

SMITH BELL AND COMPANY (PHILIPPINES), INC. AND TOKYO MARINE AND FIRE INSURANCE CO., INC., PETITIONERS, VS. THE COURT OF APPEALS AND CARLOS A. GO THONG AND CO., RESPONDENTS.

G.R. No. 56294. May 20, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

In the early morning of 3 May 1970 -- at exactly 0350 hours, on the approaches to the port of Manila near Caballo Island, a collision took place between the M/V "Don Carlos," an inter-island vessel owned and operated by private respondent Carlos A. Go Thong and Company ("Go Thong"), and the M/S "Yotai Maru," a merchant vessel of Japanese registry. The "Don Carlos" was then sailing south bound leaving the port of Manila for Cebu, while the "Yotai Maru" was approaching the port of Manila, coming in from Kobe, Japan. The bow of the "Don Carlos" rammed the portside (left side) of the "Yotai Maru" inflicting a three (3) cm. gaping hole on her portside near Hatch No. 3, through which seawater rushed in and flooded that hatch and her bottom tanks, damaging all the cargo stowed therein.

The consignees of the damaged cargo got paid by their insurance companies. The insurance companies in turn, having been subrogated to the interests of the consignees of the damaged cargo, commenced actions against private respondent Go Thong for damages sustained by the various shipments in the then Court of First Instance of Manila.

Two (2) cases were filed in the Court of First Instance of Manila. The first case, Civil Case No. 82567, was commenced on 13 March 1971 by petitioner Smith Bell and Company (Philippines), Inc. and Sumitomo Marine and Fire Insurance Company Ltd., against private respondent Go Thong, in Branch 3, which was presided over by Judge Bernardo P. Fernandez. The second case, Civil Case No. 82556, was filed on 15 March 1971 by petitioners Smith Bell and Company (Philippines), Inc. and Tokyo Marine and Fire Insurance Company, Inc. against private respondent Go Thong in Branch 4, which was presided over by then Judge, later Associate Justice of this Court, Serafin R. Cuevas.

Civil Cases Nos. 82567 (Judge Fernandez) and 82556 (Judge Cuevas) were tried under the same issues and evidence, relating to the collision between the "Don Carlos" and the "Yotai Maru", the parties in both cases having agreed that the evidence on the collision presented in one case would be simply adopted in the other. In both cases, the Manila Court of First Instance held that the officers and crew of the "Don Carlos" had been negligent, that such negligence was the proximate cause of the collision and accordingly held respondent Go Thong liable for damages to the plaintiff insurance companies. Judge Fernandez awarded the insurance companies P19,889.79 with legal interest plus P3,000.00 as attorney's fees; while Judge Cuevas awarded the plaintiff insurance companies on two (2) claims US\$68,640.00 or its equivalent in Philippine currency plus attorney's fees of P30,000.00, and P19,163.02 plus P5,000.00 as attorney's fees, respectively.

The decision of Judge Fernandez in Civil Case No. 82567 was appealed by respondent Go Thong to the Court of Appeals, and the appeal was there docketed as C.A.-G.R. No. 61320-R. The decision of Judge Cuevas in Civil Case No. 82556 was also appealed by Go Thong to the Court of Appeals, the appeal being docketed as C.A.-G.R. No. 61206-R. Substantially identical assignments of errors were made by Go Thong in the two (2) appealed cases before the Court of Appeals.

In C.A.-G.R. No. 61320-R, the Court of Appeals through Reyes, L.B., J., rendered a Decision on 8 August 1978 affirming the Decision of Judge Fernandez. Private respondent Go Thong moved for reconsideration, without success. Go Thong then went to the Supreme Court on Petition for Review, the Petition being docketed as G.R. No. L-48839 ("Carlos A. Go Thong and Company v. Smith Bell and Company [Philippines], Inc., et al."). In its Resolution dated 6 December 1978, this Court, having considered "the allegations, issues and arguments adduced in the Petition for Review on Certiorari, of the Decision of the Court of Appeals as well as respondent's comment", denied the Petition for lack of merit. Go Thong filed a Motion for Reconsideration; the Motion was denied by this Court on 24 January 1979.

In the other (Cuevas) case, C.A.-G.R. No. 61206-R, the Court of Appeals, on 26 November 1980 (or almost two [2] years after the Decision of Reyes, L.B., J., in C.A.-G.R. No. 61320-R, had been affirmed by the Supreme Court on Petition for Review) through Sison, P.V., J., reversed the Cuevas Decision and held the officers of the "Yotai Maru" at fault in the collision with the "Don Carlos," and dismissed the insurance companies' complaint. Herein petitioners asked for reconsideration, to no avail.

The insurance companies are now before us on Petition for Review on Certiorari, assailing the Decision of Sison, P.V., J., in C.A.-G.R. No. 61206-R. Petitioners' principal contentions are:

- a. that the Sison Decision had disregarded the rule of res judicata;
- b. that Sison P.V., J., was in serious and reversible error in accepting Go Thong's defense that the question of fault on the part of the "Yotai Maru" had been settled by the compromise agreement between the owner of the "Yotai Maru" and Go Thong as owner of the "Don Carlos;" and
- c. that Sison, P.V., J., was in serious and reversible error in holding that the "Yotai Maru" had been negligent and at fault in the collision with the "Don Carlos."

I

The first contention of petitioners is that Sison, P.V., J. in rendering his questioned Decision, failed to apply the rule of res judicata. Petitioners maintain that the Resolution of the Supreme Court dated 6 December 1978 in G.R. No. 48839 which dismissed Go Thong's Petition for Review of the Decision of Reyes, L.B., J., in C.A.-G.R. No. 61320-R, had effectively settled the question of liability on the part of the "Don Carlos." Under the doctrine of res judicata, petitioners contend, Sison, P.V., J. should have followed the Reyes, L.B., J. Decision since the latter had been affirmed by the Supreme Court and had become final and executory long before the Sison Decision was rendered.

Private respondent Go Thong, upon the other hand, argues that the Supreme Court, in rendering its minute Resolution in G.R. No. L-48839, had merely dismissed Go Thong's Petition for Review of the Reyes, L.B., J. Decision for lack of merit but had not affirmed in toto that Decision. Private respondent, in other words, purports to distinguish between denial of a Petition for Review for lack of merit and affirmance of the Court of Appeals' Decision. Thus, Go Thong concludes, this Court did not hold that the "Don Carlos" had been negligent in the collision.

Private respondent's argument must be rejected. That this Court denied Go Thong's Petition for Review in a minute Resolution did not in any way diminish the legal significance of the denial so decreed by this Court. The Supreme Court is not compelled to adopt a definite and stringent rule on how its judgment shall be framed.[1] It has long been settled that this Court has discretion to decide whether a "minute resolution" should be used in lieu of a full-blown decision in any particular case and that a minute Resolution of dismissal of a Petition for Review on Certiorari constitutes an adjudication on the merits of the controversy or subject matter of the Petition.[2] It has been stressed by the Court that the grant of due course to a Petition for Review is "not a matter of right, but of sound judicial discretion; and so there is no need to fully explain the Court's denial. For one thing, the facts and law are already mentioned in the Court of Appeals' opinion." [3] A minute Resolution denying a Petition for Review of a Decision of the Court of Appeals can only mean that the Supreme Court agrees with or adopts the findings and conclusions of the Court of Appeals, in other words, that the Decision sought to be reviewed and set aside is correct.[4]

Private respondent Go Thong argues also that the rule of *res judicata* cannot be invoked in the instant case whether in respect of the Decision of Reyes, L.B., J. or in respect of the Resolution of the Supreme court in G.R. No. L-48839, for the reason that there was no identity of parties and no identity of cause of action between C.A.-G.R. No. 61206-R and C.A.-G.R. No. 61320-R.

The parties in C.A.-G.R. No. 61320-R where the decision of Judge Fernandez was affirmed, involved Smith Bell and Company (Philippines), Inc., and Sumitomo Marine and Fire Insurance Co., Ltd. while the petitioners in the instant case (plaintiffs below) are Smith Bell and Co. (Philippines), Inc. and Tokyo Marine and Fire Insurance Co., Ltd. In other words, there was a common petitioner in the two (2) cases, although the co-petitioner in one was an insurance company different from the insurance company co-petitioner in the other case. It should be noted, moreover, that the co-petitioner in both cases was an insurance company and that both petitioners in the two (2) cases represented the same interest, i.e., the cargo owners' interest as against the hull interest or the interest of the shipowner. More importantly, both cases had been brought against the same defendant, private respondent Go Thong, the owner of the vessel "Don Carlos". In sum, C.A.-G.R. No. 61320-R and C.A.-G.R. No. 61206-R exhibited substantial identity of parties.

It is conceded by petitioners that the subject matters of the two (2) suits were not identical, in the sense that the cargo which had been damaged in the one case and for which indemnity was sought, was not the very same cargo which had been damaged in the other case indemnity for which was also sought. The cause of action was, however, the same in the two (2) cases, i.e., the same right of the cargo owners to the safety and integrity of their cargo had been violated by the same casualty, the ramming of the "Yotai Maru" by the "Don Carlos." The judgments in both cases were final judgments on the merits rendered by the two (2) divisions of the Court of Appeals and by the Supreme Court, the jurisdiction of which has not been questioned.

Under the circumstances, we believe that the absence of identity of subject matter, there being substantial identity of parties and identity of cause of action, will not preclude the application of *res judicata*. [5]

In *Tingson v. Court of Appeals*, [6] the Court distinguished one from the other the two (2) concepts embraced in the principle of *res judicata*, i.e., "bar by former judgment" and "conclusiveness of judgment:"

"There is no question that where as between the first case where the judgment is rendered and the second case where such judgment is invoked, there is identity of parties, subject-matter and cause of action, the judgment on the merits in the first case constitutes an absolute bar to the subsequent action not only as to every matter which was offered and received to sustain or defeat the claim or demand, but also as to any other admissible matter which might have been offered for that purpose and to all matters that could have been adjudged in that case. This is designated as 'bar by former judgment.'

But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or judgment was rendered. In fine, the previous judgment is conclusive in the second case, only as those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the rule on 'conclusiveness of judgment' embodied in subdivision (c) of Section 49 of Rule 39 of the Revised Rules of Court." [7] (Citations omitted) (Emphases supplied)

In *Lopez v. Reyes*, [8] the Court elaborated further the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action:

"The doctrine of *res judicata* has two aspects. The first is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second aspect is that it precludes the relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action.

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions 'necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion and upon which such conclusion is based is as effectually passed upon as the ultimate question which is finally solved.'" [9] (Citations omitted) (Emphases supplied)

In the case at bar, the issue of which vessel ("Don Carlos" or "Yotai Maru") had been negligent, or so negligent as to have proximately caused the collision between them, was an issue that was actually, directly and expressly raised, controverted and litigated in C.A.-G.R. No. 61320-R. *Reyes, L.B., J.* resolved that issue in his Decision and held the "Don Carlos" to have been negligent rather than the "Yotai Maru" and, as already noted, that Decision was affirmed by this Court in G.R. No. L-48839 in a Resolution dated 6 December 1978. The *Reyes* Decision thus became final and executory approximately two (2) years before the *Sison* Decision, which is assailed in the case at bar, was promulgated. Applying the rule of conclusiveness of judgment, the question of which vessel had been negligent in the collision between the two (2) vessels, had long been settled by this Court and could no longer be relitigated in C.A.-G.R. No. 61206-R. Private respondent Go Thong was certainly bound by the ruling or judgment of *Reyes, L.B., J.* and that of this Court. The Court of Appeals fell into clear and reversible error when it disregarded the Decision of this Court affirming the *Reyes* Decision. [10]

Private respondent Go Thong also argues that a compromise agreement entered into between Sanyo Shipping Company as owner of the "Yotai Maru" and Go Thong as owner of the "Don Carlos," under which the former paid P268,000.00 to the latter, effectively settled that the "Yotai Maru" had been at fault. This argument is wanting in both factual basis and legal substance. True it is that by virtue of the compromise agreement, the owner of the "Yotai Maru" paid a sum of money to the owner of the "Don Carlos." Nowhere, however, in the compromise agreement did the owner of the "Yotai Maru" admit or concede that the "Yotai Maru" had been at fault in the collision. The familiar rule is that "an offer of compromise is not an admission that anything is due, and is not admissible in evidence against the person making the offer." [11] A compromise is an agreement

between two (2) or more persons who, in order to forestall or put an end to a law suit, adjust their differences by mutual consent, an adjustment which everyone of them prefers to the hope of gaining more, balanced by the danger of losing more.[12] An offer to compromise does not, in legal contemplation, involve an admission on the part of a defendant that he is legally liable, nor on the part of a plaintiff that his claim or demand is groundless or even doubtful, since the compromise is arrived at precisely with a view to avoiding further controversy and saving the expenses of litigation.[13] It is of the very nature of an offer of compromise that it is made tentatively, hypothetically and in contemplation of mutual concessions.[14] The above rule on compromises is anchored on public policy of the most insistent and basic kind: that the incidence of litigation should be reduced and its duration shortened to the maximum extent feasible.

The collision between the "Yotai Maru" and the "Don Carlos" spawned not only sets of litigations but also administrative proceedings before the Board of Marine Inquiry ("BMI"). The collision was the subject matter of an investigation by the BMI in BMI Case No. 228. On 12 July 1971, the BMI, through Commodore Leovegildo L. Gantioki, found both vessels to have been negligent in the collision.

Both parties moved for reconsideration of the BMI's decision. The Motions for Reconsideration were resolved by the Philippine Coast Guard ("PCG") nine (9) years later, in an order dated 19 May 1980 issued by PCG Commandant, Commodore Simeon M. Alejandro. The dispositive portion of the PCG decision read as follows:

"Premises considered, the Decision dated July 12, 1971 is hereby reconsidered and amended absolving the officers of 'YOTAI MARU' from responsibility for the collision. This Headquarters finds no reason to modify the penalties imposed upon the officers of 'Don Carlos'. (Annex 'C', Reply, September 5, 1981)."[15]

Go Thong filed a second Motion for Reconsideration; this was denied by the PCG in an order dated September 1980.

Go Thong sought to appeal to the then Ministry of National Defense from the orders of the PCG by filing with the PCG on 6 January 1981 a motion for a 30-day extension from 7 January 1981 within which to submit its record on appeal. On 4 February 1981, Go Thong filed a second urgent motion for another extension of thirty (30) days from 7 February 1981. On 12 March 1981, Go Thong filed a motion for a final extension of time and filed its record on appeal on 17 March 1981. The PCG noted that Go Thong's record on appeal was filed late, that is, seven (7) days after the last extension granted by the PCG had expired. Nevertheless, on 1 July 1981 (after the Petition for Review on Certiorari in the case at bar had been filed with this Court), the Ministry of Defense rendered a decision reversing and setting aside the 19 May 1980 decision of the PCG.

The owners of the "Yotai Maru" then filed with the Office of the President a Motion for Reconsideration of the Defense Ministry's decision. The Office of the President rendered a decision dated 17 April 1986 denying the Motion for Reconsideration. The decision of the Office of the President correctly recognized that Go Thong had failed to appeal in a seasonable manner:

"MV 'DON CARLOS' filed her Notice of Appeal on January 5, 1981. However, the records also show beyond peradventure of doubt that the PCG Commandant's decision of May 19, 1980, had already become final and executory when MV 'DON CARLOS' filed her Record on Appeal on March 17, 1981, and when the motion for third extension was filed after the expiry date.

Under Paragraphs (c), (d), (e) and (f), Chapter XVI, of the Philippine Merchant Marine Rules and Regulations, decisions of the PCG Commandant shall be final unless, within thirty (30) days after receipt of a copy thereof, an appeal to the Minister of National Defense is filed and perfected by the filing of a notice of appeal and a record on appeal. Such administrative regulation has the force and effect of law, and the failure of MV 'DON CARLOS' to comply therewith rendered the PCG Commandant's decision on May 19, 1980, as final and

executory. (*Antique Sawmills, Inc. vs. Zayco*, 17 SCRA 316; *Deslata vs. Executive Secretary*, 19 SCRA 487; *Macailing vs. Andrada*, 31 SCRA 126.) (Annex 'A', Go Thong's Manifestation and Motion for Early Resolution, November 24, 1986)."[16] (Emphases supplied)

Nonetheless, acting under the misapprehension that certain "supervening" events had taken place, the Office of the President held that the Minister of National Defense could validly modify or alter the PCG Commandant's decision:

"However, the records likewise show that, on November 26, 1980, the Court of Appeals rendered a decision in CA-G.R. No. 61206-R (*Smith Bell & Co., Inc., et. al. vs. Carlos A. Go Thong & Co.*) holding that the proximate cause of the collision between MV 'DON CARLOS' AND MS 'YOTAI MARU' was the negligence, failure and error of judgment of the officers of MS 'YOTAI MARU'. Earlier, or on February 27, 1976, the Court of First Instance of Cebu rendered a decision in Civil Case No. R-11973 (*Carlos A. Go Thong vs. San-yo Marine Co.*) holding that MS 'YOTAI MARU' was solely responsible for the collision, which decision was upheld by the Court of Appeals.

The foregoing judicial pronouncements, rendered after the finality of the PCG Commandant's decision of May 19, 1980, were supervening causes or reasons that rendered the PCG Commandant's decision as no longer enforceable and entitled MV 'DON CARLOS' to request the Minister of National Defense to modify or alter the questioned decision to harmonize the same with justice and the facts. (*De la Costa vs. Cleofas*, 67 Phil. 686; *City of Bututan vs. Ortiz*, 3 SCRA 659; *Candelario vs. Canizares*, 4 SCRA 738; *Abellana vs. Dosdos*, 13 SCRA 244). Under such precise circumstances, the Minister of National Defense may validly modify or alter the PCG Commandant's decision. (Sec. 37, Act 4007; Secs. 79 (c) and 550, Revised Administrative Code; *Province of Pangasinan vs. Secretary of Public Works and Communications*, 30 SCRA 134; *Estrella vs. Orendain*, 37 SCRA 640)."[17] (Emphases supplied)

The multiple misapprehensions under which the Office of the President labored, were the following:

It took account of the Decision of Sison, P.V., J. in C.A.-G.R. No. 61206-R, the very decision that is the subject of review in the Petition at bar and therefore not final. At the same time, the Office of the President either ignored or was unaware of the Reyes, L.B., J. Decision in C.A.-G.R. No. 61320-R finding the "Don Carlos" solely liable for the collision, and of the fact that that Decision had been affirmed by the Supreme Court and had long ago become final and executory. A third misapprehension of the Office of the President related to a decision in a Cebu Court of First Instance litigation which had been settled by the compromise agreement between the Sanyo Marine Company and Go Thong. The Office of the President mistakenly believed that the Cebu Court of First Instance had rendered a decision holding the "Yotai Maru" solely responsible for the collision, when in truth the Cebu court had rendered a judgment of dismissal on the basis of the compromise agreement. The Cebu decision was not, of course, appealed to the Court of Appeals.

It thus appears that the decision of the Office of the President upholding the belated reversal by the Ministry of National Defense of the PCG's decision holding the "Don Carlos" solely liable for the collision, is so deeply flawed as not to warrant any further examination. Upon the other hand, the basic decision of the PCG holding the "Don Carlos" solely negligent in the collision remains in effect.

II

In their Petition for Review, petitioners assail the finding and conclusion of the Sison Decision that the "Yotai Maru" was negligent and at fault in the collision, rather than the "Don Carlos." In view of the conclusions reached in Part I above, it may not be strictly necessary to deal with the issue of the correctness of the Sison Decision in this respect. The Court considers, nonetheless, that in view of the conflicting conclusions reached by Reyes, L.B., J., on the one hand, and Sison, P.V., J., on the other, and since in affirming the Reyes Decision, the Court did not

engage in a detailed written examination of the question of which vessel had been negligent, and in view of the importance of the issues of admiralty law involved, the Court should undertake a careful review of the record of the case at bar and discuss those issues in extenso.

The decision of Judge Cuevas in Civil Case No. 82556 is marked by careful analysis of the evidence concerning the collision. It is worth underscoring that the findings of fact of Judge Fernandez in Civil Case No. 82567 (which was affirmed by the Court of Appeals in the Reyes Decision and by this Court in G.R. No. L-48839) are just about identical with the findings of Judge Cuevas. Examining the facts as found by Judge Cuevas, the Court believes that there are three (3) principal factors which are constitutive of negligence on the part of the "Don Carlos," which negligence was the proximate cause of the collision.

The first of these factors was the failure of the "Don Carlos" to comply with the requirements of Rule 18 (a) of the International Rules of the Road ("Rules"),[18] which provides as follows:

"(a) When two power-driven vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other. This Rule only applies to cases where vessels are meeting end on or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective course, pass clear of each other. The only cases to which it does apply are when each of two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line or nearly in a line with her own; and by night to cases in which each vessel is in such a position as to see both the sidelights of the other. It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or, by night, to cases where the red light of one vessel is opposed to the red light of the other or where the green light of one vessel is opposed to the green light of the other or where a red light without a green light or a green light without a red light is seen ahead, or where both green and red lights are seen anywhere but ahead." (Underscoring supplied)

The evidence on this factor was summarized by Judge Cuevas in the following manner:

"Plaintiff's and defendant's evidence seem to agree that each vessel made a visual sighting of each other ten minutes before the collision which occurred at 0350. German's version of the incident that followed, was that 'Don Carlos' was proceeding directly to [a] meeting [on an] 'end-on or nearly end-on situation' (Exh. S, page 8). He also testified that 'Yotai Maru's' headlights were 'nearly in line at 0340 A.M.' (t.s.n. June 6, 1974) clearly indicating that both vessels were sailing on exactly opposite paths (t.s.n. June 6, 1974, page 56). Rule 18(a) of the International Rules of the Road provides as follows:

.....

And yet German altered 'Don Carlos' course by five degrees to the left at 0343 hours instead of to the right (t.s.n. June 6, 1974, pages 44-45) which maneuver was the error that caused the collision in question. Why German did so is likewise explained by the evidence on record. 'Don Carlos' was overtaking another vessel, the 'Don Francisco', and was then at the starboard (right side) of the aforesaid vessel at 3:40 a.m. It was in the process of overtaking 'Don Francisco' that 'Don Carlos' was finally brought into a situation where he was meeting end-on or nearly end-on 'Yotai Maru', thus involving risk of collision. Hence, German in his testimony before the Board of Marine Inquiry stated:

'Atty. Chung:

You said in answer to the cross-examination that you took a change of course to the left. Why did you not take a course to the right instead?

German:

I did not take any course to the right because the other vessel was in my mind at the starboard side following

me. Besides, I don't want to get risk of the Caballo Island (Exh. 2, pages 209 and 210)."[19] (Underscoring supplied)

For her part, the "Yotai Maru" did comply with its obligations under Rule 18 (a). As the "Yotai Maru" found herself on an "end-on" or a "nearly end-on" situation vis-a-vis the "Don Carlos," and as the distance between them was rapidly shrinking, the "Yotai Maru" turned starboard (to its right) and at the same time gave the required signal consisting of one short horn blast. The "Don Carlos" turned to portside (to its left), instead of turning to starboard as demanded by Rule 18 (a). The "Don Carlos" also violated Rule 28 (c) for it failed to give the required signal of two (2) short horn blasts meaning "I am altering my course to port." When the "Yotai Maru" saw that the "Don Carlos" was turning to port, the master of the "Yotai Maru" ordered the vessel turned "hard starboard" at 3:45 a.m. and stopped her engines; at about 3:46 a.m., the "Yotai Maru" went "full astern engine." [20] The collision occurred at exactly 3:50 a.m.

The second circumstance constitutive of negligence on the part of the "Don Carlos" was its failure to have on board that night a "proper look-out" as required by Rule I (B). Under Rule 29 of the same set of Rules, all consequences arising from the failure of the "Don Carlos" to keep a "proper look-out" must be born by the "Don Carlos." Judge Cuevas' summary of the evidence said:

"The evidence on record likewise discloses very convincingly that 'Don Carlos' did not have a 'look-out' whose sole and only duty is only to act as such. x x x"[21]

A "proper look-out" is one who has been trained as such and who is given no other duty save to act as a look-out and who is stationed where he can see and hear best and maintain good communication with the officer in charge of the vessel, and who must, of course, be vigilant. Judge Cuevas wrote:

"The 'look-out' should have no other duty to perform. (Chamberlain v. Ward, 21, N.O.W. 62, U.S. 548, 571). He has only one duty, that which its name implies - to keep a 'look-out'. So a deckhand who has other duties, is not a proper 'look-out' (Brooklyn Perry Co. v. U.S., 122, Fed. 696). The navigating officer is not a sufficient 'look-out' (Larcen B. Myrtle, 44 Fed. 779) - - - Griffin on Collision, pages 277-278). Neither the captain nor the [helmsman] in the pilothouse can be considered to be a 'look-out' within the meaning of the maritime law. Nor should he be stationed in the bridge. He should be as near as practicable to the surface of the water so as to be able to see low-lying lights (Griffin on Collision, page 273).

On the strength of the foregoing authorities, which do not appear to be disputed even by the defendant, it is hardly probable that neither German or Leo Enriquez may qualify as 'look-out' in the real sense of the word." [22] (Emphases supplied)

In the case at bar, the failure of the "Don Carlos" to recognize in a timely manner the risk of collision with the "Yotai Maru" coming in from the opposite direction, was at least in part due to the failure of the "Don Carlos" to maintain a proper look-out.

The third factor constitutive of negligence on the part of the "Don Carlos" relates to the fact that Second Mate Benito German was, immediately before and during the collision, in command of the "Don Carlos." Judge Cuevas summed up the evidence on this point in the following manner:

"The evidence on record clearly discloses that 'Don Carlos' was, at the time of the collision and immediately prior thereto, under the command of Benito German, a second mate although its captain, Captain Rivera, was very much in the said vessel at the time. The defendant's evidence appears bereft of any explanation as to why second mate German was at the helm of the aforesaid vessel when Captain Rivera did not appear to be under any disability at the time. In this connection, Article [633] of the Code of Commerce provides:
'Art. [633] - The second mate shall take command of the vessel in case of the inability or disqualification of the

captain and sailing mate, assuming, in such case, their powers and liability.'

The fact that second mate German was allowed to be in command of 'Don Carlos' and not the chief or the sailing mate in the absence of Captain Rivera, gives rise to no other conclusion except that said vessel [had] no chief mate. Otherwise, the defense evidence should have at least explained why it was German, only a second mate, who was at the helm of the vessel 'Don Carlos' at the time of the fatal collision.

But that is not all. Worst still, aside from German's being only a second mate, is his apparent lack of sufficient knowledge of the basic and generally established rules of navigation. For instance, he appeared unaware of the necessity of employing a 'look-out' (t.s.n. June 6, 1974, page 27) which is manifest even in his testimony before the Board of Marine Inquiry on the same subject (Exh. 2, page 209). There is, therefore, every reasonable ground to believe that his inability to grasp actual situation and the implication brought about by inadequacy of experience and technical know-how was mainly responsible and decidedly accounted for the collision of the vessels involved in this case. x x x"[23] (Underscoring supplied)

Second Mate German simply did not have the level of experience, judgment and skill essential for recognizing and coping with the risk of collision as it presented itself that early morning when the "Don Carlos," running at maximum speed and having just overtaken the "Don Francisco" then approximately one mile behind to the starboard side of the "Don Carlos," found itself head-on or nearly head-on vis-a-vis the "Yotai Maru." It is essential to point out that this situation was created by the "Don Carlos" itself.

The Court of Appeals in C.A.-G.R. No. 61206-R did not make any findings of fact which contradicted the findings of fact made by Judge Cuevas. What Sison, P.V., J. actually did was to disregard all the facts found by Judge Cuevas, and discussed above and, astonishingly, found a duty on the "Yotai Maru" alone to avoid collision with and to give way to the "Don Carlos." Sison, P.V., J., wrote:

"At a distance of eight (8) miles and with ten (10) minutes before the impact, [Katoh] and Chonabayashi had ample time to adopt effective precautionary measures to steer away from the Philippine vessel, particularly because both [Katoh] and Chonabayashi also deposed that at the time they had first eyesight of the 'Don Carlos' there was still 'no danger at all' of a collision. Having sighted the 'Don Carlos' at a comparatively safe distance -- 'no danger at all' of a collision -- the Japanese ship should have observed with the highest diligence the course and movements of the Philippine interisland vessel as to enable the former to adopt such precautions as will necessarily prevent a collision, or give way, and in case of a collision, the former is prima facie at fault. In *G. Urrutia & Co. vs. Baco River Plantation Co.*, 26 Phil. 632, the Supreme Court held:

'Nautical rules require that where a steamship and sailing vessel are approaching each other from opposite directions, or on intersecting lines, the steamship, from the moment the sailing vessel is seen, shall watch with the highest diligence her course and movements so as to enable it to adopt such timely means of precaution as will necessarily prevent the two boats from coming in contact.' (Underscoring in the original)

At 3:44 p.m., or 4 minutes after first sighting the 'Don Carlos', or 6 minutes before contact time, Chonabayashi revealed that the 'Yotai Maru' gave a one-blast whistle to inform the Philippine vessel that the Japanese ship was turning to starboard or to the right and that there was no blast or a proper signal from the 'Don Carlos' (pp. 67-68, Deposition of Chonabayashi, List of Exhibits). The absence of a reply signal from the 'Don Carlos' placed the 'Yotai Maru' in a situation of doubt as to the course the 'Don Carlos' would take. Such being the case, it was the duty of the Japanese officers 'to stop, reverse or come to a standstill' until the course of the 'Don Carlos' has been determined and the risk of a collision removed (*The Sabine*, 21 F (2d) 121, 124, cited in *Standard Vacuum, etc. v. Cebu Stevedoring, etc.*, 5 C.A.R. 2d 853, 861-862) x x x"[24] (Underscoring supplied)

The Court is unable to agree with the view thus taken by Sison, P.V., J. By imposing an exclusive obligation upon one of the vessels, the "Yotai Maru," to avoid the collision, the Court of Appeals not only chose to overlook all

the above facts constitutive of negligence on the part of the "Don Carlos;" it also in effect used the very negligence on the part of the "Don Carlos" to absolve it from responsibility and to shift that responsibility exclusively onto the "Yotai Maru" the vessel which had observed carefully the mandate of Rule 18 (a). Moreover, *G. Urrutia and Company v. Baco River Plantation Company*[25] invoked by the Court of Appeals seems simply inappropriate and inapplicable. For the collision in the Urrutia case was between a sailing vessel, on the one hand, and a power-driven vessel, on the other; the Rules, of course, imposed a special duty on the power-driven vessel to watch the movements of a sailing vessel, the latter being necessarily much slower and much less maneuverable than the power-driven one. In the case at bar, both the "Don Carlos" and the "Yotai Maru" were power-driven and both were equipped with radar; the maximum speed of the "Yotai Maru" was thirteen (13) knots while that of the "Don Carlos" was eleven (11) knots. Moreover, as already noted, the "Yotai Maru" precisely took last minute measures to avert collision as it saw the "Don Carlos" turning to portside: the "Yotai Maru" turned "hard starboard" and stopped its engines and then put its engines "full astern."

Thus, the Court agrees with Judge Cuevas (just as it had agreed with Reyes, L.B., J.), with Judge Fernandez and Nocon, J.,[26] that the "Don Carlos" had been negligent and that its negligence was the sole proximate cause of the collision and of the resulting damages.

FOR ALL THE FOREGOING, the Decision of the Court of Appeals dated 26 November 1980 in C.A.-G.R. No. 61206-R is hereby REVERSED and SET ASIDE. The decision of the trial court dated 22 September 1975 is hereby REINSTATED and AFFIRMED in its entirety. Costs against private respondent.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

[1] *Policarpio v. Philippine Veterans Board*, 106 Phil. 125 (1959).

[2] *Commercial Union Assurance Ltd. v. Lepanto Consolidated Mining Company*, 86 SCRA 79 (1978).

[3] *Novino, et al. v. Court of Appeals, et al.*, 8 SCRA 279 (1963); *Commercial Union Assurance Company Ltd. v. Lepanto Consolidated Mining Company*, 86 SCRA 79 (1978). See Rule 45, Section 4, Revised Rules of Court.

[4] *Tayag et. al. v. Yuseco, et al.*, 105 Phil. 484 (1959).

[5] *Santos v. Gabriel*, 45 SCRA 288 (1972); *Suarez v. Municipality of Naujan, etc.*, 18 SCRA 682 (1966).

[6] 49 SCRA 429 (1973).

[7] 49 SCRA at 434-345.

[8] 76 SCRA 179 (1977).

[9] 76 SCRA at 186-187.

[10] It is useful to note that there was another set of cases that was precipitated by the collision between the "Don Carlos" and the "Yotai Maru." Thirty-two (32) civil cases were brought by insurance companies against Oyama Shipping Company Ltd. and Citadel Lines, Inc. (apparently agents of Go Thong) which companies in turn filed third party complaints against Go Thong. The thirty-two (32) cases were consolidated before the Regional Trial Court of Manila, Branch 60, which court held that both the "Don Carlos" and "Yotai Maru" were at fault in the

collision and therefore pursuant to Articles 827 and 828 of the Code of Commerce, required Go Thong, Citadel Lines, Inc. and Oyama Shipping Company Ltd., jointly and severally, to indemnify the insurance companies which had become subrogated to the claims of their consignee-clients. Both Go Thong, on the one hand, and Oyama Shipping Company Ltd. and Citadel Lines, Inc., on the other hand, appealed to the Court of Appeals, the consolidated appeal being docketed as C.A.-G.R. CV No. 05730-05761.

In a decision dated 11 December 1986, then Justice (now Presiding Justice) Nocon modified the decision of the trial court by holding Go Thong alone responsible for the damages caused by the negligence of the "Don Carlos." In reaching this conclusion, Nocon, J. followed the Decision of Reyes, L.B., J. in C.A.-G.R. No. 61320-R which Decision, Nocon, J. noted, had been affirmed by the Supreme Court in G.R. No. L-48839. Nocon, J. expressly acknowledged that the rule on conclusiveness of judgment required it to follow the conclusion reached by Reyes, L.B., J. At the same time, he satisfied himself that the conclusions of Reyes, L.B., J. were correct:

"Our analysis of the evidence on record forced us to arrive at the same findings and conclusions of the then Third Division of this Court on the negligence of the officers and crew of the vessel 'DON CARLOS' in its operation, thereby causing it to collide with the vessel 'Yotai Maru'.

It has been held that notwithstanding that the parties of a second action are different from those of the first, the conclusiveness of the judgment in the first action may be invoked in the second motion 'if the party against whom the judgment is offered in evidence was a party in the first action' (Peñalosa vs. Tuazon, 22 Phil. 303, 323).

We are more than convinced by the preponderance of evidence rule that the officers and crew of 'Don Carlos', a vessel owned by appellant Carlos A. Go Thong & Co. were negligent and/or lacked the proper skill in operating the same resulting [in] its collision with the 'Yotai Maru'." (Rollo, p. 428.)

C.A.-G.R. No. 05730-61 was sought to be raised before this Court and was assigned, on a motion for extension of time to file a petition for review, G.R. Nos. 77877-908 ("Carlos A. Go Thong and Co. v. Court of Appeals, et al."). On 17 June 1988, the Court issued a Resolution stating that no Petition had in fact been filed and declaring the case closed. The Nocon Decision thus became final.

[11] Rule 130, Section 24, Revised Rules of Court. See also Lichauco v. Limjuco and Gonzalo, 19 Phil. 12 (1911).

[12] Rovero v. Amparo, 91 Phil. 228 (1952).

[13] Fidelity and Cas. Co. of New York v. Southwestern Bell Tel. Co., C.C.A. Ark., 140 F. 2d 724; Hardaway v. Hilburn, App., 34 So. 2d 283.

[14] Scott v. Sciaroni, 226 P. 827, 66 C.A. 577; Washington Youree Hotel Co. v. Union Indemnity Co., App. 146 So. 342.

[15] Rollo, p. 400.

[16] Id., p. 402.

[17] Id., pp. 402-403.

[18] These Rules are annexed to and form part of the Philippine Merchant Marine Rules and Regulations, promulgated by the Philippine Coastguard on 9 August 1976, pursuant to Section 5 (c) of Republic Act No. 5173, as amended by P.D. No. 601; see 72 Official Gazette No. 41 (1976).

[19] Rollo, pp. 62-64.

[20] *Id.*, p. 355.

[21] *Id.*, p. 64.

[22] *Id.*, pp. 66-67.

[23] *Id.*, pp. 60-61.

[24] *Id.*, pp. 48-49.

[25] 26 Phil. 632 (1913).

[26] *Supra*, note 10.

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