

**SULPICIO LINES, INC. AND CRESENCIO G. CASTANEDA,
PETITIONERS, VS. COURT OF APPEALS AND AQUARIUS FISHING CO.,
INC., RESPONDENTS.**

G.R. No. 93291. March 29, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision, dated November 29, 1989, of the Court of Appeals[1] in CA GR No. 15081, and the Resolution, dated April 24, 1990, denying petitioners' Motion for Reconsideration.

The facts that matter are as follows:

The case stemmed from a complaint for damages of Aquarius Fishing Co., Inc. against Sulpicio Lines, Inc. and Cresencio G. Castaneda, docketed as Civil Case No. 14510 before Branch 44 of Regional Trial Court in Bacolod City. In due time, said defendants submitted their Answer with counterclaim.

On May 31, 1986, the trial court came out with its Decision in favor of plaintiff Aquarius Fishing Co., Inc. ratiocinating and disposing thus:

The question to be determined is whether the collision between M/V Don Sulpicio and F/B Aquarius 'G' was due to the negligence of the defendants or of the plaintiff. It is admitted in the evidence that at a distance of about 4 miles M/V Don Sulpicio has sighted 2 fishing boats, namely: F/B Aquarius 'C' and F/B Aquarius 'G' although defendants maintained it was F/B Aquarius 'B'. From the evidence it appears that the 2 fishing boats had a speed of about 7.5 to 8 knots per hour while M/V Don Sulpicio was running about 15.5 knots per hour. It would appear that the speed of M/V Don Sulpicio was more than twice as fast as the speed of the two fishing boats. The weather at that time the accident happened was clear and visibility was good. In other words, from the distance of about four miles at sea, the men of Don Sulpicio could clearly see the 2 fishing boats which were ahead about 4 miles and likewise, the men of the 2 fishing boats could clearly see M/V Don Sulpicio following. The plaintiff claims that they continued on their speed in their course and while maintaining their speed they were rammed by M/V Don Sulpicio.

Defendants claim that plaintiff was negligent and that the collision was due to the negligence of the men manning F/B Aquarius 'B' and submit that considering that F/B Aquarius 'B' had no lookout and that the fishing boat was ahead, F/B Aquarius 'B' should have given way to M/V Don Sulpicio who was following in order to avoid collision. And considering that F/B Aquarius 'B' was at fault, it should suffer its own damage.

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It appears in the theory of defendants that simply because a vessel had no lookout and that the vessel was ahead, if it is rammed by another vessel that is following, the fault would be on the vessel that is ahead because the vessel that is ahead should always give way to the vessel that is following.

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From this argument, it would appear that whether actual negligence was committed by the vessel ahead or not, but as long as the vessel had no lookout and has not given way to the vessel following, the vessel following, if it ram the vessel ahead, has no fault.

It should be noted that F/B Aquarius `G' is a fishing vessel with a speed of only 7.5 or 8 knots per hour and according to the master of the vessel, they are not required by law to have a lookout because the vessel is small. M/V Don Sulpicio is a passenger boat with a speed of about 15.5 knots an hour and being a passenger boat, it is bigger boat and a faster boat. It is incumbent upon its master to see to it that the direction to which they are proceeding is clear. Having seen for the first time the 2 vessels, F/B Aquarius `C' and F/B Aquarius `G' about 4 miles ahead and that they were almost parallel to each other or in the same line with each other, as M/V Don Sulpicio was following, M/V Don Sulpicio should have used sufficient diligence to avoid collision. It appears from the evidence that during the incident, the weather was clear and visibility was very good. The M/V Don Sulpicio had a clear opportunity to avoid collision, but it failed to do so. M/V Don Sulpicio believed, that considering that it was a following vessel, it can just go thru and proceed irrespective of danger. The Court believes that the evidence is abundant to show negligence on the part of the master of the defendants and as such, defendants should be held responsible for all the damages suffered by F/B Aquarius `G'.

Defendants claim that the vessel involved was F/B Aquarius `B'. However, the evidence show that the fishing vessel that sunk was F/B Aquarius `G' and not F/B Aquarius `B'. And as shown by the evidence, the total loss of F/B Aquarius `G' together with its articles and provisions was P564,448.80."[2]

WHEREFORE, the Court finds the complaint duly supported by evidence and judgment is hereby rendered in favor of the plaintiff and against the defendants, who are hereby ordered to pay, jointly and severally, the plaintiff the sum of P564,448.80 for the actual loss of F/B Aquarius `G' including its articles and provisions; the sum of P10,000.00 per month from the date of the accident representing deprivation of the use and services of F/B Aquarius `G' and another sum of P10,000.00 for actual expenses and costs of litigation, another sum of P10,000.00 by way of exemplary damages, another sum equivalent to 15% of the total claim of plaintiff as attorney's fees plus P300.00 per court appearance, and to pay legal rate of interest of all the amounts so adjudged from November 18, 1978 until the entire amount is fully paid, and to pay the costs. Counterclaim is dismissed."[3]

The defendants appealed to the Court of Appeals, assigning seven (7) errors which the appellate court summed up and treated as two pivotal issues, to wit:

"1. THE COURT A QUO ERRED IN DISREGARDING THE REGULATION FOR PREVENTING COLLISION AT SEA, MORE POPULARLY KNOWN AS THE RULE OF THE ROAD IN DETERMINING WHICH OF THE TWO VESSELS WAS NEGLIGENT AND LIABLE, CONSIDERING THAT M/V DON SULPICIO COMPLIED WITH THEIR PROVISIONS, WHILE F/B AQUARIUS `G' DID NOT; AND

2. THE COURT A QUO ERRED IN AWARDING DAMAGES, ATTORNEY'S FEES, ACTUAL EXPENSES AND COSTS OF LITIGATION, LEGAL RATE OF INTEREST OF ALL THE AWARDS FROM NOVEMBER 18, 1978 UNTIL ALL THE AMOUNTS ARE FULLY PAID."[4]

On November 29, 1989, the Court of Appeals affirmed the Decision of the trial court of origin. The Motion for Reconsideration interposed on December 23, 1989 by appellants met the same fate. It was denied on April 24, 1990.

Undaunted, petitioners found their way to this Court via the present Petition for Review on Certiorari, contending that:

I

THE LOWER COURT ERRED IN EXONERATING THE VESSEL F/B "AQUARIUS B" AND HER MASTER FROM NEGLIGENCE DESPITE THE ADMISSION BY AGAPITO GERBOLINGA, PATRON OF SAID VESSEL THAT THEY HAD NO LOOKOUT DURING THE COLLISION.

II

THE LOWER COURT ERRED IN DISREGARDING THE REGULATION FOR PREVENTING COLLISION AT SEA, MORE POPULARLY KNOWN AS THE RULES OF THE ROAD IN DETERMINING WHICH OF THE TWO VESSELS WAS NEGLIGENT AND LIABLE.

III

THE LOWER COURT ERRED IN IMPUTING NEGLIGENCE ON THE VESSEL M/V "DON SULPICIO", THE PRIVILEGED VESSEL WHICH COMPLIED WITH RULES 19 AND 21, RULES OF THE ROAD.

IV

THE LOWER COURT ERRED IN AWARDING TO PLAINTIFF-APPELLEE THE AMOUNT OF P564,448.80 AS ACTUAL LOSS PLUS P10,000.00 PER MONTH FROM THE PERIOD OF NOVEMBER 18, 1978 REPRESENTING DEPRIVATION OF USE AND SERVICES OF F/B "AQUARIUS B" AND ANOTHER SUM OF P10,000.00 FOR ACTUAL EXPENSES AND COST OF LITIGATION.

V

THE LOWER COURT ERRED IN AWARDING PLAINTIFF AND AGAINST DEFENDANTS THE SUM OF P10,000.00 AS EXEMPLARY DAMAGES.

VI

THE LOWER COURT ERRED IN AWARDING PLAINTIFF AND AGAINST THE DEFENDANT-APPELLEE THE SUM EQUIVALENT TO 15% OF THE TOTAL CLAIM AS ATTORNEY'S FEES PLUS P300.00 PER COURT APPEARANCE.

VII

THE LOWER COURT ERRED IN AWARDING LEGAL RATE OF INTEREST OF ALL THE AWARDS TO PLAINTIFF-APPELLEE FROM NOVEMBER 18, 1978 UNTIL ALL THE AMOUNTS ARE FULLY PAID.[5]

Placing reliance on the Rules of the Road and Regulations on the Prevention of Collision, petitioners maintain:

"xxx that respondent Court of Appeals completely disregarded the rule of admission in matters adverse to one's interest. It is very clear that the F/B `Aquarius B', her patron and crew were negligent in this case. The Rules of the Road which is Annex `A' of the Philippine Merchant Rules and Regulations requires that all vessels must have a lookout (Rule 29, Rules of the Road). All vessels irrespective of size and make must keep a lookout. There is no exception to this rule.

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It was clearly established by the positive testimony of second mate, Aurelio Villacampa, Jr. on July 14, 1981 and the sketch prepared by said witness (Exhibit 2) that the two vessels were in a crossing situation. The vessel M/V `Don Sulpicio' was approaching on the starboard or right side of the crossing vessel F/B `Aquarius B'. The applicable rules in such a crossing situation are Rules 19, 21, 22 and 23. We quote the above Rules as follows:

`Rule 19. When two power driven vessels are crossing, so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other.'

`Rule 21. Where, by any of the Rules, one of two vessels is to keep out of the way, the other shall keep her

course and speed.'

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

'Rule 23. Every power-driven vessel which is directed by these Rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.'

The M/V 'DON SULPICIO' was the privileged vessel and the F/B 'Aquarius B' was the burdened vessel in the crossing situation (Exhibits 2, 3, 4, 9, 10). However, the F/B 'Aquarius B' violated the rules, did not keep out of the way, did not slacken speed but instead went full ahead and crossed the bow of M/V 'DON SULPICIO.'

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In the case at bar F/B 'Aquarius B' by failure to keep out of the way and slacken her speed has allowed herself to come to close proximity to the vessel M/V 'DON SULPICIO' bringing about the collision.

The award to private respondent of the sum of P564,448.80 as actual loss is based on surmises and conjectures. No appraisal of the value of the vessel F/B 'Aquarius B' was presented to support said claim of total loss. The claim of P564,448.80 was derived after summarizing up invoices and receipts of alleged purchases of materials, provisions dating back since 1972 and even after November 18, 1978 the date of the collision (Exhibits CC to KK). This award is exaggerated (sic) and speculative." [6]

On October 24, 1990, respondent Aquarius Fishing Co., Inc. sent in its Comment, stating:

"Granting for the sake of argument that any or all of the petitioners' witnesses can be classified as lookouts for M/V Don Sulpicio, their negligence is made much clearer because they could not determine risk of collision, speed was not slackened, no warning sign was made and the course of M/V Don Sulpicio was not changed to avoid the collision.

At any rate, the office of the Coast Guard Judge Advocate which we believed is the proper authority and has the technical competence to determine who is at fault in maritime cases has this to say on the look out defense put up by the petitioners:

'It is clear that the M/V Don Sulpicio was the overtaking vessel and, under the Rules on the Road, was the burdened vessel which had the duty to take all the necessary actions to keep clear of the overtaken vessel. It was also shown that M/V Don Sulpicio did not alter her course to reduce her speed and being at close range with F/B 'Aquarius G', did not even give a warning signal. It was likewise shown that the Aquarius Fishing Co., Inc. did not own a vessel named F/B 'Aquarius B' (as identified by Chief Mate Oro), but it did own a vessel named Aquarius G' at the time of the incident. The fact that F/B 'Aquarius G' had no lookout at the time of the collision does not excuse M/V Don Sulpicio from observing her duty to keep clear of the overtaken vessel especially so when there was sufficient room for her to do so.'" [7]

The Petition is not impressed with merit.

Well-settled to the point of being elementary is the doctrine that the findings by the trial court are binding on the appellate court and will not be disturbed on appeal, " unless the trial court has overlooked or ignored some fact or circumstance of sufficient weight or significance which, if considered, would alter the situation." [8]

"Factual findings of the appellate court deemed conclusive." (Estonina v. Court of Appeals, 266 SCRA 627)"

"It is a fundamental rule in criminal as well as in civil cases that in the matter of credibility of witnesses, the findings of the trial court are given great weight and highest degree of respect by the appellate court." (Lee Eng Hong v. Court of Appeals, 241 SCRA 392 citing Pagsuyu v. Intermediate Appellate Court, 193 SCRA 547)

"xxx It is not the function of this Court to assess and evaluate all over again the evidence, testimonial and evidentiary, adduced by the parties particularly where, such as here, the findings of both the trial court and the appellate court on the matter coincide." (South Sea Surety and Insurance Company, Inc. v. Court of Appeals, 244 SCRA 744)

"It is a settled principle of civil procedure that the conclusions of the trial court regarding the credibility of witnesses are entitled to great respect from the appellate court xxx" (Limketkai Sons Milling, Inc. vs. Court of Appeals, 250 SCRA 253, citing Serrano vs. Court of Appeals, 196 SCRA 107)

After a thorough review and examination of the evidence on hand, we discern no ground or basis for disregarding the findings and conclusion arrived at below.

Petitioners asserted that private respondent, through its patron, admitted that the vessel had no lookout during the collision despite the absolute rule provided in Rule 9 of the Rules of Road. To bolster its stance, it contended that it was a privileged vessel pursuant to Rules 19, 21, 22, 23 of the Regulations for the Prevention of Collisions at Sea.

Both the trial court and the respondent court found that M/V "Don Sulpicio" was crossing at 15.5 knots per hour while F/B Aquarius "G" was obeying a speed limit of 7.5 knots per hour. The weather was clear and visibility was good. M/V "Don Sulpicio" was four (4) miles away when it first sighted F/B Aquarius "G". All the time up to the collision, M/V "Don Sulpicio" maintained its speed of 16 knots. It was only two (2) minutes before the collision when M/V "Don Sulpicio" changed its course.

Whether or not the collision sued upon occurred in a crossing situation is immaterial as the Court of Appeals, relying on Rule 24-C, Regulations for Preventing Collisions at the Sea, rules that the duty to keep out of the way remained even if the overtaking vessel cannot determine with certainty whether she is forward of or abaft more than 2 points from the vessel. It is beyond cavil that M/V "Don Sulpicio" must assume responsibility as it was in a better position to avoid the collision. It should have blown its horn or give signs to warn the other vessel that it was to overtake it.

Assuming argumenti ex gratia that F/B Aquarius "G" had no lookout during the collision, the omission does not suffice to exculpate Sulpicio Lines from Liability. M/V "Don Sulpicio" cannot claim that it was a privileged vessel being in the portside which can maintain its course and speed during the collision. When it overtook F/B Aquarius "G", it was duty bound during the collision. When it overtook F/B Aquarius "G", it was duty bound to slacken its speed and keep away from other vessel, which it failed to do. The stance of petitioners that F/B Aquarius "G" is a burdened vessel which should have kept out of the way of M/V "Don Sulpicio" is not supported by facts.

Anent the award of actual damage in the amount of P564,448.80, petitioners' mere allegation that the award of actual damages is exaggerated and speculative, without controverting the receipts and invoices when the boat was constructed and which were bases of accounting entries in the books of accounts presented by the private respondent, are unavailing to defeat the award. To be sure, the private respondent amply established the compensatory damages it suffered by reason of the collision.

The award of fifteen (15%) percent of the total claim sued upon as attorney's fees and the legal rate of interest adjudged are proper. However, the P10,000.00 a month awarded by the trial court and the respondent court for earnings that would have derived from F/B Aquarius "G," without indicating the material period is too uncertain and onerous to deserve serious consideration.

In awarding P10,000.00 per month, representing the supposed profits F/B "Aquarius G" could have netted, the

trial court relied on the sole testimony of Mr. Johnny L. Chua, who is in the employ of private respondent.

"The arguments of petitioners that the earnings of F/B Aquarius "G" must be shown is not applicable in this case. F/B Aquarius "G" is just a carrier to its mother boat Aquarius "G". Its role was to carry the catch from the fishing ground to the port and it was serving not only its mother boat, but other boats owned by respondent Aquarius. The income of F/B Aquarius "G" is therefore impossible to really determine. The only reasonable basis is only its rental value compared with similar boats."[9]

As regards the reckoning period, there is tenability in petitioner's submission that a fishing boat deteriorates quite quickly due to exposure to the elements. To hold Sulpicio Lines to pay the profits that would have been realized by the private respondents for an unlimited period of time is to burden it indefinitely, which cannot be countenanced.

"xxx The decision awarding P10,000.00 per month reckoned from November 1978 up to the present implies unlimited existence of the fishing vessel F/B Aquarius "G" which is not the case as any common man will experience. The Honorable Court can take judicial notice of the deterioration of the wood in a fishing boat that is always exposed to the elements. Surely, said existence will not last for more than ten years. Considering that the fishing vessel is already six years old, then it has a lifespan of not more than four more years.[10]

Failure of Aquarius Fishing Co., Inc. to come forward with controverting evidence to the allegation of Sulpicio Lines that the ordinary lifespan of a fishing vessel is more than ten (10) years, amounted to an admission of such allegation. The vessel was constructed in 1972 while the collision occurred in 1978. The remaining life span of "F/B Aquarius "G" was therefore four (4) years. Conformably, computed at P10,000.00 per month for a period of four (4) years, the unrealized profits/earnings involved, amounted to at most P480,000.00.

As regards the attorney's fees equivalent to 15% of all the awards granted by the Regional Trial Court, the propriety thereof cannot be questioned. Gross and evident bad faith on the part of petitioner in refusing to pay the claim sued upon constrained the private respondent to enlist the services of a lawyer to litigate.

Petitioner must have placed reliance on the general rule that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. (Philtransco Service Enterprises, Inc. v. Court of Appeals, 273 SCRA 562; Morales v. Court of Appeals, 274 SCRA 282). But the aforecited rule is inapplicable here in the face of the stubborn refusal of petitioner to respect the valid claim of the private respondent.

The payment of legal interest is also in order. But it should be computed from November 18, 1978, not from March 30, 1986, when the Regional Trial Court a quo came out with its Decision. It was from the time of the collision complained of that the private respondent began to be deprived of subject vessel.

WHEREFORE, the Petition is DENIED and the Decision of the Court of Appeals in CA GR CV No. 15081 AFFIRMED, with the MODIFICATION that the award for exemplary damages is deleted for want of legal basis, and the amount of unrealized profits awarded is fixed at P480,000.00. No pronouncement as to cost.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Josue N. Bellosillo and concurred in by JJ. Alfredo M. Morigomen and Cesar D. Francisco.

[2] Decision penned by Judge Alfonso B. Baguio, Rollo, pp. 70-74.

- [3] Decision Civil Case No. 14510, p. 5, Rollo, p. 74.
- [4] CA GR CV No. 15081, pp. 3-4, Rollo, pp. 49-50.
- [5] Petition, pp. 7-8, Rollo, 27-28.
- [6] Rollo, pp. 29, 33, 35, 37, 38.
- [7] Rollo, pp. 91-92.
- [8] Heirs of Felicidad Canque vs. Court of Appeals, 275 SCRA 751.
- [9] Memorandum for Respondents, p. 29, Rollo, p. 225.
- [10] Rollo, pp. 171-172.

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