

**JOSE P. MECENAS, ROMEO P. MECENAS, LILIA P. MECENAS,
ORLANDO P. MECENAS, VIOLETA M. ACERVO, LUZVIMINDA P.
MECENAS; AND OFELIA M. JAVIER, PETITIONERS, VS. HON. COURT
OF APPEALS, ...**

G.R. No. 88052. December 14, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

At 6:20 o'clock in the morning of 22 April 1980, the M/T "Tacloban City," a barge-type oil tanker of Philippine registry, with a gross tonnage of 1,241.68 tons, owned by the Philippine National Oil Company (PNOC) and operated by the PNOC Shipping and Transport Corporation (PNOC Shipping), having unloaded its cargo of petroleum products, left Amlan, Negros Occidental, and headed towards Bataan. At about 1:00 o'clock in the afternoon of that same day, the M/V "Don Juan," an inter-island vessel, also of Philippine registry, of 2,391.31 tons gross weight, owned and operated by the Negros Navigation Co., Inc. (Negros Navigation) left Manila bound for Bacolod with seven hundred fifty (750) passengers listed in its manifest, and a complete set of officers and crew members.

On the evening of that same day, 22 April 1980, at about 10:30 o'clock, the "Tacloban City" and the "Don Juan" collided at the Talbas Strait near Maestra de Campo Island in the vicinity of the island of Mindoro. When the collision occurred, the sea was calm, the weather fair and visibility good. As a result of this collision, the M/V "Don Juan" sank and hundreds of its passengers perished. Among the ill-fated passengers were the parents of petitioners, the spouses Perfecto Mecenas and Sofia Mecenas, whose bodies were never found despite intensive search by petitioners.

On 29 December 1980, petitioners filed a complaint in the then Court of First Instance of Quezon City, docketed as Civil Case No. Q-31525, against private respondents Negros Navigation and Capt. Roger Santisteban, the captain of the "Don Juan" without, however, impleading either PNOC or PNOC Shipping. In their complaint, petitioners alleged that they were the seven (7) surviving legitimate children of Perfecto Mecenas and Sofia Mecenas and that the latter spouses perished in the collision which had resulted from the negligence of Negros Navigation and Capt. Santisteban. Petitioners prayed for actual damages of not less than P100,000.00 as well as moral and exemplary damages in such amount as the Court may deem reasonable to award to them.

Another complaint, docketed as Civil Case No. Q-33932, was filed in the same court by Lilia Ciocon claiming damages against Negros Navigation, PNOC and PNOC Shipping for the death of her husband Manuel Ciocon, another of the luckless passengers of the "Don Juan." Manuel Ciocon's body, too, was never found.

The two (2) cases were consolidated and heard jointly by the Regional Trial Court of Quezon City, Branch 82. On 17 July 1986, after trial, the trial court rendered a decision, the dispositive part of which read as follows:

"WHEREFORE, the Court hereby renders judgment ordering:

a) The defendant Negros Navigation Co., Inc. and Capt. Roger Santisteban jointly and severally liable to pay plaintiffs in Civil Case No. Q-31525, the sum of P400,000.00 for the death of plaintiffs' parents, Perfecto A. Mecnas and Sofia P. Mecnas; to pay said plaintiffs the sum of P15,000.00 as and for attorney's fees; plus costs of the suit.

b) Each of the defendants Negros Navigation Co, Inc. and Philippine National Oil Company/PNOC Shipping and Transportation Company, to pay the plaintiff in Civil Case No. Q-33932, the sum of P100,000.00 for the death of Manuel Ciocon, to pay said plaintiff jointly and severally, the sum of P15,000.00 as and for attorney's fees, plus costs of the suit."[1]

Negros Navigation, Capt. Santisteban, PNOC and PNOC Shipping appealed the trial court's decision to the Court of Appeals. Later, PNOC and PNOC Shipping withdrew their appeal citing a compromise agreement reached by them with Negros Navigation; the Court of Appeals granted the motion by a resolution dated 5 September 1988, subject to the reservation made by Lilia Ciocon that she could not be bound by the compromise agreement and would enforce the award granted her by the trial court.

In time, the Court of Appeals rendered a decision dated 26 January 1989 which decreed the following:

"WHEREFORE, in view of the foregoing, the decision of the court a quo is hereby affirmed as modified with respect to Civil Case No. 31525, wherein defendant appellant Negros Navigation Co. Inc. and Capt. Roger Santisteban are held jointly and severally liable to pay the plaintiffs the amount of P100,000.00 as actual and compensatory damages and P15,000.00 as attorney's fees and the cost of the suit."[2]

The issue to be resolved in this Petition for Review is whether or not the Court of Appeals had erred in reducing the amount of the damages awarded by the trial court to the petitioners from P400,000.00 to P100,000.00.

We note that the trial court had granted petitioners the sum of P400,000.00 "for the death of [their parents]" plus P15,000.00 as attorney's fees, while the Court of Appeals awarded them P100,000.00 "as actual and compensatory damages" and P15,000.00 as attorney's fees. To determine whether such reduction of the damages awarded was proper, we must first determine whether petitioners were entitled to an award of damages other than actual or compensatory damages, that is, whether they were entitled to award of moral and exemplary damages.

We begin by noting that both the trial court and the Court of Appeals considered the action (Civil Case No. Q-31525) brought by the sons and daughters of the deceased Mecnas spouses against Negros Navigation as based on quasi-delict. We believe that that action is more appropriately regarded as grounded on contract, the contract of carriage between the Mecnas spouses as regular passengers who paid for their boat tickets and Negros Navigation; the surviving children while not themselves passengers are in effect suing the carrier in representation of their deceased parents.[3] Thus, the suit (Civil Case No. Q-33932) filed by the widow Lilia Ciocon was correctly treated by the trial and appellate courts as based on contract (vis-a-vis Negros Navigation) and as well on quasi-delict (vis-a-vis PNOC and PNOC Shipping). In an action based upon a breach of the contract of carriage, the carrier under our civil law is liable for the death of passengers arising from the negligence or wilful act of the carrier's employees although such employees may have acted beyond the scope of their authority or even in violation of the instructions of the carrier[4], which liability may include liability for moral damages.[5] It follows that petitioners would be entitled to moral damages so long as the collision with the "Tacloban City" and the sinking of the "Don Juan" were caused or attended by negligence on the part of private respondents.

In respect of the petitioners' claim for exemplary damages, it is only necessary to refer to Article 2232 of the Civil Code:

"Article 2332. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner." [6]

Thus, whether petitioners are entitled to exemplary damages as claimed must depend upon whether or not private respondents acted recklessly, that is, with gross negligence.

We turn, therefore, to a consideration of whether or not Negros Navigation and Capt. Santisteban were grossly negligent during the events which culminated in the collision with "Tacloban City" and the sinking of the "Don Juan" and the resulting heavy loss of lives.

The then Commandant of the Philippine Coast Guard, Commodore B.C. Ochoco, in a decision dated 2 March 1981, held that the "Tacloban City" was "primarily and solely [sic] at fault and responsible for the collision." [7] Initially, the Minister of National Defense upheld the decision of Commodore Ochoco. [8] On Motion for Reconsideration, however, the Minister of National Defense reversed himself and held that both vessels had been at fault:

"It is therefore evident from a close and thorough review of the evidence that fault is imputable to both vessels for the collision. Accordingly, the decision dated March 12, 1982, subject of the Motion for Reconsideration filed by counsel of M/T Tacloban City, is hereby reversed. However, the administrative penalties imposed on both vessels and their respective crew concerned are hereby affirmed. [9]

The trial court, after a review of the evidence submitted during the trial, arrived at the same conclusion that the Minister of National Defense had reached that both the "Tacloban City" and the "Don Juan" were at fault in the collision. The trial court summarized the testimony and evidence of PNOC and PNOC Shipping as well as of Negros Navigation in the following terms:

"Defendant PNOC's version of the incident:

"M/V Don Juan was first sighted at about 5 or 6 miles from Tacloban City (TSN, January 21, 1985, p. 13); it was on the starboard (right) side of Tacloban City. This was a visual contact; not picked up by radar (p. 15, *ibid*). Tacloban City was travelling 310 degrees with a speed of 6 knots, estimated speed of Don Juan of 16 knots (TSN, May 9, pp. 5-6). As Don Juan approached, Tacloban City gave a leeway of 10 degrees to the left. 'The purpose was to enable Tacloban to see the direction of Don Juan (p. 19, *ibid*). Don Juan switched to green light, signifying that it will pass Tacloban City's right side; it will be a starboard to starboard passing (p. 21, *ibid*).' Tacloban City's purpose in giving a leeway of 10 degrees at this point, is to give Don Juan more space for her passage (p. 22, *ibid*). This was increased by Tacloban City to an additional 15 degrees towards the left (p. 22, *ibid*). The way was clear and Don Juan has not changed its course (TSN, May 9, 1985, p. 39).

"When Tacloban City altered its course the second time, from 300 degrees to 285 degrees, Don Juan was about 4.5 miles away (TSN, May 9, 1985, p. 7).

"Despite executing a hardport maneuver, the collision nonetheless occurred. Don Juan rammed the Tacloban City near the starboard bow (p. 7, *ibid*)."

NENACO's [Negros Navigation] version.

"Don Juan first sighted Tacloban City 4 miles away, as shown by radar (p. 13, May 24, 1983). Tacloban City showed its red and green lights twice; it proceeded to, and will cross, the path of Don Juan. Tacloban was on the left side of Don Juan (TSN, April 20, 1983, p. 4).

"Upon seeing Tacloban's red and green lights, Don Juan executed hard starboard (TSN, p. 4, *ibid*). This maneuver is in conformity with the rule that 'when both vessels are head on or nearly head on, each vessel must turn to the right in order to avoid each other.' (p. 5, *ibid*). Nonetheless, Tacloban appeared to be heading

towards Don Juan (p. 6, *ibid*).

"When Don Juan executed hard starboard, Tacloban was about 1,500 feet away (TSN, May 24, 1983, p. 6). Don Juan, after execution of hard starboard, will move forward 200 meters before the vessel will respond to such maneuver (p. 7, *ibid*). The speed of Don Juan at that time was 17 knots; Tacloban City 6.3 knots.

"Between 9 to 15 seconds from execution of hard starboard, collision occurred (p. 8, *ibid*). (pp. 3-4 Decision)."[10]

The trial court concluded:

"M/V Don Juan and Tacloban City became aware of each other's presence in the area by visual contact at a distance of something like 6 miles from each other. They were fully aware that if they continued on their course, they will meet head on. Don Juan steered to the right; Tacloban City continued its course to the left. There can be no excuse for them not to realize that, with such maneuvers, they will collide. They executed maneuvers inadequate, and too late, to avoid collision.

"The Court is of the considered view that the defendants are equally negligent and are liable for damages. (p. 4, Decision)."[11]

The Court of Appeals, for its part, reached the same conclusion.[12]

There is, therefore, no question that the "Don Juan" was at least as negligent as the M/T "Tacloban City" in the events leading up to the collision and the sinking of the "Don Juan." The remaining question is whether the negligence on the part of the "Don Juan" reached that level of recklessness or gross negligence that our Civil Code requires for the imposition of exemplary damages. Our own review of the record in the case at bar requires us to answer this in the affirmative.

In the first place, the report of the Philippine Coast Guard Commandant (Exhibit "10"), while holding the "Tacloban City" as "primarily and solely [*sic*] at fault and responsible for the collision," did itself set out that there had been fault or negligence on the part of Capt. Santisteban and his officers and crew before the collision and immediately after contact of the two (2) vessels. The decision of Commodore Ochoco said:

"x x x x x x x x

MS Don Juan's Master, Capt. Rogelio Santisteban, was playing mahjong before and up to the time of collision. Moreover, after the collision, he failed to institute appropriate measures to delay the sinking of MS Don Juan and to supervise properly the execution of his order of abandonship. As regards the officer on watch, Senior 3rd Mate Rogelio Devera, he admitted that he failed or did not call or inform Capt. Santisteban of the imminent danger of collision and of the actual collision itself. Also, he failed to assist his master to prevent the fast sinking of the ship. The record also indicates that Auxiliary Chief Mate Antonio Labordo displayed laxity in maintaining order among the passengers after the collision.

x x x x x x x x."[13]

We believe that the behaviour of the captain of the "Don Juan" in this instance -- playing mahjong "before and up to the time of collision" -- constitutes behaviour that is simply unacceptable on the part of the master of a vessel to whose hands the lives and welfare of at least seven hundred fifty (750) passengers had been entrusted. Whether or not Capt. Santisteban was "off-duty" or "on-duty" at or around the time of actual collision is quite immaterial; there is, both realistically speaking and in contemplation of law, no such thing as "off-duty" hours for the master of a vessel at sea that is a common carrier upon whom the law imposes the duty of extraordinary diligence --?

"[t]he duty 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.[14]

The record does not show that that was the first or only time that Capt. Santisteban had entertained himself during a voyage by playing mahjong with his officers and passengers; Negros Navigation in permitting, or in failing to discover and correct such behaviour, must be deemed grossly negligent.

Capt. Santisteban was also faulted in the Philippine Coast Guard decision for failing after the collision, "to institute appropriate measures to delay the sinking of M/V Don Juan." This appears to us to be a euphemism for failure to maintain the seaworthiness or the water-tight integrity of the "Don Juan." The record shows that the "Don Juan" sank within ten (10) to fifteen (15) minutes after initial contact with the "Tacloban City." [15] While the failure of Capt. Santisteban to supervise his officers and crew in the process of abandoning the ship and his failure to avail of measures to prevent the too rapid sinking of his vessel after collision, did not cause the collision by themselves, such failures doubtless contributed materially to the consequent loss of life and, moreover, were indicative of the kind and level of diligence exercised by Capt. Santisteban in respect of his vessel and his officers and men prior to actual contact between the two (2) vessels. The officer-on-watch in the "Don Juan" admitted that he had failed to inform Capt. Santisteban not only of the "imminent danger of collision" but even of "the actual collision itself."

There is also evidence that the "Don Juan" was carrying more passengers than she had been certified as allowed to carry. The Certificate of Inspection, [16] dated 27 August 1979, issued by the Philippine Coast Guard Commander at Iloilo City, the Don Juan's home port, states:

Passengers allowed

:

810

Total Persons Allowed

:

864

The report of the Philippine Coast Guard (Exhibit "10") stated that the "Don Juan" had been "officially cleared with 878 passengers on-board when she sailed from the port of Manila on April 22, 1980 at about 1:00 p.m." This head-count of the passengers "did not include the 126 crew members, children below three (3) years old and two (2) half-paying passengers" which had been counted as one adult passenger. [17] Thus, the total number of persons on board the "Don Juan" on that ill-starred night of 22 April 1980 was 1,004, or 140 persons more than the maximum number that could be safely carried by the "Don Juan," per its own Certificate of Inspection. [18] We note in addition, that only 750 passengers had been listed in its manifest for its final voyage; in other words, at least 128 passengers on board had not even been entered into the "Don Juan's" manifest. The "Don Juan's" Certificate of Inspection showed that she carried life boat and life raft accommodations for only 864 persons, the maximum number of persons she was permitted to carry; in other words, she did not carry enough boats and life rafts for all the persons actually on board that tragic night of 22 April 1980.

We hold that under these circumstances, a presumption of gross negligence on the part of the vessel (her officers and crew) and of its shipowner arises; this presumption was never rebutted by Negros Navigation.

The grossness of the negligence of the "Don Juan" is underscored when one considers the foregoing circumstances in the context of the following facts: Firstly, the "Don Juan" was more than twice as fast as the "Tacloban City." The "Don Juan's" top speed was 17 knots; while that of the "Tacloban City" was 6.3 knots. [19] Secondly, the "Don Juan" carried the full complement of officers and crew members specified for a passenger

vessel of her class. Thirdly, the "Don Juan" was equipped with radar which was functioning that night. Fourthly, the "Don Juan's" officer on-watch had sighted the "Tacloban City" on his radar screen while the latter was still four (4) nautical miles away. Visual confirmation of radar contact was established by the "Don Juan" while the "Tacloban City" was still 2.7 miles away.[20] In the total set of circumstances which existed in the instant case, the "Don Juan," had it taken seriously its duty of extraordinary diligence, could have easily avoided the collision with the "Tacloban City." Indeed, the "Don Juan" might well have avoided the collision even if it had exercised ordinary diligence merely.

It is true that the "Tacloban City" failed to follow Rule 18 of the International Rules of the Road which requires two (2) power-driven vessels meeting end on or nearly end on each to alter her course to starboard (right) so that each vessel may pass on the port side (left) of the other.[21] The "Tacloban City," when the two (2) vessels were only three-tenths (0.3) of a mile apart, turned (for the second time) 15° to port side while the "Don Juan" veered hard to starboard. This circumstance, while it may have made the collision immediately inevitable, cannot, however, be viewed in isolation from the rest of the factual circumstances obtaining before and up to the collision. In any case, Rule 18 like all other International Rules of the Road, are not to be obeyed and construed without regard to all the circumstances surrounding a particular encounter between two (2) vessels.[22] In ordinary circumstances, a vessel discharges her duty to another by a faithful and literal observance of the Rules of Navigation,[23] and she cannot be held at fault for so doing even though a different course would have prevented the collision. This rule, however, is not to be applied where it is apparent, as in the instant case, that her captain was guilty of negligence or of a want of seamanship in not perceiving the necessity for, or in so acting as to create such necessity for, a departure from the rule and acting accordingly.[24] In other words, "rote observance" of the International Rules of the Road will not relieve a vessel from responsibility if the collision could have been avoided by proper care and skill on her part or even by a departure from the rules.[25]

In the petition at bar, the "Don Juan" having sighted the "Tacloban City" when it was still a long way off was negligent in failing to take early preventive action and in allowing the two (2) vessels to come to such close quarters as to render the collision inevitable when there was no necessity for passing so near to the "Tacloban City" as to create that hazard or inevitability, for the "Don Juan" could choose its own distance.[26] It is noteworthy that the "Tacloban City," upon turning hard to port shortly before the moment of collision, signalled its intention to do so by giving two (2) short blasts with its horn.^{26A} The "Don Juan" gave no answering horn blast to signal its own intention and proceeded to turn hard to starboard.^{26B}

We conclude that Capt. Santisteban and Negros Navigation are properly held liable for gross negligence in connection with the collision of the "Don Juan" and "Tacloban City" and the sinking of the "Don Juan" leading to the death of hundreds of passengers. We find no necessity for passing upon the degree of negligence or culpability properly attributable to PNOG and PNOG Shipping or the master of the "Tacloban City," since they were never impleaded here.

It will be recalled that the trial court had rendered a lump sum of P400,000.00 to petitioners for the death of their parents in the "Don Juan" tragedy. Clearly, the trial court should have included a breakdown of the lump sum award into its component parts: compensatory damages, moral damages and exemplary damages. On appeal, the Court of Appeals could have and should have itself broken down the lump sum award of the trial court into its constituent parts; perhaps, it did, in its own mind. In any case, the Court of Appeals apparently relying upon *Manchester Development Corporation v. Court of Appeals*[27] reduced the P400,000.00 lump sum award into a P100,000.00 for actual and compensatory damages only.

We believe that the Court of Appeals erred in doing so. It is true that the petitioners' complaint before the trial court had in the body indicated that the petitioner-plaintiffs believed that moral damages in the amount of at least

P1,400,000.00 were properly due to them (not P12,000,000.00 as the Court of Appeals erroneously stated) as well as exemplary damages in the sum of P100,000.00 and that in the prayer of their complaint, they did not specify the amount of moral and exemplary damages sought from the trial court. We do not believe, however, that the Manchester doctrine, which has been modified and clarified in subsequent decision by the Court in Sun Insurance Office, Ltd. (SIOL), et al. v. Asuncion, et al.,[28] can be applied in the instant case so as to work a striking out of that portion of the trial court's award which could be deemed notionally to constitute an award of moral and exemplary damages. Manchester was promulgated by the Court on 7 May 1987. Circular No. 7 of this Court, which embodied the doctrine in Manchester, is dated 24 March 1988. Upon the other hand, the complaint in the case at bar was filed on 29 December 1980, that is, long before either Manchester or Circular No. 7 of 24 March 1988 emerged. The decision of the trial court was itself promulgated on 17 July 1986, again, before Manchester and Circular No. 7 were promulgated. We do not believe that Manchester should have been applied retroactively to this case where a decision on the merits had already been rendered by the trial court, even though such decision was then under appeal and had not yet reached finality. There is no indication at all that petitioners here sought simply to evade payment of the court's filing fees or to mislead the court in the assessment of the filing fees. In any event, we apply Manchester as clarified and amplified by Sun Insurance Office Ltd. (SIOL), by holding that the petitioners shall pay the additional filing fee that is properly payable given the award specified below, and that such additional filing fee shall constitute a lien upon the judgment.

We consider, finally, the amount of damages -- compensatory, moral and exemplary -- properly imposable upon private respondents in this case. The original award of the trial court of P400,000.00 could well have been disaggregated by the trial court and the Court of Appeals in the following manner:

(1) actual or compensatory damages proved in the course of trial consisting of actual expenses incurred by petitioners in their search for their parents' bodies -- P126,000.00

(2) actual or compensatory damages in case of wrongful death (P30,000.00 x 2)
-- P 60,000.00[29]

(3) moral damages -- P107,000.00

(4) exemplary damages -- P107,000.00

T o t a l -- P400,000.00

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Considering that petitioners, legitimate children of the deceased spouses Mecenaz, are seven (7) in number and that they lost both father and mother in one fell blow of fate, and considering the pain and anxiety they doubtless experienced while searching for their parents among the survivors and the corpses recovered from the sea or washed ashore, we believe that an additional amount of P200,000.00 for moral damages, making a total of P307,000.00 as moral damages, would be quite reasonable.

Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour. In requiring compliance with the standard of extraordinary diligence, a standard which is in fact that of the highest possible degree of diligence, from common carriers and in creating a presumption of negligence against them, the law seeks to compel them to control their employees, to tame their reckless instincts and to force them to take adequate care of human beings and their property. The Court will take judicial notice of the dreadful regularity with which grievous maritime disasters occur in our waters with massive loss of life. The bulk of our population is too poor to afford domestic air transportation. So it is that notwithstanding the frequent sinking of passenger

vessels in our waters, crowds of people continue to travel by sea. This Court is prepared to use the instruments given to it by the law for securing the ends of law and public policy. One of those instruments is the institution of exemplary damages; one of those ends, of special importance in an archipelagic state like the Philippines, is the safe and reliable carriage of people and goods by sea. Considering the foregoing, we believe that an additional award in the amount of P200,000.00 as exemplary damages, making a total award of P307,000.00 as exemplary damages, is quite modest.

The Court is aware that petitioners here merely asked for the restoration of the P400,000.00 award of the trial court. We underscore once more, however, the firmly settled doctrine that this Court may consider and resolve all issues which must be decided in order to render substantial justice to the parties, including issues not explicitly raised by the party affected. In the case at bar, as in *Kapalaran Bus Line v. Coronado, et al.*,^[30] both the demands of substantial justice and the imperious requirements of public policy compel us to the conclusion that the trial court's implicit award of moral and exemplary damages was erroneously deleted and must be restored and augmented and brought more nearly to the level required by public policy and substantial justice.

WHEREFORE, the Petition for Review on Certiorari is hereby GRANTED and the Decision of the Court of Appeals insofar as it reduced the amount of damages awarded to petitioners to P100,000.00 is hereby REVERSED and SET ASIDE. The award granted by the trial court is hereby RESTORED and AUGMENTED as follows:

- (a) P126,000.00 for actual damages;
- (b) P60,000.00 as compensatory damages for wrongful death;
- (c) P307,000.00 as moral damages;
- (d) P307,000.00 as exemplary damages making a total of P800,000.00; and
- (e) P15,000.00 as attorney's fees.

Petitioners shall pay the additional filing fees properly due and payable in view of the award here made, which fees shall be computed by the Clerk of Court of the trial court and shall constitute a lien upon the judgment here awarded. Costs against private respondents.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 60.

[2] Rollo, p. 40.

[3] See e.g. *Necesito v. Paras*, 104 Phil. 84 (1958); *Batangas Transportation Co. v. Caguimbal, et al.*, 22 SCRA 171 (1968); and *Davila v. Philippine Airlines*, 49 SCRA 497 (1973).

[4] Article 1759, Civil Code.

[5] Article 1764, Civil Code.

[6] See, e.g., *Marchan v. Mendoza*, 26 SCRA 731 (1961); underscoring supplied.

[7] BMI Case No. 415-80; Exhibit "10," Folder of Exhibits.

[8] See Decision, dated 12 March 1982, of the Minister of National Defense; Exhibit "11," Folder of Exhibits; underscoring supplied.

[9] Exhibit "13," Folder of Exhibits; underscoring supplied.

[10] Court of Appeals' Decision; Rollo, pp. 33-34.

[11] Regional Trial Court's Decision; Rollo p. 59; underscoring supplied.

[12] Decision, C.A. - G.R. CV No. 13802, p. 8; Rollo p. 38.

[13] Exhibit "E," Folder of Exhibits; underscoring supplied.

[14] Article 1755, Civil Code; underscoring supplied.

[15] Decision, dated 24 July 1984, Minister of National Defense; Exhibit "13." There, the M/T Tacloban City urged, that the Don Juan was in fact unseaworthy, that she sank in ten (10) minutes "after only one of her holds was punctured when she was supposed to remain afloat even with two (2) adjacent compartments completely flooded, suggesting that her water-tight integrity had been tampered with x x x."

[16] Exhibit "1-A" (Negros Navigation), Folder of Exhibits.

[17] Exhibit "10," p. 5.

[18] See also the "Certificate of Stability," dated 16 December 1976, of the Don Juan ("Exhibit "6-A," Folder of Exhibits) stating that the number of persons on board shall not exceed the authorized number stipulated in the Certificate of Inspection.

[19] Decision, dated 24 July 1984 of the Minister of National Defense, Exhibit "13," Folder of Exhibits.

[20] BMI Case No. 415-80; Exhibit "10", folder of Exhibits. It should not escape notice that the "Tacloban City" had visually sighted the "Don Juan" when the latter was still 5 or 6 miles away, much sooner than the "Don Juan" had done.

[21] "Rule 18. (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.

(b) For the purposes of this Rule and Rules 19 to 29 inclusive, except Rule 20 (c) and Rule 28, a seaplane on the water shall be deemed to be a vessel, and the expression 'power-driven vessel' shall be construed accordingly." (Annex A, Philippine Merchant Marine Rules and Regulations, 540-541 [published by the Philippine Coast Guard; 1977]).

[22] Thus, e.g.:

"Rule 19. When two-power driven vessels are crossing, so as to involve risk of collision, the vessel which has the

other on her own starboard side shall keep out of the way of the other."

"Rule 22. Every vessel which is directed by these Rules to keep out of the way of another vessel shall, so far as possible, take positive early action to comply with this obligation, and shall, if the circumstances of the case admit, avoid crossing ahead of the other."

"Rule 27. In obeying and construing these Rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances, including the limitations of the craft involved, which may render a departure from the above Rules necessary in order to avoid immediate danger."

"Rule 29. Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case." (Underscoring supplied)

[23] *The Oregon*, 158 U.S. 186, 49 L ed. 943 (1895).

[24] *The Steamship Nacoochee v. Mosley, et al.*, 137 U.S. 330, 34 L ed. 687 (1890). See also Healy and Sharpe, *Cases and Materials on Admiralty*, 2nd ed. (1986) p. 585.

[25] *The New York* 175 U.S. 187, 44 L ed. 126 (1899); *The America*, 92 U.S. 432, 23 L ed. 724 (1876). See also Schoenbaum, *Admiralty and Maritime Law* (1987), p. 449.

[26] *Urrutia & Co. v. Baco River Plantation Co.*, 26 Phil. 632 (1913) quoting with approval "*The Genesee Chief*" 12 How. 443.

26A TSN, January 21, 1985, p. 23; see Rule 28, *Inter-national Rules of the Road*.

26B *Ibid*, p. 30.

[27] 149 SCRA 562 (1987).

[28] G.R. Nos. 79937-38, promulgated 13 February 1988.

[29] See, e.g., *Spouses Federico Franco and Felicisima R. Franco v. Intermediate Appellate Court, et al.*, G.R. No. 71137, promulgated 5 October 1989.

[30] G.R. No. 85531, promulgated 25 August 1989.

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