

SECOND DIVISION

[G.R. No. 181683, October 07, 2015]

**LORENZO SHIPPING CORPORATION, PETITIONER, VS.
NATIONAL POWER CORPORATION, RESPONDENT.**

[G.R. No. 184568]

**NATIONAL POWER CORPORATION, PETITIONER, VS. LORENZO
SHIPPING CORPORATION, RESPONDENT.**

DECISION

LEONEN, J.:

These consolidated Petitions for Review on Certiorari^[1] are offshoots of the Court of Appeals' disposition of CA-G.R. CV No. 76295. The Petition docketed as G.R. No. 181683 was filed by Lorenzo Shipping Corporation (Lorenzo Shipping) while the Petition docketed as G.R. No. 184568 was filed by National Power Corporation.

In its September 14, 2007 Decision,^[2] the Court of Appeals reversed and set aside the February 18, 2002 Decision of the Regional Trial Court and entered another judgment ordering Lorenzo Shipping to pay National Power Corporation the amount of P876,286.00 as actual damages and P50,000.00 as attorney's fees and expenses of litigation.^[3]

In its February 12, 2008 Amended Decision,^[4] the Court of Appeals amended its September 14, 2007 Decision to award National Power Corporation the amount of P300,000.00 as temperate damages in lieu of the original award of P876,286.00 as actual damages.

In its September 17, 2008 Resolution,^[5] the Court of Appeals denied National Power Corporation's Motion for Reconsideration.

The February 18, 2002 Decision^[6] of the Regional Trial Court dismissed National Power Corporation's Complaint for damages against Lorenzo Shipping.^[7]

Lorenzo Shipping is the owner and operator of the commercial vessel MV Lorcon Luzon.^[8] National Power Corporation is the owner of Power Barge 104, "a non-propelled power plant barge."^[9]

On March 20, 1993, Power Barge 104 was berthed and stationed at the Makar Wharf in General Santos City when the MV Lorcon Luzon "hit and rammed Power Barge 104."^[10]

At the time of the incident, Captain Mariano Villarias (Captain Villarias) served as the Master of the MV Lorcon Luzon. However, the MV Lorcon Luzon was then being piloted by Captain Homer Yape (Captain Yape), a Harbor Pilot from the General Santos City pilotage district.^[11] As underscored by Lorenzo Shipping, the MV Lorcon Luzon was under Captain Yape's pilotage as it was mandatory to yield navigational control to the Harbor Pilot while docking.^[12]

Testifying before the Board of Marine Inquiry, Captain Villarias recalled that while the MV Lorcon Luzon was under Captain Yape's pilotage, he nevertheless "always" ^[13] remained at the side of Captain Yape. He likewise affirmed that he heard and knew of Captain Yape's orders, "because I have to repeat his order."^[14]

As the MV Lorcon Luzon was docking, Captain Yape ordered the vessel to proceed "slow ahead," making it move at the speed of about one (1) knot. As it moved closer to dock, Captain Yape gave the order "dead slow ahead," making the vessel move even slower. He then ordered the engine stopped.^[15]

As the MV Lorcon Luzon moved "precariously close"^[16] to the wharf, Captain Yape ordered the vessel to move backward, i.e., go "slow astern," and subsequently "full astern." Despite his orders, the engine failed to timely respond. Thus, Captain Yape ordered the dropping of the anchor. Despite this, the MV Lorcon Luzon rammed into Power Barge 104.^[17]

Following this incident, Nelson Homena, Plant Manager of Power Barge 104, filed a Marine Protest before the Board of Marine Inquiry. Captain Villarias also filed his own Marine Protest. For his part, Captain Yape filed a Marine Accident Report. The Board of Marine Inquiry conducted joint hearings on the Marine Protests and Captain Yape's report.^[18]

To forestall the prescription of its cause of action for damages, National Power Corporation filed before the Quezon City Regional Trial Court a Complaint for Damages against Lorenzo Shipping.^[19] In this Complaint, National Power Corporation recalled the damage resulting from the ramming, as follows:

4. Due to the force and impact of the ramming, the three (3) nylon ropes of 4 inches [sic] diameter each securing the barge at the Makar Wharf-Philippines [sic] Ports Authority Pier was instantaneously ripped off and the take [-] off tower of the barge swayed causing flash over on the 69 KV line tripping the line and isolated General Santos City from the Mindanao Grid. Consequently, the General Santos Power Plant, Power Barge 102, interconnected with Power Barge 104, all tripped off causing total blackout in General Santos City and its underlying areas;

5. Immediate investigation revealed that the ramming resulted to severe damage to Ballast Tank No. 1 and metal deformation with approximate area of two (2) sq. meters. The crack, 25 mm. [b]y 460 mm. [ojccurred two (2) meters above the crater line and another one, 75 mm. by 310 mm. on the water line caused a leak of waste oil into the sea . . . ;

6. In addition to the physical damage caused to the Power Barge 104, plaintiff suffered generation losses as a result of the tripping off of the line and the failure of

Power Barge 104 to generate electricity immediately after the accident[.][20]

Lorenzo Shipping filed a Motion to Dismiss grounded on the Regional Trial Court's alleged lack of jurisdiction over the subject matter and National Power Corporation's failure to exhaust administrative remedies. Lorenzo Shipping underscored that the dispute was supposedly within the jurisdiction of the Board of Marine Inquiry/Philippine Coast Guard.[21] The Regional Trial Court denied Lorenzo Shipping's Motion to Dismiss.[22]

On November 7, 1997, Lorenzo Shipping filed its Answer. It emphasized that at the time of the incident, the MV Lorcon Luzon was commandeered by an official Harbor Pilot to whom it was "mandatory . . . to yield operational control";[23] thus, any liability should be attributed to the Harbor Pilot and not to the company. It added that "Makar Wharf is a berthing place only for self-propelled vessel [sic]."[24] As Power Barge 104 was not a self-propelled vessel, it "had no right to lash itself on the Maka[r] Wharf. . . . [and] it assumed the risk of such ramming because [of] its improper presence[.]"[25] Lastly, Lorenzo Shipping pointed out that National Power Corporation's action was barred by laches as four (4) years had lapsed before it filed its Complaint.[26]

The Regional Trial Court issued the Decision[27] dated February 18, 2002 absolving Lorenzo Shipping of liability. It concluded that National Power Corporation failed to establish Lorenzo Shipping's negligence. It underscored that while the ramming was found to have been the result of the engine's stoppage, no malfunctioning was recorded before and after the incident. The Regional Trial Court further stated that Lorenzo Shipping was sued in its capacity as the employer of Captain Villarias and that any liability it incurred would have been only subsidiary. Nevertheless, as Lorenzo Shipping supposedly exercised due diligence in its selection and supervision of Captain Villarias, no liability could be attributed to it.[28]

National Power Corporation appealed before the Court of Appeals.

The Court of Appeals rendered the Decision[29] dated September 14, 2007 reversing and setting aside the February 18, 2002 Decision of the Regional Trial Court and entering another judgment ordering Lorenzo Shipping to pay National Power Corporation the amount of P876,286.00 as actual damages and P50,000.00 as attorney's fees and expenses of litigation.[30]

The Court of Appeals reasoned that while the MV Lorcon Luzon was under compulsory pilotage, Captain Villarias, the vessel's Master, remained to be its overall commander. It added that he was remiss in his duties as he did nothing in the crucial moments when Captain Yape's orders to go astern appeared to not have been heeded.[31] It cited Article 2180 of the Civil Code[32] in that an employer's liability is primary and not subsidiary. It further noted that Lorenzo Shipping failed to show that it exercised due diligence in the selection and supervision of Captain Villarias.[33]

Lorenzo Shipping filed a Motion for Reconsideration.

The Court of Appeals then issued the Amended Decision dated February 12, 2008. [34] Noting that the amount of actual damages was not proven by National Power Corporation, it awarded National Power Corporation the amount of P300,000.00 as temperate damages in lieu of actual damages. The awards for attorney's fees and litigation expenses were sustained.

National Power Corporation then filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated September 17, 2008. [35]

On March 31, 2008, Lorenzo Shipping filed the Petition for Review on Certiorari [36] docketed as G.R. No. 181683. It reiterated its position that no liability could be attributed to it as the MV Lorcon Luzon was under compulsory pilotage and that National Power Corporation assumed risk when it berthed a non-propelled vessel in the Makar Wharf. [37] It added that even assuming that it was at fault, the award of P3 00,000.00 as temperate damages was still improper. It claimed that, from the text of Article 2224 of the Civil Code, [38] temperate damages can be awarded only in cases where pecuniary loss may have been incurred, but whose exact amount, through the nature of the injury suffered, e.g., injury to commercial credit or business goodwill, cannot be ascertained. It argued that National Power Corporation was well in a position to adduce proof of the exact amount of damage it incurred, but failed to do so. [39]

On November 24, 2008, National Power Corporation filed its Comment [40] to Lorenzo Shipping's Petition. It maintained that it was Lorenzo Shipping that must be held liable and that it was able to show by "competent testimonial and documentary evidence" [41] that it must be compensated for actual damages in the amount of P876,826.00. On April 7, 2009, Lorenzo Shipping filed its Reply. [42]

In the meantime, on November 18, 2008, National Power Corporation filed its own Petition for Review on Certiorari [43] docketed as G.R. No. 184568, arguing how it had supposedly proven by competent evidence that it was entitled to actual damages in the amount of F876,826.00. Lorenzo Shipping filed its Comment [44] on February 2, 2009. National Power Corporation filed its Reply [45] on June 22, 2009.

In the Resolution [46] dated February 9, 2009, this court consolidated the Petitions docketed as G.R. Nos. 181683 and 184568.

For resolution are the following issues:

First, whether Lorenzo Shipping Corporation is liable for the damage sustained by Power Barge 104 when the MV Lorcon Luzon rammed into it, considering that at the time of the ramming, the MV Lorcon Luzon was under mandatory pilotage by Captain Yape; and

Second, assuming that liability is to be attributed to Lorenzo Shipping, what damages, if any, may be awarded to National Power Corporation.

It is not disputed that the MV Lorcon Luzon, a vessel owned and operated by Lorenzo Shipping, rammed into Power Barge 104 while attempting to dock at the Makar Wharf. Likewise, it is not disputed that when it rammed into Power Barge No. 104, the MV Lorcon Luzon was being piloted by Captain Yape. What is in dispute is whether Captain Yape's pilotage suffices to absolve Lorenzo Shipping of liability.

A Master's designation as the commander of a vessel is long-settled. This court's citation in *Yu Con v. Ipil*^[47] of General Review of Legislation and Jurisprudence explains that "Master" and "Captain" are synonymous terms:

"The name of captain or master is given, according to the kind of vessel, to the person in charge of it.

"The first denomination is applied to those who govern vessels that navigate the high seas or ships of large dimensions and importance, although they be engaged in the coastwise trade.

"Masters are those who command smaller ships engaged exclusively in the coastwise trade.

"For the purposes of maritime commerce, the words 'captain' and 'master' have the same meaning; both being the chiefs or commanders of ships."^[48]

Likewise, in *Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission*:^[49]

A master or captain, for purposes of maritime commerce, is one who has command of a vessel. A captain commonly performs three (3) distinct roles: (1) he is a general agent of the shipowner; (2) he is also commander and technical director of the vessel; and (3) he is a representative of the country under whose flag he navigates. *Of these roles, by far the most important is the role performed by the captain as commander of the vessel*; for such role (which, to our mind, is analogous to that of "Chief Executive Officer" [CEO] of a present-day corporate enterprise) has to do with the operation and preservation of the vessel during its voyage and the protection of the passengers (if any) and crew and cargo. In his role as general agent of the shipowner, the captain has authority to sign bills of lading, carry goods aboard and deal with the freight earned, agree upon rates and decide whether to take cargo. The ship captain, as agent of the shipowner, has legal authority to enter into contracts with respect to the vessel and the trading of the vessel, subject to applicable limitations established by statute, contract or instructions and regulations of the shipowner. *To the captain is committed the governance, care and management of the vessel*. Clearly, the captain is vested with both management and fiduciary functions.^[50] (Emphasis supplied, citations omitted)

This notwithstanding, there are recognized instances when control of a vessel is yielded to a pilot. Section 8 of Philippine Ports Authority (PPA) Administrative Order No. 03-85, otherwise known as the Rules and Regulations Governing Pilotage