

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, ELEVENTH DIVISION, LUCILA C. VIANA, SPS. ANTONIO VIANA AND GORGONIA VIANA, AND PIONEER STEVEDORING CORPORATION...

G.R. No. 84458. November 16, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

In this appeal by certiorari, petitioner Aboitiz Shipping Corporation seeks a review of the decision¹ of respondent Court of Appeals, dated July 29, 1988, the decretal portion of which reads:

"WHEREFORE, the judgment appealed from as modified by the order of October 27, 1982, is hereby affirmed with the modification that appellant Aboitiz Shipping is hereby ordered to pay plaintiff-appellees the amount of P30,000.00 for the death of Anacleto Viana; actual damages of P9,800.00; P150,000.00 for unearned income; P7,200.00 as support for deceased's parents; P20,000.00 as moral damages; P10,000.00 as attorney's fees; and to pay the costs."

The undisputed facts of the case, as found by the court a quo and adopted by respondent court, are as follows:

"The evidence disclosed that on May 11, 1975, Anacleto Viana boarded the vessel M/V Antonia, owned by defendant, at the port at San Jose, Occidental Mindoro, bound for Manila, having purchased a ticket (No. 117392) in the sum of P23.10 (Exh. 'B')- On May 12, 1975, said vessel arrived at Pier 4, North Harbor, Manila, and the passengers therein disembarked, a gangplank having been provided connecting the side of the vessel to the pier. Instead of using said gangplank, Anacleto Viana disembarked on the third deck which was on the level with the pier. After said vessel had landed, the Pioneer Stevedoring Corporation took over the exclusive control of the cargoes loaded on said vessel pursuant to the Memorandum of Agreement dated July 26, 1975 (Exh. '2') between the third-party defendant Pioneer Stevedoring Corporation and defendant Aboitiz Shipping Corporation.

"The crane owned by the third-party defendant and operated by its crane operator Alejo Figueroa was placed alongside the vessel and one (1) hour after the passengers of said vessel had disembarked, it started operation by unloading the cargoes from said vessel. While the crane was being operated, Anacleto Viana who had already disembarked from said vessel obviously remembering that some of his cargoes were still loaded in the vessel, went back to the vessel, and it was while he was pointing to the crew of the said vessel to the place where his cargoes were loaded that the crane hit him, pinning him between the side of the vessel and the crane. He was thereafter brought to the hospital where he later expired three (3) days thereafter, on May 15, 1975, the cause of his death according to the Death Certificate (Exh. 'C') being "hypostatic pneumonia secondary to traumatic fracture of the pubic bone lacerating the urinary bladder" (See also Exh. 'B'). For his hospitalization, medical, burial and other miscellaneous expenses, Anacleto's wife, herein plaintiff, spent a total of P9,800.00 (Exhibits 'E', 'E-I' to 'E-5')- Anacleto Viana who was only forty (40) years old when he met said fateful accident (Exh. 'E') was in good health. His average annual income as a farmer or a farm supervisor was 400 cavans of palay annually. His parents, herein plaintiffs Antonio and Gorgonia Viana, prior to his death had

been recipient of twenty (20) cavans of palay as support or P120.00 monthly. Because of Anacleto's death, plaintiffs suffered mental anguish and extreme worry or moral damages. For the filing of the instant case, they had to hire a lawyer for an agreed fee of ten thousand (P10,000.00) pesos." [2]

Private respondents Vianas filed a complaint [3] for damages against petitioner corporation (Aboitiz, for brevity) for breach of contract of carriage.

In its answer, [4] Aboitiz denied responsibility contending that at the time of the accident, the vessel was completely under the control of respondent Pioneer Stevedoring Corporation (Pioneer, for short) as the exclusive stevedoring contractor of Aboitiz, which handled the unloading of cargoes from the vessel of Aboitiz. It is also averred that since the crane operator was not an employee of Aboitiz, the latter cannot be held liable under the fellow-servant rule.

Thereafter, Aboitiz, as third-party plaintiff, filed a third-party complaint [5] against Pioneer imputing liability thereto for Anacleto Viana's death as having been allegedly caused by the negligence of the crane operator who was an employee of Pioneer under its exclusive control and supervision.

Pioneer, in its answer to the third-party complaint, [6] raised the defenses that Aboitiz had no cause of action against Pioneer considering that Aboitiz is being sued by the Vianas for breach of contract of carriage to which Pioneer is not a party; that Pioneer had observed the diligence of a good father of a family both in the selection and supervision of its employees as well as in the prevention of damage or injury to anyone including the victim Anacleto Viana; that Anacleto Viana's gross negligence was the direct and proximate cause of his death; and that the filing of the third-party complaint was premature by reason of the pendency of the criminal case for homicide through reckless imprudence filed against the crane operator, Alejo Figueroa.

In a decision rendered on April 17, 1980 by the trial court, [7] Aboitiz was ordered to pay the Vianas for damages incurred, and Pioneer was ordered to reimburse Aboitiz for whatever amount the latter paid the Vianas. The dispositive portion of said decision provides:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs:

"(1) ordering defendant Aboitiz Shipping Corporation to pay to plaintiffs the sum of P12,000.00 for the death of Anacleto Viana; P9,800.00 as actual damages; P533,200.00 value of the 10,664 cavans of palay computed at P50.00 per cavan; P10,000.00 as attorney's fees; P5,000.00, value of the 100 cavans of palay as support for five (5) years for deceased (sic) parents, herein plaintiffs Antonio and Gorgonia Viana computed at P50.00 per cavan; P7,200.00 as support for deceased's parents computed at P120.00 a month for five years pursuant to Art. 2206, par. 2, of the Civil Code; P20,000.00 as moral damages, and costs; and

"(2) ordering the third-party defendant Pioneer Stevedoring Corporation to reimburse defendant and third party plaintiff-Aboitiz Shipping Corporation the said amounts that it is ordered to pay to herein plaintiffs."

Both Aboitiz and Pioneer filed separate motions for reconsideration wherein they similarly raised the trial court's failure to declare that Anacleto Viana acted with gross negligence despite the overwhelming evidence presented in support thereof. In addition, Aboitiz alleged, in opposition to Pioneer's motion, that under the memorandum of agreement the liability of Pioneer as contractor is automatic for any damages or losses whatsoever occasioned by and arising from the operation of its arrastre and stevedoring service.

In an order dated October 27, 1982, [8] the trial court absolved Pioneer from liability for failure of the Vianas and Aboitiz to preponderantly establish a case of negligence against the crane operator which the court *quo* ruled is never presumed, aside from the fact that the memorandum of agreement supposedly refers only to Pioneer's liability in case of loss or damage to goods handled by it but not in the case of personal injuries, and, finally, that

Aboitiz cannot properly invoke the fellow-servant rule simply because its liability stems from a breach of contract of carriage. The dispositive portion of said order reads:

"WHEREFORE, judgment is hereby modified insofar as third-party defendant Pioneer Stevedoring Corporation is concerned rendered in favor of the plaintiffs:

"(1) Ordering defendant Aboitiz Shipping Corporation to pay the plaintiffs the sum of P12,000.00 for the death of Anacleto Viana; P9,000.00 (sic) as actual damages; P533,200.00 value of the 10,664 cavans of pal ay computed at P50.00 per cavan; P10,000.00 as attorney's fees; P5,000.00 value of the 100 cavans of palay as support for five (5) years for deceased's parents, herein plaintiffs Antonio and Gorgonia Viana, computed at P50.00 per cavan; P7,200.00 as support for deceased's parents computed at P120.00 a month for five years pursuant to Art. 2206, par. 2, of the Civil Code; P20,000.00 as moral damages, and costs; and"

(2) Absolving third-party defendant Pioneer Stevedoring Corporation for (sic) any liability for the death of Anacleto Viana, the passenger of M/V Antonia owned by defendant third-party plaintiff Aboitiz Shipping Corporation it appearing that the negligence of its crane operator has not been established therein."

Not satisfied with the modified judgment of the trial court, Aboitiz appealed the same to respondent Court of Appeals which affirmed the findings of the trial court except as to the amount of damages awarded to the Vianas.

Hence, this petition wherein petitioner Aboitiz postulates that respondent court erred:

"(A) In holding that the doctrine laid down by this Honorable Court in *La Mallorca vs. Court of Appeals, et al* (17 SCRA 739, July 27, 1966) is applicable to the case in the face of the undisputable fact that the factual situation under the *La Mallorca* case is radically different from the facts obtaining in this case;

"(B) In holding petitioner liable for damages in the face of the finding of the court a quo and confirmed by the Honorable respondent Court of Appeals that the deceased, Anacleto Viana was guilty of contributory negligence, which, we respectfully submit, contributory negligence was the proximate cause of his death; specifically the Honorable respondent Court of Appeals failed to apply Art. 1762 of the New Civil Code;

"(C) In the alternative assuming the holding of the Honorable respondent Court of Appeals that petitioner may be legally condemned to pay damages to the private respondents we respectfully submit that it committed a reversible error when it dismissed petitioner's third-party complaint against private respondent Pioneer Stevedoring Corporation instead of compelling the latter to reimburse the petitioner for whatever damages it may be compelled to pay to the private respondents Vianas."[9]

At threshold, it is to be observed that both the trial court and respondent Court of Appeals found the victim Anacleto Viana guilty of contributory negligence, but holding that it was the negligence of Aboitiz in prematurely turning over the vessel to the arrastre operator for the unloading of cargoes which was the direct, immediate and proximate cause of the victim's death.

I. Petitioner contends that since one (1) hour had already elapsed from the time Anacleto Viana disembarked from the vessel and that he was given more than ample opportunity to unload his cargoes prior to the operation of the crane, his presence on the vessel was no longer reasonable and he consequently ceased to be a passenger. Corollarily, it insists that the doctrine in *La Mallorca vs. Court of Appeals, et al*. [10] is not applicable to the case at bar.

The rule is that the relation of carrier and passenger continues until the passenger has been landed at the port of destination and has left the vessel owner's dock or premises. [11] Once created, the relationship will not ordinarily terminate until the passenger has, after reaching his destination, safely alighted from the carrier's conveyance or had a reasonable opportunity to leave the carrier's premises. All persons who remain on the premises a reasonable

time after leaving the conveyance are to be deemed passengers, and what is a reasonable time or a reasonable delay within this rule is to be determined from all the circumstances, and includes a reasonable time to see after his baggage and prepare for his departure.[12] The carrier-passenger relationship is not terminated merely by the fact that the person transported has been carried to his destination if, for example, such person remains in the carrier's premises to claim his baggage.[13]

It was in accordance with this rationale that the doctrine in the aforesaid case of *La Mallorca* was enunciated, to wit:

"It has been recognized as a rule that the relation of carrier and passenger does not cease at the moment the passenger alights from the carrier's vehicle at a place selected by the carrier at the point of destination, but continues until the passenger has had a reasonable time or a reasonable opportunity to leave the carrier's premises. And, what is a reasonable time or a reasonable delay within this rule is to be determined from all the circumstances. Thus, a person who, after alighting from a train, walks along the station platform is considered still a passenger. So also, where a passenger has alighted at his destination and is proceeding by the usual way to leave the company's premises, but before actually doing so is halted by the report that his brother, a fellow passenger, has been shot, and he in good faith and without intent of engaging in the difficulty, returns to relieve his brother, he is deemed reasonably and necessarily delayed and thus continues to be a passenger entitled as such to the protection of the railroad company and its agents.

"In the present case, the father returned to the bus to get one of his baggages which was not unloaded when they alighted from the bus. Racquel, the child that she was, must have followed the father. However, although the father was still on the running board of the bus waiting for the conductor to hand him the bag or bayong, the bus started to run, so that even he (the father) had to jump down from the moving vehicle. It was at this instance that the child, who must be near the bus, was run over and killed. In the circumstances, it cannot be claimed that the carrier's agent had exercised the 'utmost diligence' of a 'very cautious person' required by Article 1755 of the Civil Code to be observed by a common carrier in the discharge of its obligation to transport safely its passengers, x x x The presence of said passengers near the bus was not unreasonable and they are, therefore, to be considered still as passengers of the carrier, entitled to the protection under their contract of carriage." [14]

It is apparent from the foregoing that what prompted the Court to rule as it did in said case is the fact of the passenger's reasonable presence within the carrier's premises. That reasonableness of time should be made to depend on the attending circumstances of the case, such as the kind of common carrier, the nature of its business, the customs of the place, and so forth, and therefore precludes a consideration of the time element per se without taking into account such other factors. It is thus of no moment whether in the cited case of *La Mallorca* there was no appreciable interregnum for the passenger therein to leave the carrier's premises whereas in the case at bar, an interval of one (1) hour had elapsed before the victim met the accident. The primary factor to be considered is the existence of a reasonable cause as will justify the presence of the victim on or near the petitioner's vessel. We believe there exists such a justifiable cause.

It is of common knowledge that, by the very nature of petitioner's business as a shipper, the passengers of vessels are allotted a longer period of time to disembark from the ship than other common carriers such as a passenger bus. With respect to the bulk of cargoes and the number of passengers it can load, such vessels are capable of accommodating a bigger volume of both as compared to the capacity of a regular commuter bus. Consequently, a ship passenger will need at least an hour as is the usual practice, to disembark from the vessel and claim his baggage whereas a bus passenger can easily get off the bus and retrieve his luggage in a very short period of time. Verily, petitioner cannot categorically claim, through the bare expedient of comparing the period of time entailed in getting the passenger's cargoes, that the ruling in *La Mallorca* is inapplicable to the case at bar. On the contrary, if we are to apply the doctrine enunciated therein to the instant petition, we cannot in reason doubt that the victim

Anacleto Viana was still a passenger at the time of the incident. When the accident occurred, the victim was in the act of unloading his cargoes, which he had every right to do, from petitioner's vessel. As earlier stated, a carrier is duty bound not only to bring its passengers safely to their destination but also to afford them a reasonable time to claim their baggage.

It is not definitely shown that one (1) hour prior to the incident, the victim had already disembarked from the vessel. Petitioner failed to prove this. What is clear to us is that at the time the victim was taking his cargoes, the vessel had already docked an hour earlier. In consonance with common shipping procedure as to the minimum time of one (1) hour allowed for the passengers to disembark, it may be presumed that the victim had just gotten off the vessel when he went to retrieve his baggage. Yet, even if he had already disembarked an hour earlier, his presence in petitioner's premises was not without cause. The victim had to claim his baggage which was possible only one (1) hour after the vessel arrived since it was admittedly standard procedure in the case of petitioner's vessel arrived since it was admittedly standard procedure in the case of petitioner's vessel that the unloading operations shall start only after that time. Consequently, under the foregoing circumstances, the victim Anacleto Viana is still deemed a passenger of said carrier at the time of his tragic death.

II. Under the law, common carriers are, from the nature of their business and for reasons of public policy, bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.[15] More particularly, a common carrier is 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.[16] Thus, where a passenger dies or is injured, the common carrier is presumed to have been at fault or to have acted negligently.[17] This gives rise to an action for breach of contract of carriage where all that is required of plaintiff is to prove the existence of the contract of carriage and its non-performance by the carrier, that is, the failure of the carrier to carry the passenger safely to his destination,[18] which, in the instant case, necessarily includes its failure to safeguard its passenger with extraordinary diligence while such relation subsists.

The presumption is, therefore, established by law that in case of passenger's death or injury the operator of the vessel was at fault or negligent, having failed to exercise extraordinary diligence, and it is incumbent upon it to rebut the same. This is in consonance with the avowed policy of the State to afford full protection to the passengers of common carriers which can be carried out only by imposing a stringent statutory obligation upon the latter. Concomitantly, this Court has likewise adopted a rigid posture in the application of the law by exacting the highest degree of care and diligence from common carriers, bearing utmost in mind the welfare of the passengers who often become hapless victims of indifferent and profit-oriented carriers. We cannot in reason deny that petitioner failed to rebut the presumption against it. Under the facts obtaining in the present case, it cannot be gainsaid that petitioner had inadequately complied with the required degree of diligence to prevent the accident from happening.

As found by the Court of Appeals, the evidence does not show that there was a cordon of drums around the perimeter of the crane, as claimed by petitioner. It also adverted to the fact that the alleged presence of visible warning signs in the vicinity was disputable and not indubitably established. Thus, we are not inclined to accept petitioner's explanation that the victim and other passengers were sufficiently warned that merely venturing into the area in question was fraught with serious peril. Definitely, even assuming the existence of the supposed cordon of drums loosely placed around the unloading area and the guard's admonitions against entry therein, these were at most insufficient precautions which pale into insignificance if considered vis-a-vis the gravity of the danger to which the deceased was exposed. There is no showing that petitioner was extraordinarily diligent in requiring or seeing to it that said precautionary measures were strictly and actually enforced to subserve their

purpose of preventing entry into the forbidden area. By no stretch of liberal evaluation can such perfunctory acts approximate the "utmost diligence of very cautious persons" to be exercised "as far as human care and foresight can provide" which is required by law of common carriers with respect to their passengers.

While the victim was admittedly contributorily negligent, still petitioner's aforesaid failure to exercise extraordinary diligence was the proximate and direct cause of, because it could definitely have prevented, the former's death. Moreover, in paragraph 5.6 of its petition, at bar,[19] petitioner has expressly conceded the factual finding of respondent Court of Appeals that petitioner did not present sufficient evidence in support of its submission that the deceased Anacleto Viana was guilty of gross negligence. Petitioner cannot now be heard to claim otherwise.

No excepting circumstance being present, we are likewise bound by respondent court's declaration that there was no negligence on the part of Pioneer Stevedoring Corporation, a confirmation of the trial court's finding to that effect, hence our conformity to Pioneer's being absolved of any liability.

As correctly observed by both courts, Aboitiz joined Pioneer in proving the alleged gross negligence of the victim, hence its present contention that the death of the passenger was due to the negligence of the crane operator cannot be sustained both on grounds of estoppel and for lack of evidence on its present theory. Even in its answer filed in the court below it readily alleged that Pioneer had taken the necessary safeguards insofar as its unloading operations were concerned, a fact which appears to have been accepted by the plaintiff therein by not impleading Pioneer as a defendant, and likewise inceptively by Aboitiz by filing its third-party complaint only after ten (10) months from the institution of the suit against it. Parenthetically, Pioneer is not within the ambit of the rule on extraordinary diligence required of, and the corresponding presumption of negligence foisted on, common carriers like Aboitiz. This, of course, does not detract from what we have said that no negligence can be imputed to Pioneer but, that on the contrary, the failure of Aboitiz to exercise extraordinary diligence for the safety of its passenger is the rationale for our finding on its liability.

WHEREFORE, the petition is DENIED and the judgment appealed from is hereby AFFIRMED in toto.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Justice Nicolas P. Lapena, Jr. and concurred in by Associate Justices Fidel P. Purisima and Segundino G. Chua, Rollo, 79-100.

[2] Rollo, 88-89.

[3] Annex A, Petition; Rollo, 23-27.

[4] Annex B, id.; *ibid.*, 28-30.

[5] Annex C, id.: *ibid.* 31-32.

[6] Annex D, id; *ibid.*, 33-38.

[7] Penned by Judge Wmlelmo C. Fortun; Annex E. id: *ibid.*, 39-44.

[8] Penned by Judge Jose H. Tecson; Annex F, id.; *ibid.*, 45-61.

[9] Petition, 4; Rollo, 9.

[10] 17 SCRA 739 (1966).

[11] 80 C.J.S. 1086,

[12] 13 C.J.S. 1073.

[13] 14 Am. Jur., 2d 250.

[14] Supra, 743-744.

[15] Art. 1733, Civil Code

[16] Art. 1755, id.

[17] Art. 1756, id.

[18] Casto vs. Acro Taxicab Co., Inc., 83 Phil. 359 (1948); Brito Sy vs. Malate Taxicab and Garage, Inc., 102 Phil 482 (1957).

[19] Rollo, 16-17.

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