

**ALEJANDRO ARADA, DOING BUSINESS UNDER THE NAME AND
STYLE "SOUTH NEGROS ENTERPRISES", PETITIONER,
VS. HONORABLE COURT OF APPEALS, SAN MIGUEL CORPORATION,
RESPONDENTS.**

G.R. No. 98243. July 01, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari which seeks to annul and set aside the decision* of the Court of Appeals dated April 8, 1991 in CA-G.R. CV No. 20597 entitled "San Miguel Corporation v. Alejandro Arada, doing business under the name and style "South Negros Enterprises", reversing the decision of the RTC, Seventh Judicial Region, Branch XII, Cebu City, ordering petitioner to pay the private respondent the amount of P172,284.80 representing the value of the cargo lost on board the ill-fated, M/L Maya with interest thereon at the legal rate from the date of the filing of the complaint on March 25, 1983 until fully paid, and the costs.

The undisputed facts of the case are as follows:

Alejandro Arada, herein petitioner, is the proprietor and operator of the firm South Negros Enterprises which has been organized and established for more than ten (10) years. It is engaged in the business of small scale shipping as a common carrier, servicing the hauling of cargoes of different corporations and companies with the five (5) vessels it was operating (Rollo, p. 121).

On March 24, 1982, petitioner entered into a contract with private respondent to safely transport as a common carrier, cargoes of the latter from San Carlos City, Negros Occidental to Mandaue City using one of petitioner's vessels, M/L Maya. The cargoes of private respondent consisted of 9,824 cases of beer empties valued at P176,824.80, were itemized as follows:

NO. OF CASES

CARGO

VALUE

7,515 CS

PPW STENIE MTS

P136,773.00

1,542 CS

PLW GRANDE MTS

23,438.40

58 CS

G.E. PLASTIC MTS

1,276.00

24 CS

PLP MTS

456.00

37 CS

CS WOODEN MTS

673.40

8 CS

LAGERLITE PLASTIC MTS

128.00

640 CS

STENEI PLASTIC MTS

14,080.00

9,824 CS

P176,824.80

On March 24, 1982, petitioner thru its crew master, Mr. Vivencio Babao, applied for a clearance with the Philippine Coast Guard for M/L Maya to leave the port of San Carlos City, but due to a typhoon, it was denied clearance by SNI Antonio Prestado PN who was then assigned at San Carlos City Coast Guard Detachment (Rollo, p. 122).

On March 25, 1982 M/L Maya was given clearance as there was no storm and the sea was calm. Hence, said

vessel left for Mandaue City. While it was navigating towards Cebu, a typhoon developed and said vessel was buffeted on all its sides by big waves. Its rudder was destroyed and it drifted for sixteen (16) hours although its engine was running.

On March 27, 1982 at about 4:00 a.m., the vessel sank with whatever was left of its cargoes. The crew was rescued by a passing pump boat and was brought to Calanggaman Island. Later in the afternoon, they were brought to Palompon, Leyte, where Vivencio Babao filed a marine protest (Rollo, p. 10).

On the basis of such marine protest, the Board of Marine Inquiry conducted a hearing of the sinking of M/L Maya wherein private respondent was duly represented. Said Board made its findings and recommendation dated November 7, 1983, the dispositive portion of which reads as:

"WHEREFORE, premises considered, this Board recommends as it is hereby recommended that the owner/operator, officers and crew of M/L Maya be exonerated or absolved from any administrative liability on account of this incident" (Exh. 1).

The Board's report containing its findings and recommendation was then forwarded to the headquarters of the Philippine Coast Guard for appropriate action. On the basis of such report, the Commandant of the Philippine Coast Guard rendered a decision dated December 21, 1984 in SBMI Adm. Case No. 88-82 exonerating the owner/operator officers and crew of the ill-fated M/L Maya from any administrative liability on account of said incident (Exh. 2).

On March 25, 1983, private respondent filed a complaint in the Regional Trial Court its first cause of action being for the recovery of the value of the cargoes anchored on breach of contract of carriage. After due hearing, said court rendered a decision dated July 18, 1988, the dispositive portion of which reads –

"WHEREFORE, judgment is hereby rendered as follows:

- (1) With respect to the first cause of action, claim of plaintiff is hereby dismissed;
 - (2) Under the second cause of action, defendant must pay plaintiff the sum of P2,000.00;
 - (3) In the third cause of action, the defendant must pay plaintiff the sum of P2,849.20;
 - (4) Since the plaintiff has withheld the payment of P12,997.47 due the defendant, the plaintiff should deduct the amount of P4,849.20 from the P12,997.47 and the balance of P8,148.27 must be paid to the defendant; and
 - (5) Defendant's counterclaim not having been substantiated by evidence is likewise dismissed. NO COSTS."
- (Orig. Record, pp. 193-195).

Thereafter, private respondent appealed said decision to the Court of Appeals claiming that the trial court erred in -?

- (1) Holding that nothing was shown that the defendant, or any of his employees who manned the M/L Maya was negligent in any way nor did they fail to observe extraordinary diligence over the cargoes of the plaintiff; and
- (2) Holding that the sinking of said vessel was caused by the storm, consequently, dismissing the claim of plaintiff in its first cause of action for breach of contract of carriage of goods (Rollo, pp. 33-34; Decision, pp. 3-4).

In its decision promulgated on April 8, 1991, the Court of Appeals reversed the decision of the court a quo, the dispositive portion and the dispositive part of its decision reads as:

"WHEREFORE, that part of the judgment appealed from is REVERSED and the appellee Alejandro Arada,

doing business by the name and style, "South Negros Enterprises", ordered (sic) to pay unto the appellant San Miguel Corporation the amount of P176,824.80 representing the value of the cargo lost on board the ill-fated vessel, M/L Maya, with interest thereon at the legal rate from date of the filing of the complaint on March 25, 1983, until fully paid, and the costs." (Rollo, p. 37)

The Court of Appeals ruled that "in view of his failure to observe extraordinary diligence over the cargo in question and his negligence previous to the sinking of the carrying vessel, as above shown, the appellee is liable to the appellant for the value of the lost cargo.

Hence, the present recourse.

On November 20, 1991, this Court gave due course to the petition.

The pivotal issue to be resolved is whether or not petitioner is liable for the value of the lost cargoes.

Petitioner contends that it was not in the exercise of its function as a common carrier when it entered into a contract with private respondent, but was then acting as a private carrier not bound by the requirement of extraordinary diligence (Rollo, p. 15) and that the factual findings of the Board of Marine Inquiry and the Special Board of Marine Inquiry are binding and conclusive on the Court (Rollo, pp. 16-17).

Private respondent counters that M/L Maya was in the exercise of its function as a common carrier and its failure to observe the extraordinary diligence required of it in the vigilance over their cargoes makes petitioner liable for the value of said cargoes.

The petition is devoid of merit.

Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation offering their services to the public (Art. 1732 of the New Civil Code).

In the case at bar, there is no doubt that petitioner was exercising its function as a common carrier when it entered into a contract with private respondent to carry and transport the latter's cargoes. This fact is best supported by the admission of petitioner's son, Mr. Eric Arada, who testified as the officer-in-charge for operations of South Negros Enterprises in Cebu City. In substance his testimony on January 14, 1985 is as follows:

Q. How many vessels are you operating?

A. There were all in all around five (5).

Q. And you were entering to service hauling of cargoes to different companies, is that correct?

A. Yes, sir.

Q. In one word, the South Negros Enterprises is engaged in the business of common carriers, is that correct?

A. Yes, sir.

Q. And in fact, at the time of the hauling of the San Miguel Beer, it was also in the same category as a common carrier?

A. Yes, sir.

(TSN, pp. 3-4, Jan. 29, 1985)

A common carrier, both from the nature of its business and for insistent reasons of public policy is burdened by law with the duty of exercising extraordinary diligence not only in ensuring the safety of passengers, but in caring

for the goods transported by it. The loss or destruction or deterioration of goods turned over to the common carrier for the conveyance to a designated destination raises instantly a presumption of fault or negligence on the part of the carrier, save only where such loss, destruction or damage arises from extreme circumstances such as a natural disaster or calamity x x x (Benedicto v. IAC, G.R. No. 70876, July 19, 1990, 187 SCRA 547) (Underscoring supplied).

In order that the common carrier may be exempted from responsibility, the natural disaster must have been the proximate and only cause of the loss. However, the common carrier must exercise due diligence to prevent or minimize the loss before, during and after the occurrence of flood, storm or other natural disaster in order that the common carrier may be exempted from liability for the destruction or deterioration of the goods (Article 1739, New Civil Code).

In the instant case, the appellate court was correct in finding that petitioner failed to observe the extraordinary diligence over the cargo in question and he or the master in his employ was negligent previous to the sinking of the carrying vessel. In substance, the decision reads:

"x x x VIVENCIO BABAO, the master of the carrying vessel, knew that there was a typhoon coming before his departure but did not check where it was.

x x x

"If only for the fact that he was first denied clearance to depart on March 24, 1982, obviously because of a typhoon coming, Babao, as master of the vessel, should have verified first where the typhoon was before departing on March 25, 1982. True, the sea was calm at departure time. But that might be the calm before the storm. Prudence dictates that he should have ascertained first where the storm was before departing as it might be on his path."

(Rollo, pp. 35-36)

Respondent court's conclusion as to the negligence of petitioner is supported by evidence. It will be noted that Vivencio Babao knew of the impending typhoon on March 24, 1982 when the Philippine Coast Guard denied M/L Maya the issuance of a clearance to sail. Less than 24 hours elapsed since the time of the denial of said clearance and the time a clearance to sail was finally issued on March 25, 1982. Records will show that Babao did not ascertain where the typhoon was headed by the use of his vessel's barometer and radio (Rollo, p. 142). Neither did the captain of the vessel monitor and record the weather conditions everyday as required by Art. 612 of the Code of Commerce (Rollo, pp. 142-143). Had he done so while navigating for 31 hours he could have anticipated the strong winds and big waves and taken shelter (Rollo, pp. 36; 145). His testimony on May 4, 1982 is as follows:

Q. Did you not check on your own where the typhoon was?

A. No, sir. (TSN, May 4, 1982, pp. 58-59)

Noteworthy is the fact that as per official records of the Climatological Division of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAG-ASA for brevity) issued by its Chief of Climatological Division, Primitivo G. Ballan, Jr. as to the weather and sea conditions that prevailed in the vicinity of Catmon, Cebu during the period March 25-27, 1982, the sea conditions on March 25, 1982 were slight to rough and the weather conditions then prevailing during those times were cloudy skies with rainshowers and the small waves grew larger and larger, to wit:

SPEED KNOTS

WAVE HT. (METERS)

SEA CONDITIONS

WEATHER

March 25

8 AM

15

1-2

slight

cloudy skies w/ rainshowers

2 PM

20-25

2.0-3.0

moderate to rough

overcast skies w/ some rains

8 PM

30

3.7

rough

sea heaps up white foam from breaking waves begin to be blown in streaks along the direction of the wind;
Spind-rift begins

2 AM

30

3.7

Rough

sea heaps up white foam from breaking waves begin to be blown in streaks along the direction of the wind;
Spind-rift begins

(Exh. 3)

A common carrier is obliged to observe extraordinary diligence and the failure of Babao to ascertain the direction

of the storm and the weather condition of the path they would be traversing, constitute lack of foresight and minimum vigilance over its cargoes taking into account the surrounding circumstances of the case.

While the goods are in the possession of the carrier, it is but fair that it exercises extraordinary diligence in protecting them from loss or damage, and if loss occurs, the law presumes that it was due to the carrier's fault or negligence; that is necessary to protect the interest of the shipper which is at the mercy of the carrier (Art. 1756, Civil Code, *Aboitiz Shipping Corporation v. Court of Appeals*, G.R. No. 89757, Aug. 6, 1990, 188 SCRA 387).

Furthermore, the records show that the crew of M/L Maya did not have the required qualifications provided for in P.D. No. 97 or the Philippine Merchant Marine Officers Law, all of whom were unlicensed. While it is true that they were given special permit to man the vessel, such permit was issued at the risk and responsibility of the owner (Rollo, p. 36).

Finally, petitioner claims that the factual findings of the Special Board of Marine Inquiry exonerating the owner/operator, crew officers of the ill-fated vessel M/L Maya from any administrative liability is binding on the court.

In rejecting petitioner's claim, respondent court was correct in ruling that "such exoneration was but with respect to the administrative liability of the "owner/operator, officers and crew of the ill-fated" vessel. It could not have meant exoneration of appellee from liability as a common carrier for his failure to observe extraordinary diligence in the vigilance over the goods it was transporting and for the negligent acts or omissions of his employees. Such is the function of the Court, not the Special Board of Marine Inquiry." (Rollo, p. 37, Annex A, p. 7)

The Philippine Merchant Marine Rules and Regulations particularly Chapter XVI thereof entitled "Marine Investigation and Suspension and Revocation Proceedings" prescribes the Rules governing maritime casualties or accidents, the rules and procedures in administrative investigation of all maritime cases within the jurisdiction or cognizance of the Philippine Coast Guard and the grounds for suspension and revocation of licenses/certificates of marine officers and seamen (1601 - SCOPE); clearly, limiting the jurisdiction of the Board of Marine Inquiry and Special Board of Marine Inquiry to the administrative aspect of marine casualties in so far as it involves the shipowners and officers.

PREMISES CONSIDERED, the appealed decision is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Nocon, JJ., concur.

Padilla, J., no part.

* Penned by Associate Justice Pedro A. Ramirez and concurred in by Associate Justices Fernando A. Santiago and Fermin A. Martin, Jr.

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