43 Phil. 511

[G. R. No. 17690. June 14, 1922]

YU BIAO SONTUA & CO., PLAINTIFF AND APPELLEE VS. MIGUEL J. OSSORIO, DEFENDANT AND APPELANT.

D E C I S I O N

ROMUALDEZ, J.:

On the evening of the 13th of March, 1920, a fire broke out on board the motor boat *Alfonso* when this boat was in the Pasig River, city of Manila, ready to weigh anchor. A short distance from the *Alfonso* the steamer Y. Sontua was lying alongside moored to the wharf of said river.

The fire in the motor boat *Alfonso* spread to the steamer *Y. Sontua,* causing damages to her deck, according to plaintiff, amounting to P67,400.

The plaintiff, which is a regular partnership and the owner of the steamer *Y. Sontua*, brought this action to recover from the defendant, the owner and agent of said motor boat *Alfonso,* the aforementioned sum as indemnity for the damages alleged by the plaintiff to have been sustained by him through the negligence of the agents and employees of the said defendant, which caused the fire in the aforesaid motor boat *Alfonso*, wherefrom it spread, and caused said damages to the steamer *Y. Sontua*. These damages are specified in the two causes of action set forth in the complaint, in the first of which are mentioned the appurtenances and parts of the aforesaid vessel that were destroyed and damaged by the said fire, and for the repair of which the sum of P40,000 was expended. In the second cause of action it is alleged that the plaintiff sustained damages to the amount of P27,400 for the demurrage and delay in the ordinary voyages of the aforesaid vessel *Y. Sontua*. After denying generally and specifically the allegations of the complaint, the defendant alleges, as special defense, that he has taken no part either directly or indirectly in the acts alleged in the complaint; that if the plaintiff has sustained any damages, they are not the result of the act said to have been committed by the agents and employees of the defendant; and that

such damages were caused by a fortuitous event and are not imputable to the negligence of the defendant, or any of his agents, employees, or mandataries.

The case having been tried, the court sentenced the defendant to pay the plaintiff the above-mentioned sum of P67,400, with legal interest thereon from the date of the filing of the complaint, and the costs.

From this judgment the defendant appeals to this court assigning three errors, to wit: (a) The finding that the explosion in question was due to the negligence of the persons in charge of the motor boat Alfonso; (b) the finding that the defendant is liable for the negligence of his agents and employees; and (c) the awarding of an excessive sum as damages.

With regard to the first error, the following facts are proven: That during the day and night of the 12th, and during the day of the 13th of March, 1920, there were loaded in the said motor boat Alfonso 2,000 cases of petroleum and 8,473 cases of gasoline, of which 5,000 cases of gasoline and 2,000 of petroleum were placed in the hold of said motor boat, and the balance on deck; that said loading was done without permission from the customs authorities; that the said cases were loaded by means of straps supporting 10 or 12 cases at a time; that the said cases of gasoline and petroleum were placed in the hold about feet from the boiler of the main engine and about 4 feet from the boiler of the smaller engine; that on the evening of the 13th of March, 1920, the smaller engine was in operation preparatory to the departure of the motor boat which, at that time, was getting ready to leave; that the fire in said motor boat burst out with an explosion followed by a violent expulsion of gasoline and petroleum; that owing to the proximity of the motor boat to the steamer *Y. Sontua*, the magnitude of the fire and the inflammability of the material that served as fuel, the fire spread to the said steamer *Y. Sontua*, and so rapidly that it was impossible for the crew of the *Y. Sontua* to check its progress.

Expert testimony was also introduced by the plaintiff to the effect that it is but natural that, after several transhipments of more than 8,000 cases of gasoline and 2,000 cases of petroleum there is bound to be a leakage, on an average of 1 to 4 cases per hundred, due to the fact that the, loading is effected by means of straps supporting from 10 to 12 cases at a time which, quite frequently, receive violent bumps resulting in damage to the cans and the consequent leakage of either gasoline or petroleum, as the case may be.

It was also shown by expert testimony that the gases formed by the volatilization of the

gasoline or petroleum leaking from the cases are apt to accumulate in a compartment, such as the hold of a ship, without sufficient ventilation causing the gases to ignite upon coming in contact with a spark or upon the temperature being sufficiently raised.

Under these circumstances we are constrained to hold that the fire which caused the damages for which the plaintiff seeks to be indemnified was the inevitable effect of the explosion and fire which occurred in the motor boat Alfonso; that this explosion and fire in the said motor boat is, with good ground, imputable to the negligence of the persons having charge at that time of said motor boat and under whose direction the loading of the aforesaid cases of petroleum and gasoline had been performed.

The trial court did not, therefore, commit the first error assigned by the appellant.

In the second assignment of error, the appellant contends that the defendant ought not to be held liable for the negligence of his agents and employees.

It is proven that the agents and employees, through whose negligence the explosion and fire in question occurred, were agents, employees, and mandataries of the defendant. Where the vessel is one of freight, a public concern or public utility, its owner or agent is liable for the tortious acts of his agents (arts. 587, 613, and 618, Code of Commerce; and arts. 1902, 1903, 1908, Civil Code). This principle has been repeatedly upheld in various decisions of this court.

The doctrines cited by the appellant in support of his theory have reference to the relations between principal and agent in general, but not to the relations between ship agent and his agents and employees; for this reason they cannot be applied in the present case.

In American law, principles similar to those in force in the Philippines and contained in the Code of Commerce above cited, are prevailing:

> "*Vessel owner's liability in general*.—The general liability of a vessel owner extends to losses by fire arising from other than a natural or other excepted cause, whether occurring on the ship accidentally, or communicated from another vessel, or from the shore; and the fact that fire produces the motive power of a boat does not affect the case. Such losses are not within the exceptions either of act of God, or peril of the sea, except by local custom, unless proximately caused by one of these events. In jurisdictions where the civil law

> obtains, however, it has been held that if property on a steamboat is destroyed by fire, the owners of the boat are not responsible, if it was being navigated with proper diligence, although the accident occurred at night. The common law liability extends even to loss by fires caused entirely by spontaneous combustion of the cargo, without any negligence on the part of master or crew." (R. C. L., vol. 24, pp. 1324-1325.)

With regard to the allegation that the obligations enumerated in article 612 of our Code of Commerce are inherent in the master such inherent duties do not limit to the latter the civil liability arising from their nonfulfilment, but while the master is responsible to the ship agent, the ship agent, in turn, is responsible to third persons, as is clearly provided in article 618 of said Code, in which express mention is made, in subsections 5 and 7, of the duties enumerated in the said article 612.

Therefore there is also no ground for holding that the second error assigned by the appellant has been committed.

The third error is concerned with the amount of the damages sustained by the plaintiff.

It is sufficiently proven that the sum paid by the plaintiff to the Earnshaw Shipyards for the repairs made to the steamer *Y. Sontua*, damage to which was caused by the fire in question, amount to P27,968; that the materials used in said repairs and paid for by the plaintiff are worth P12,139.30. As to the damages sustained by the plaintiff on account of the delay of the steamer *Y. Sontua*, the evidence shows that this steamer was delayed ten days in the Pasig River, waiting for available space in the shipyard before it was taken to the said repair-shop; that it was not absolutely necessary that the repair of the damages caused by the fire should be made in the shipyard; that said vessel was taken to the shipyard for the repair of some parts of it not damaged by the fire in question.

As the evidence does not sufficiently show the time consumed in repairing the actual damage caused by the said fire, nor the time employed in making the other repairs, and as the damage, if any, resulting from the ten days' delay in the Pasig River, is remote and, therefore, not chargeable to the defendant since said delay is in no way imputable to him, we think, in view of all of the circumstances of the case and taking into consideration the importance of all the repairs, whether by fire or otherwise, the delay of seventy days, according to the evidence of the plaintiff, chargeable to the defendant, should be reduced to one-half, or thirty-five days at the rate of P410.84 a day which is the net profit that the

aforesaid steamer *Y. Sontua* failed to realize as a consequence of said delay. We find that the damages sustained by the plaintiff by reason of this delay amount to P14,379.40.

The plaintiff further asks that he be awarded, by way of damages, the sum of P4,400 covering maintenance and salary of the officers and crew of his steamer during the delay aforementioned. We do not feel that he is entitled to this item for the reason that such expenses have already been taken into account in determining the net daily profit above referred to. We find that the total sum which the plaintiff is entitled to recover from the defendant as damages under the facts stated is fifty-four thousand four hundred eighty-six pesos and seventy centavos (P54,486.70).

The judgment appealed from is hereby modified and the defendant sentenced to pay the plaintiff the sum of P54,486.70 with costs. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, and *Johns, JJ.,* concur.

Date created: June 05, 2014