."

There was no valid reason for the Fredy not to have kept the original course until both vessels were clear of one another, and the contention of plaintiff-appellant that paragraph 163 of the Philippine Marine Regulations, to the effect that steam-vessels towing, have the right of way over steam-vessels not towing, is controlling, is incorrect. Such a rule is subject to reasonable limitations and this court has held in the case of the *Marine Trading Co. vs. Government of the Philippine Islands* (39 Phil., 29), that the vessel with a tow is not, by that fact, authorized to usurp the entire channel.

The case of *The Alabama* (126 Fed., 332), is very much in point. In that case a tug with tow by an improper maneuver, without a clear understanding with the other vessel, and in violation of the rules of navigation, caused a collision with a steamer, unencumbered and having full control of its movements. The tug was held solely to blame.

Holding that the Tai Yin was free from blame, the judgment of the lower court against Macondray & Co., Inc., as defendant, must be set aside and defendant-appellant be absolved of all liability due to the collision. The judgment of the Court of First Instance of Iloilo is, therefore, reversed with costs against the plaintiff-appellant.

In accordance with the stipulation of the parties, this action is without prejudice of the right of the plaintiff-appellant to have a new trial in the Court of First Instance of Iloilo against Eusebio Villanueva and Juliana Melliza, defendants-appellees. So ordered.

Street, Villamor, Ostrand, Villa-Real, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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