

THIRD DIVISION

[G.R. NO. 217311, July 15, 2020]

ALESON SHIPPING LINES, PETITIONER, VS. CGU INTERNATIONAL INS. PLC. AND CANDADO SHIPPING LINES, INC., RESPONDENTS.

DECISION

LEONEN, J.:

This resolves a petition for review assailing the Decision and Resolution of the Court of Appeals in CA-G.R. CV. No. 95628, which held Aleson Shipping Lines, Inc. (Aleson Shipping) liable for the damages resulting from a vessel collision.

In 2002, Candano Shipping Lines, Inc. (Candano Shipping) signed a time charter agreement with Apo Cement Corporation (Apo Cement) over the former's vessel, M/V Romeo. The agreement was executed for the delivery of Apo Cement's cargo consisting of cement from Cebu to Albay.^[1]

M/V Romeo was loaded with 31,250 bags of cement, equivalent to 1,250 metric tons. The cargo was insured with CGU International Insurance (CGU Insurance).^[2]

On July 14, 2002, at around 12 midnight, M/V Romeo was on its way out of the pier in Apo channel when it collided with M/V Aleson Carrier 5 (M/V Aleson), which was owned by Aleson Shipping.^[3] M/V Aleson's front hull hit the side of M/V Romeo.^[4] As a result, a gaping hole in the mid-section of M/V Romeo caused it to instantly sink, taking with it the bags of cement worth P3,427,500.^[5]

Apo Cement demanded payment from Candano Shipping and Aleson Shipping, but to no avail; hence, it made an insurance claim with CGU Insurance, which was granted.^[6]

CGU Insurance then filed a case against Candano Shipping and Aleson Shipping before the Regional Trial Court, claiming actual damages and attorney's fees.^[7]

Aleson Shipping denied liability and asserted that only Candano Shipping should be held liable because the latter's vessel, M/V Romeo, was at fault in the collision.^[8] On the other hand, its officers and crew at M/V Aleson have exercised diligence and care to avoid the incident.^[9]

Meanwhile, Candano Shipping maintained that M/V Romeo was seaworthy and that it exercised extraordinary diligence in the care and custody of the cargo, and in the operation of the vessel. It blamed Aleson Shipping for the incident, claiming that Aleson Shipping was careless in command of M/V Aleson Carrier 5.^[10]

Further, Candano Shipping argued that the complaint should be dismissed, because CGU Insurance failed to observe the arbitration clause under the time charter.^[11]

CGU Insurance's surveyor and investigator, Teodoro R. Lopez (Lopez), testified that based on his interviews with the Chief Engineer of M/V Romeo and the stevedores and supervisor of the port, M/V Aleson hit and caused an opening at the mid-section of M/V Romeo.^[12]

Lopez found that the port authority instructed M/V Aleson to wait until M/V Romeo has cleared the last buoy, but M/V Aleson still proceeded to enter the pier. In an interview with the captain of Apo Cement's tug boat, Lopez likewise learned that the Captain of M/V Romeo asked the Captain of M/V Aleson to slow down, but the latter did not heed instructions.^[13]

Captain Ramil Fermin Cabeltes (Captain Cabeltes) of M/V Aleson testified for Aleson Shipping. He narrated that the sea was calm during the incident and acknowledged that the Apo channel cannot accommodate two (2) vessels at a time.^[14] When M/V Aleson was about to enter the pier, he admitted that he failed to verify from the radio operator whether it can proceed to enter the pier. He merely relied on the message relayed to him by a crew that M/V Aleson must "standby for proceeding to port."^[15]

Further, while Captain Cabeltes initially claimed that he did not know any vessel present at the pier, he later admitted that he knew M/V Romeo was loading cargo at that time. Moreover, when M/V Aleson was in stop position, he neither contacted nor used its horn to signal the M/V Romeo. He likewise admitted that there was still around 200 meters of space on the right side of the vessel where he can maneuver to avoid the mishap, but he did not do so, fearing that M/V Aleson will run aground.^[16]

Maria Tessie Jadulco Flores (Flores), operations manager of Candano Shipping, claimed that M/V Aleson was at fault in the collision. She averred that under the rule of the Apo channel, the vessel going out of the wharf has the right of way, and vessels which are about to enter must wait until the wharf is cleared. Hence, M/V Aleson should have waited until M/V Romeo exited the pier.^[17]

Flores added that due to the incident, M/V Romeo's master of the vessel died instantly. While 14 members of the crew survived, two (2) remained missing. She further narrated that M/V Romeo was no longer retrieved due to the depth of the sea, while M/V Aleson remained afloat.^[18]

In its Decision,^[19] the Regional Trial Court found Aleson Shipping solely liable for the collision. Thus:

WHEREFORE, in view of the foregoing considerations, this Court hereby FINDS in favor of the plaintiff against the defendant ALESON, hence it hereby ORDERS defendant ALESON, to pay plaintiff the sum of Philippine Pesos: THREE MILLION THREE HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED FIFTY (P3,368,750.00) with interest at 6% percent per annum from date hereof until the finality of this decision and 12% per

annum from finality of this decision until fully paid and attorney's fee of P50,000.00 plus cost of suit.

The complaint against Candano is hereby DISMISSED in accordance with the provision of Article 826 of the Code of Commerce. It states: "If a vessel would collide with another, through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered after expert appraisal.

Finally, the counterclaims filed by defendant Aleson against defendant Candano are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.^[20] (Emphasis in the original)

The trial court ruled that under Article 1733 of the New Civil Code, Aleson Shipping and Candano Shipping are bound to observe extraordinary diligence as common carriers. If there was loss, destruction, or deterioration of the goods it carries, common carriers are presumed responsible, unless they can prove that they observed extraordinary diligence.^[21] Aleson Shipping failed to overcome this presumption. On the other hand, Candano Shipping appeared to have observed the diligence required.^[22]

The trial court admitted in evidence the testimonies of Flores and Lopez which were treated as part of *res gestae*, being startling statements made immediately by persons who were near and at the place of the incident.^[23] Moreover, it relied on the testimony of Captain Cabeltes, who admitted several lapses in his duty as the captain of M/V Aleson.^[24]

Based on the evidence, the impact of the collision was strong, as M/V Aleson created a gaping hole on the side of M/V Romeo, causing the vessel to instantly sink after five (5) minutes. The trial court noted that Captain Cabeltes of M/V Aleson failed to wait until M/V Romeo has exited from the wharf, and merely assumed that it can enter the port when he knew for a fact that there was a vessel loading at that time. Moreover, Captain Cabeltes of M/V Aleson admitted that the collision could have been avoided if only he maneuvered the vessel; but he chose not to, fearing that M/V Aleson may be aground.^[25]

In its Appeal, Aleson Shipping maintained that it was not at fault in the collision. It claimed that Captain Cabeltes exerted all efforts to avoid the collision, and that the trial court twisted his testimony to make Aleson Shipping liable.^[26]

Further, it claimed that M/V Aleson dropped its anchor at some 3,200 meters from the pier while waiting for their turn to approach the loading berth. Captain Cabeltes could not see the loading bay from its position and, thus, relied on the instructions of the port operators, who relayed that it can already proceed to the loading bay.^[27] It then went towards the pier at a slow speed of two (2) knots, while M/V Romeo was navigating at full speed.^[28]

Aleson Shipping claimed that this version of the story is more believable, as it coincides with Lopez's testimony which confirmed that the collision site was three

(3) kilometers away from the pier's last buoy. Thus, the trial court erred in its observation that M/V Aleson failed to wait until M/V Romeo has exited the last buoy.
[29]

Moreover, Aleson Shipping claimed that it was M/V Romeo that failed to maneuver the vessel to avoid the collision.^[30] The trial court faulted Aleson Shipping for its failure to blow its horn, but there was no need to signal M/V Romeo, since both ships have communicated with each other and have explicitly agreed to do a port-to-port passing to avoid a collision. Further, sending a sound signal would only do more harm than good, since the master's instructions to the crew will not be heard over the horn's sound.^[31]

Aleson Shipping argued that the testimony of Captain Cabeltes must be given credence because of all the witnesses, only he has first-hand knowledge of what transpired before, during, and after the collision. On the other hand, Candano Shipping failed to present any of the surviving crew of M/V Romeo.^[32]

Further, Aleson Shipping asserted that the trial court erred in relying on hearsay testimony and in applying the *res gestae* rule.^[33] Candano Shipping's witness, Flores, was incompetent to testify on matters regarding the collision.^[34] She admitted to having no personal knowledge of the incident, and even though she was not presented as an expert witness, the trial court allowed her to inject her opinion as to who is at fault between the two (2) vessels.^[35]

Similarly, Aleson Shipping claimed that the trial court erred in considering the testimony of Lopez as part of *res gestae* because, as the inspector, he only had secondary information and none of the sources of these information were present at the site of the incident.^[36]

The Court of Appeals affirmed the decision of the lower court.^[37] Thus:

IN VIEW OF ALL THESE, the Appeal is **DENIED.** The Decision of the lower court is **AFFIRMED.**

SO ORDERED.^[38] (Emphasis in the original)

The appellate court further held that it found no strong and cogent reason to depart from the conclusions and findings of the trial court.^[39] It ruled that the evidence defeats Aleson Shipping's arguments. As the records bare, the collision was due to the fault of M/V Aleson's Captain. Despite being informed that M/V Romeo was loading at the pier, M/V Aleson still proceeded to enter. Captain Cabeltes likewise failed to blow its horn to alert M/V Romeo.^[40]

Considering Captain Cabeltes' testimony, the Court of Appeals found that there is sufficient evidence to ascribe fault to Aleson Shipping. Hence, Aleson Shipping's argument assailing the testimony of Flores is irrelevant.^[41]

Aleson Shipping moved for the reconsideration of the decision, but it was denied.^[42]

In this Petition, petitioner argues that the lower courts erred in applying the law on

common carriers in determining its liability, considering that it has no contract of carriage with respondent CGU Insurance or Apo Cement.^[43]

It explains that in claiming subrogation rights, respondent CGU Insurance can only have as much rights and causes of action as Apo Cement, which springs from the contract of insurance. Thus, it cannot be sued based on contract, because it is a complete stranger to the time charter between respondent Candano Shipping and Apo Cement, as well as to the contract of insurance between respondents.^[44]

Thus, petitioner claims that respondent CGU Insurance's action against it is based on maritime tort governed by the Code of Commerce.^[45] It follows that there can be no presumption of negligence against petitioner. It is not a common carrier under a contract of carriage which must exercise extraordinary diligence. Moreover, the doctrine of last clear chance will not then be applicable in this case, because under Article 827 of the Code of Commerce, if both vessels may be blamed, both shall be jointly responsible for the damages.^[46]

Necessarily, the trial court erred in applying laws and jurisprudence on common carriers, because the cause of action in this case is based on maritime tort and not on the breach of contract of carriage.^[47]

Petitioner further claims that respondent Candano Shipping was solely at fault for the collision which was due to the error and negligence of its officers and crew. On the other hand, petitioner asserts that it exercised ordinary diligence—the degree of diligence demanded from it under the Code of Commerce.^[48]

When it saw M/V Romeo, M/V Aleson immediately requested for a port-to-port passing to avoid collision which the former granted.^[49] Still, M/V Romeo did not change course. In its last attempt to avoid the collision, Captain Cabeltes ordered to stop M/V Aleson's engine, but to no avail.^[50]

For the sake of argument that it was negligent, petitioner avers that it should be made solidarily liable with respondent Candano Shipping under Article 827 of the Code of Commerce.^[51]

Further, petitioner questions the application of the *res gestae* rule to admit the testimonies of respondents' witnesses.^[52]

In particular, witness Floras, who admitted to having no personal knowledge on the incident, was allowed to inject her own opinion as to who between the two (2) vessels was at fault. Petitioner claims this is against Rule 130, Section 48 of the Rules of Court, which provides that the opinion of a witness is inadmissible unless presented as an expert witness.^[53]

Moreover, it alleges that Lopez's testimony was mere hearsay. As respondents' surveyor, the information he proffered were obtained from the witnesses to the incident. Thus, these testimonies do not qualify as part of *res gestae*.^[54]

Lastly, petitioner maintains that Captain Cabeltes' testimony cannot be rejected for