

CHIN GUAN, PLAINTIFF AND APPELLEE, VS. COMPAÑIA MARITIMA, DEFENDANT AND APPELLANT.

G.R. No. 45070. November 28, 1938

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The steamship Corregidor was sunk as a result of a collision. An action was instituted by Chin Guan against the Compañia Maritima, owner of the steamship Cebu, which caused the collision, to recover the value of sixty sacks of flour loaded on the Corregidor. Judgment having been rendered against the defendant in the amount of P181 with legal interest from the filing of the complaint, it now appeals to this court to have said judgment reversed.

Appellant, in its brief, says that "no question of fact is involved in this case. The appeal has been interposed because we honestly believe and maintain that a rule of law has been violated. This being so, its cognizance lies within the jurisdiction of the Supreme Court in accordance with clause 6 of section 138 of Commonwealth Act No. 3."

The statement of facts in the decision appealed from which appellant admits as correct and sufficient, is as follows:

"* * * On July 3, 1933 the agent consignee of plaintiff in the City of Manila, Ong Ang Chuan, loaded on the steamship Corregidor for the port of Calivo, Province of Capiz, sixty (60) sacks of 'Anchor' flour valued at P181, belonging to plaintiff and consigned to him. On the 5th of the same month, the steamship Corregidor, under the command of its captain, defendant Arcadio Castisima, left the port of Manila for that of Calivo, Province of Capiz, and other southern ports, bringing on board; with other cargo, the sixty (60) sacks of flour aforementioned. On the night of July 5, 1933, while the Corregidor was navigating in the waters of Manila Bay, it collided with the steamship Cebu, which is also owned by the defendant company. As a result of the collision, the Corregidor sank with all its cargo, including the sixty (60) sacks of flour belonging to plaintiff. Defendants Compañia Maritima and Arcadio Castisima refused to pay plaintiff the value of the aforesaid sixty (60) sacks of flour in spite of plaintiff's demands.

"By reason of the collision between the steamships Cebu and Corregidor, the Bureau of Customs conducted an investigation which resulted in said office finding the officers of both ships responsible for the collision. Later, the Department of Finance to which the resolution of the Bureau of Customs was appealed, modified it in the sense of exonerating, as it did exonerate, the captain of the steamship Cebu."

Appellant contends that even on the theory that the total loss of the steamship Corregidor with all its cargo was due to the fault of the captain, still it is not responsible for the loss of the sacks of flour belonging to plaintiff for the reason that according to article 837 of the Code of Commerce "the civil liability contracted by the ship-owners in the cases prescribed in this section, shall be understood as limited to the value of the vessel with all her appurtenances and all the freight earned." (*Italic ours.*) And the Corregidor having been totally lost, the appellant's liability has been extinguished.

However, in accordance with the foregoing legal provision, it was held in the case of *G. Urrutia & Co. vs. Baco River Plantation Co.* (26 Phil., 632, 646), that:

"While it was held in the case of *Philippine Shipping Co. vs. Vergara* (6 Phil. Rep., 281), that, in accordance with articles 837 and 826 of the Code of Commerce, the defendant in an action such as the one at bar cannot be held responsible in damages when the ship causing the injury was wholly lost by reason of the accident, we do not apply it in this case for the reason that the vessel lost was insured and that the defendant collected the insurance. That being the case, the insurance money substitutes the vessel and must be used, so far as necessary, to pay the judgment rendered in this case." (*Italic ours.*)

Appellee, nevertheless, contends that even granting but without admitting the theory of appellant that its liability has been extinguished by reason of the sinking of the steamship *Corregidor*, it remains bound to pay the claim of appellee from the freights earned by said ship on its voyage.

The decision of this court in the case of *G. Urrutia & Co. vs. Baco River Plantation Company*, *aforecited*, does not in any way sustain the pretension of appellee. In that case it was held that in accordance with the provisions of articles 837 and 826 of the Code of Commerce, the ship-owner is not liable in damages when the ship responsible for the collision has been totally lost. In such case, the amount of the insurance substitutes for the value of the ship and should be applied to the payment of the judgment rendered in favor of plaintiff. If the ship was not insured, then the freights earned shall answer for the civil liability of the ship-owner according to article 837.

The judgment appealed from is reversed without prejudice to the right of the plaintiff to obtain payment of the value of the sixty (60) sacks of flour with legal interest from the amount of the insurance of the *Corregidor*, if it was insured; otherwise, from the freights earned during the voyage. Without pronouncement as to costs.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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