

HEIRS OF AMPARO DELOS SANTOS, HEIRS OF ERNANIE DELOS SANTOS, HEIRS OF AMABELLA DELOS SANTOS, HEIRS OF LENNY DELOS SANTOS, HEIRS OF MELANY DELOS SANTOS, HEIRS OF TERESA PAMATIAN,...

G.R. No. 51165. June 21, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks to set aside the decision of the Court of Appeals in CA-G.R. No. 58118-R affirming the decision in Civil Case No. 74593 of the then Court of First Instance (now Regional Trial Court), Branch XI, Manila which dismissed the petitioners' claim for damages against Compania Maritima for the injury to and death of the victims as a result of the sinking of M/V Mindoro on November 4, 1967.

The trial court found the antecedent facts to be as follows:

"This is a complaint originally filed on October 21, 1968 (p. 1, rec.) and amended on October 24, 1968 (p. 16 rec.) by the heirs of Delos Santos and others as pauper litigants against the Compania Maritima, for damages due to the death of several passengers as a result of the sinking of the vessel of defendant, the M/V 'Mindoro', on November 4, 1967.

"There is no dispute in the record that the M/V 'Mindoro' sailed from pier 8 North Harbor, Manila, on November 2, 1967 at about 2:00 (should have been 6:00 p.m.) in the afternoon bound for New Washington, Aklan, with many passengers aboard. It appears that said vessel met typhoon 'Welming' on the Sibuyan Sea, Aklan, at about 5:00 in the morning of November 4, 1967 causing the death of many of its passengers, although about 136 survived.

"Mauricio delos Santos declared that on November 2, 1967 he accompanied his common-law wife, Amparo delos Santos, and children, namely: Romeo, Josie, Hernani, who was 10 years old, Abella, 7 years old, Maria Lemia, 5 years old and Melany, 5 months old, to pier 8, North Harbor, Manila, to board the M/V 'Mindoro' bound for Aklan. It appears that Amparo delos Santos and the aforesaid children brought all their belongings, including household utensils valued at P1,000.00, with the intention of living in Aklan permanently.

"As already stated, the boat met typhoon 'Welming' and due to the strong waves it sank causing the drowning of many passengers among whom were Amparo delos Santos and all the aforesaid children. It appears also that Teresa Pamatian and Diego Salim, who were also passengers also drowned. Plaintiff Ruben Reyes was one of the survivors.

"The plaintiffs presented the birth and death certificates of Amparo delos Santos and the children (Exhs. I, I-1, J, J-1, K, K-1, L, L-1, O to S, pp. 180 to 194 rec.). They also presented copies of the manifest of passengers of the M/V 'Mindoro' on November 2, 1967 (Exhs. B & C, pp. 163 to 161 rec.).

"Eliadora Crisostomo de Justo, one of the survivors, corroborated the testimony of Mauricio delos Santos that he accompanied Amparo delos Santos and her children to the port to board the M/V Mindoro. She is a cousin

of Amparo delos Santos' husband. According to her, when she boarded the second deck of the vessel, she saw about 200 persons therein. She tried to see whether she could be accommodated in the third deck or first deck because the second deck was very crowded. She admitted that she was not included in the manifest because she boarded the boat without a ticket, but she purchased one in the vessel. She testified further that the boat was not able to reach its destination due to its sinking. During the typhoon before the vessel sunk, she was able to board a 'balsa.'

"Ruben Reyes, the other survivor, declared that he paid for his ticket before boarding the M/V Mindoro. At that time he had with him personal belongings and cash all in the amount of P2,900.00. It appears that Felix Reyes Jakusalem, Teresa Pamatian and Amparo delos Santos drowned during the sinking of the vessel. He was able to swim on (sic) an island and was with the others, rescued later on and brought to the hospital. The survivors were then taken ashore (Exh. M, p. 188, rec.).

"Dominator Salim declared that Teresa Pamatian, his aunt and Diego Salim, his father, drowned along with the sinking of the M/V Mindoro. This witness declared that he accompanied both his father and his aunt to the pier to board the boat and at the time Teresa Pamatian was bringing cash and personal belongings of about P250.00 worth. His father brought with him P200.00 in cash plus some belongings. He admitted that when his father boarded the vessel he did not have yet a ticket.

"The plaintiffs further submitted in evidence a copy of a Radiogram stating among other things that the M/V Mindoro was loaded also with 3,000 cases of beer, one dump truck and 292 various goods (Exhs. D and D-1, p. 162 rec.).

"In alleging negligence on the part of the vessel, plaintiffs introduced in evidence a letter sent to the Department of Social Welfare concerning the resurvey of the M/V 'Mindoro' victims (Exh. F, p. 169 rec.) and a telegram to the Social Welfare Administration (Exh. G, p. 170 rec.), a resurvey of the M/V 'Mindoro' victims (Exh. H, p. 171 rec.), a complete list of the M/V 'Mindoro' victims (Exhs. H-1 to H-8, pp. 172-179 rec.), a certified true copy of the Special Permit to the Compania Maritima issued by the Bureau of Customs limiting the vessel to only 193 passengers (Exh. X, p. 318 rec.).

"It appears that in a decision of the Board of Marine Inquiry, dated February 2, 1970, it was found that the captain and some officers of the crew were negligent in operating the vessel and imposed upon them a suspension and/or revocation of their license certificates. It appears, however, that this decision cannot be executed against the captain who perished with the vessel (Exhs. E, E-1, E-1-A, E-2 to E-9, pp. 163-168 rec.).

"Upon agreement of the parties, the plaintiffs also introduced in evidence the transcript of stenographic notes of the testimony of Boanerjes Prado before Branch I of this Court (Exh. U, pp. 203-220) and that of Felimon Rebaño in the same branch (Exh. V, pp. 225-260 rec.).

"The defendant alleges that no negligence was ever established and, in fact, the shipowners and their officers took all the necessary precautions in operating the vessel. Furthermore, the loss of lives as a result of the drowning of some passengers, including the relatives of the herein plaintiffs, was due to force majeure because of the strong typhoon 'Welming.' It appears also that there was a note of marine protest in connection with the sinking of the vessel as substantiated by affidavits (Exhs. 3, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F and 3-G rec.). On this score Emer Saul, member of the PC Judge Advocate General's Office, brought to Court records of this case which were referred to their office by the Board of Marine Inquiry. According to him the decision referred to by the plaintiffs was appealed to the Department of National Defense, although he did not know the result of the appeal. At any rate, he knew that the Department of National Defense remanded the case to the Board of Marine Inquiry for further investigation. In the second indorsement signed by Efren I. Plana, Undersecretary of National Defense, it is stated, among other things, that the hearings of the Board of Marine Inquiry wherein the Philippine Coast Guard made the decision lacked the necessary quorum as required by Section 827 of the Tariff and Customs Code. Moreover, the decision of the Commandant of the Philippine Coast Guard relied principally on the findings reached by the Board of Officers after an ex-parte investigation especially in those

aspects unfavorable to the captain (Exh. 1, folder of exhibits).

"It appears also that there were findings and recommendations made by the Board of Marine Inquiry, dated March 5, 1968, recommending among other things that the captain of the M/V 'Mindoro,' Felicitio Irineo, should be exonerated. Moreover, Captain Irineo went down with the vessel and his lips are forever sealed and could no longer defend himself. This body also found that the ship's compliment (sic) and crew were all complete and the vessel was in seaworthy condition. If the M/V 'Mindoro' sank, it was through force majeure (Exhs. 2 & 2-A, folder of exhibits).

"Defendant also introduced in evidence the transcripts of stenographic notes of the testimony of Francisco Punzalan, marine officer, as well as of Abelardo F. Garcia, Harbor Pilot in Zamboanga City, in Civil Case No. Q-12473 of Branch XXVIII, Court of First Instance of Rizal, Quezon City Branch (Exhs. 3-H & 10-H, folder of exhibits), and of Arturo Ilagan, boat captain, in Civil Case No. Q-15962 of Branch V, of the same Court (Exh. 9 folder of exhibits).

"It appears that five other vessels left the pier at Manila on November 2, 1967, aside from the M/V 'Mindoro' (Exhs 4 & 4-A). A certification of the Weather Bureau indicated the place of typhoon 'Welming' on November 2, 1967 (Exh. 6). A certification of the shipyard named El Varadero de Manila stated among other things that the M/V 'Mindoro' was dry-docked from August 25 to September 6, 1967 and was found to be in a seaworthy condition (Exh. 5), and that the said M/V 'Mindoro' was duly inspected by the Bureau of Customs (Exhs. 7, 7-A & 7-B). Another certification was introduced stating among other things that the Bureau of Customs gave a clearance to the M/V 'Mindoro' after inspection (Exh. 8 folder of exhibits)." (CFI Decision, Records, pp. 468-471)

On the basis of these facts, the trial court sustained the position of private respondent Compania Maritima (Maritima, for short) and issued a decision on March 27, 1974, to wit:

"WHEREFORE, the Court finds that in view of lack of sufficient evidence, the case be, as it is hereby DISMISSED.

For lack of evidence, the counterclaim is also hereby DISMISSED.

IT IS SO ORDERED." (Records, p. 474)

Forthwith, the petitioners' heirs and Reyes brought an appeal to the Court of Appeals. As earlier mentioned, the appellate court affirmed the decision on appeal. While it found that there was concurring negligence on the part of the captain which must be imputable to Maritima, the Court of Appeals ruled that Maritima cannot be held liable in damages based on the principle of limited liability of the shipowner or ship agent under Article 587 of the Code of Commerce.

The heirs and Reyes now come to Us with the following assignment of errors:

"ERROR I

THE HONORABLE RESPONDENT COURT OF APPEALS ERRED IN NOT CONCENTRATING TO (sic) THE PROVISION OF LAW IN THE NEW CIVIL CODE AS EXPRESSED IN, -

'Art. 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.'

ERROR II

RESPONDENT COURT OF APPEALS ERRED IN NOT REVERSING THE DECISION OF THE LOWER COURT OF ORIGIN AFTER FINDING A SERIES OF FAULTS AND NEGLIGENCE AND IN NOT ORDERING ITS CO-RESPONDENT COMPANIA MARITIMA TO PAY THE DAMAGES IN ACCORDANCE WITH THE LAW.

ERROR III

THE HONORABLE RESPONDENT COURT OF APPEALS ERRED TO NOTE, OBSERVE AND COMPREHEND THAT ART. 587 OF THE CODE OF COMMERCE IS ONLY FOR THE GOODS WHICH THE VESSEL CARRIED AND DO NOT INCLUDE PERSONS." (Rollo, p. 8)

The petition has merit. At the outset, We note that there is no dispute as to the finding of the captain's negligence in the mishap. The present controversy centers on the questions of Maritima's negligence and of the application of Article 587 of the Code of Commerce. The said article provides:

"Art. 587. The ship agent shall also be civilly liable for indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel, but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight it may have earned during the voyage."

Under this provision, a shipowner or agent has the right of abandonment; and by necessary implication, his liability is confined to that which he is entitled as of right to abandon-"the vessel with all her equipments and the freight it may have earned during the voyage" (Yangco v. Laserna, et al. 73 Phil. 330, 332). Notwithstanding the passage of the New Civil Code, Article 587 of the Code of Commerce is still good law. The reason lies in the peculiar nature of maritime law which is "exclusively real and hypothecary that operates to limit such liability to the value of the vessel, or to the insurance thereon, if any (Yangco v. Laserna, *ibid*). As correctly stated by the appellate court, "(t)his rule is found necessary to offset against the innumerable hazards and perils of a sea voyage and to encourage shipbuilding and marine commerce (Decision, Rollo, p. 29). Contrary to the petitioners' supposition, the limited liability doctrine applies not only to the goods but also in all cases like death or injury to passengers wherein the shipowner or agent may properly be held liable for the negligent or illicit acts of the captain (Yangco v. Laserna, *ibid*). It must be stressed at this point that Article 587 speaks only of situations where the fault or negligence is committed solely by the captain. In cases where the shipowner is likewise to be blamed, Article 587 does not apply (see Manila Steamship Co., Inc. v. Abdulhanan, et al., 100 Phil. 32, 38). Such a situation will be covered by the provisions of the New Civil Code on Common Carriers. Owing to the nature of their business and for reasons of public policy, common carriers are tasked to observe extraordinary diligence in the vigilance over the goods and for the safety of its passengers (Article 1733, New Civil Code). Further, they are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances (Article 1755, New Civil Code). Whenever death or injury to a passenger occurs, common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence as prescribed by Articles 1733 and 1755 (Article 1756, New Civil Code).

Guided by the above legal provisions, We painstakingly reviewed the records of the case and found imprints of Maritima's negligence which compel Us to reverse the conclusion of the appellate court.

Maritima claims that it did not have any information about typhoon 'Welming' until after the boat was already at sea. Modern technology belie such contention. The Weather Bureau is now equipped with modern apparatus which enables it to detect any incoming atmospheric disturbances. In his summary report on tropical cyclone

'Welming' which occurred within the Philippine Area of Responsibility, Dr. Roman L. Kintanar, Weather Bureau Director, stated that during the periods of November 1-5, 1967, the Bureau issued a total of seventeen (17) warnings or advisories of typhoon 'Welming' to shipping companies. Additionally, he reported that:

"By 11:15 a.m. of November 1st, or in less than twenty four hours, the storm intensified into a typhoon. It was by then located at 8.7 N 137.3 E with sea level pressure of 978 millibars, an eye diameter of about 18.53 kilometers and a maximum surface wind of 139 kilometers per hour.

"As it moved along in the open sea, it intensified further and by 11:07 a.m. of November 2, when its center was at 103 N 131.4 E, it had attained surface winds of about 240 kilometers per hour. x x x" (Exh. Z, p. 131, Index of Exhibits, p. 115, underscoring ours).

Considering the above report and the evidence on record showing the late departure of the ship at 6:00 p.m. (instead of the scheduled 2:00 p.m. departure) on November 2, 1967, We find it highly improbable that the Weather Bureau had not yet issued any typhoon bulletin at any time during the day to the shipping companies. Maritima submitted no convincing evidence to show this omission. Its evidence showing the Weather Bureau's forecast of November 3, 1967 is not persuasive. It merely indicated the weather bulletin of that day. Nowhere could We find any statement therein from the Weather Bureau that it had not issued any forecast on November 1 and 2, 1967 (Exh. 6, Records, p. 257). Significantly, the appellate court found that the ship's captain through his action showed prior knowledge of the typhoon. The court said:

"x x x. It cannot be true that he was apprised of the typhoon only at about 11:00 o'clock the following morning on November 3, 1967 when the Weather report was transmitted to him from the Weather Bureau at which time he plotted its position. For in his radiogram sent to defendant-appellee's office in Manila as early as 8:07 in the morning of November 3, 1967 (Exh. D) he states in the concluding portion 'still observing weather condition,' thereby implicitly suggesting that he had known even before departure of the unusual weather condition. x x x" (Decision, Rollo, p. 26)

If the captain knew of the typhoon beforehand, it is inconceivable for Maritima to be totally in the dark of 'Welming.' In allowing the ship to depart late from Manila despite the typhoon advisories, Maritima displayed lack of foresight and minimum concern for the safety of its passengers taking into account the surrounding circumstances of the case.

While We agree with the appellate court that the captain was negligent for overloading the ship, We, however, rule that Maritima shares equally in his negligence. We find that while M/V Mindoro was already cleared by the Bureau of Customs and the Coast Guard for departure at 2:00 p.m., the ship's departure was, however, delayed for four hours. Maritima could not account for the delay because it neither checked from the captain the reasons behind the delay nor sent its representative to inquire into the cause of such delay. It was due to this interim that the appellate court noted that "(i)ndeed there is a great probability that unmanifested cargo (such as dump truck, 3 toyota cars, steel bars, and 6,000 beer cases) and passengers (about 241 more than the authorized 193 passengers) were loaded during the four (4) hour interval" (Decision, p. 13, Rollo, p. 26). Perchance, a closer supervision could have prevented the overloading of the ship. Maritima could have directed the ship's captain to immediately depart in view of the fact that as of 11:07 in the morning of November 2, 1967, the typhoon had already attained surface winds of about 240 kilometers per hour. As the appellate court stated, "(v)erily, if it were not for this delay, the vessel could have reached (its) destination and thereby have avoided the effects of the storm" (Decision, Rollo, p. 26). This conclusion was buttressed by evidence that another ship, M/V Mangaren, an interisland vessel, sailed for New Washington, Aklan on November 2, 1967, ahead of M/V Mindoro and took the same route as the latter but it arrived safely (Exh. BB-2, Index of Exhibits, pp. 143-144 and Exh. 4-A, *ibid*, p. 254).

Maritima presents evidence of the seaworthy condition of the ship prior to its departure to prove that it exercised

extraordinary diligence in this case. M/V Mindoro was drydocked for about a month. Necessary repairs were made on the ship. Life saving equipment and navigational instruments were installed.

While indeed it is true that all these things were done on the vessel, Maritima, however, could not present evidence that it specifically installed a radar which could have allowed the vessel to navigate safely for shelter during a storm. Consequently, the vessel was left at the mercy of 'Welming' in the open sea because although it was already in the vicinity of the Aklan river, it was unable to enter the mouth of Aklan River to get into New Washington, Aklan due to darkness and the Floripon Lighthouse at the entrance of the Aklan River was not functioning or could not be seen at all (Exh. 3-H, Index of Exhibits, pp. 192-195; see also Exh. 2-A, *ibid*, p. 160). Storms and typhoons are not strange occurrences. In 1967 alone before 'Welming,' there were about 17 typhoons that hit the country (Exh. M, Index of Exhibits, p. 115), the latest of which was typhoon Uring which occurred on October 20-25, which cost so much damage to lives and properties. With the impending threat of 'Welming,' an important device such as the radar could have enabled the ship to pass through the river and to safety.

The foregoing clearly demonstrates that Maritima's lack of extraordinary diligence coupled with the negligence of the captain as found by the appellate court were the proximate causes of the sinking of M/V Mindoro. Hence, Maritima is liable for the deaths and injury of the victims.

With the above finding, We now come to the amount of damages due to the petitioners. Ordinarily, We would remand the case to the trial court for the reception of evidence. Considering however, that this case has been pending for almost twenty-three (23) years now and that since all the evidence had already been presented by both parties and received by the trial court, We resolve to decide the corresponding damages due to petitioners (see *Samal v. Court of Appeals*, 99 Phil. 230; *Del Castillo v. Jaymalin*, L-28256, March 17, 1982, 112 SCRA 629).

In their complaint filed with the Court of First Instance, petitioners prayed for moral, actual and exemplary damages, as well as for attorney's fees plus costs.

Under Article 1764 in relation to Article 2206 of the New Civil Code, the amount of damages for the death of a passenger caused by the breach of contract by a common carrier is at least three thousand pesos (P3,000.00). The prevailing jurisprudence has increased the amount of P3,000.00 to P30,000.00 (*De Lima v. Laguna Tayabas Co.*, L-35697-99, April 15, 1988, 160 SCRA 70). Consequently, Maritima should pay the civil indemnity of P30,000.00 to the heirs of each of the victims. For mental anguish suffered due to the deaths of their relatives, Maritima should also pay to the heirs the sum of P10,000.00 each as moral damages.

In addition, it was proven at the trial that at the time of death, (1) Amparo delos Santos had with her cash in the sum of P1,000.00 and personal belongings valued at P500.00; (2) Teresa Pamatian, cash in the sum of P250.00 and personal belongings worth P200.00; and (3) Diego Salem, cash in the sum of P200.00 and personal belongings valued at P100.00. Likewise, it was established that the heirs of Amparo delos Santos and her deceased children incurred transportation and incidental expenses in connection with the trial of this case in the amount of P500.00 while Dominador Salem, son of victim Diego Salem and nephew of victim Teresa Pamatian spent about P100.00 for expenses at the trial. With respect to petitioner Reyes, the evidence shows that at the time of the disaster, he had in his possession cash in the sum of P2,900.00 and personal belongings worth P100.00. Further, due to the disaster, Reyes was unable to work for three months due to shock and he was earning P9.50 a day or in a total sum of P855.00. Also, he spent about P100.00 for court expenses. For such losses and incidental expenses at the trial of this case, Maritima should pay the aforesated amounts to the petitioners as actual damages.

Reyes' claim for moral damages cannot be granted inasmuch as the same is not recoverable in damage action based on the breach of contract of transportation under Articles 2219 and 2220 of the New Civil Code except (1)

where the mishap resulted in the death of a passenger and (2) where it is proved that the carrier was guilty of fraud or bad faith, even if death does not result (*Rex Taxicab Co., Inc. v. Bautista*, 109 Phil. 712). The exceptions do not apply in this case since Reyes survived the incident and no evidence was presented to show that Maritima was guilty of bad faith. Mere carelessness of the carrier does not per se constitute or justify an inference of malice or bad faith on its part (*Rex Taxicab Co., Inc. v. Bautista*, *supra*).

Anent the claim for exemplary damages, We are not inclined to grant the same in the absence of gross or reckless negligence in this case.

As regards the claim for attorney's fees, the records reveal that the petitioners engaged the services of a lawyer and agreed to pay the sum of P3,000.00 each on a contingent basis (see TSN's, July 21, 1971, p. 24; November 3, 1971, pp. 18 and 29). In view hereof, We find the sum of P10,000.00 as a reasonable compensation for the legal services rendered.

ACCORDINGLY, the appealed decision is hereby REVERSED and judgment is hereby rendered sentencing the private respondent to pay the following: (1) P30,000.00 as indemnity for death to the heirs of each of the victims; (2) P10,000.00 as moral damages to the heirs of each of the victims; (3) P6,805.00 as actual damages divided among the petitioners as follows: heirs of Amparo Delos Santos and her deceased children, P2,000.00; heirs of Teresa Pamatian, P450.00; heirs of Diego Salem, P400.00; and Ruben Reyes, P2,955.00; (4) P10,000.00 as attorney's fees; and (5) the costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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