636 Phil. 396

THIRD DIVISION

[G.R. No. 186312, June 29, 2010]

SPOUSES DANTE CRUZ AND LEONORA CRUZ, PETITIONERS, VS. SUN HOLIDAYS, INC., RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Spouses Dante and Leonora Cruz (petitioners) lodged a Complaint on January 25, 2001[1] against Sun Holidays, Inc. (respondent) with the Regional Trial Court (RTC) of Pasig City for damages arising from the death of their son Ruelito C. Cruz (Ruelito) who perished with his wife on September 11, 2000 on board the boat *M/B Coco Beach III* that capsized en route to Batangas from Puerto Galera, Oriental Mindoro where the couple had stayed at Coco Beach Island Resort (Resort) owned and operated by respondent.

The stay of the newly wed Ruelito and his wife at the Resort from September 9 to 11, 2000 was by virtue of a tour package-contract with respondent that included transportation to and from the Resort and the point of departure in Batangas.

Miguel C. Matute (Matute),[2] a scuba diving instructor and one of the survivors, gave his account of the incident that led to the filing of the complaint as follows:

Matute stayed at the Resort from September 8 to 11, 2000. He was originally scheduled to leave the Resort in the afternoon of September 10, 2000, but was advised to stay for another night because of strong winds and heavy rains.

On September 11, 2000, as it was still windy, Matute and 25 other Resort guests including petitioners' son and his wife trekked to the other side of the Coco Beach mountain that was sheltered from the wind where they boarded *M/B Coco Beach III*, which was to ferry them to Batangas.

Shortly after the boat sailed, it started to rain. As it moved farther away from Puerto Galera and into the open seas, the rain and wind got stronger, causing the boat to tilt from side to side and the captain to step forward to the front, leaving the wheel to one of the crew members.

The waves got more unwieldy. After getting hit by two big waves which came one after the other, *M/B Coco Beach III* capsized putting all passengers underwater.

The passengers, who had put on their life jackets, struggled to get out of the boat. Upon seeing the captain, Matute and the other passengers who reached the surface asked him what they could do to save the people who were still trapped under the boat. The captain replied "*Iligtas niyo na lang ang sarili niyo*" (Just save yourselves).

Help came after about 45 minutes when two boats owned by Asia Divers in Sabang, Puerto Galera passed by the capsized *M/B Coco Beach III*. Boarded on those two boats were 22 persons, consisting of 18 passengers and four crew members, who were brought to Pisa Island. Eight passengers, including petitioners' son and his wife, died during the incident.

At the time of Ruelito's death, he was 28 years old and employed as a contractual worker for Mitsui Engineering & Shipbuilding Arabia, Ltd. in Saudi Arabia, with a basic monthly salary of $900.[3]

Petitioners, by letter of October 26, 2000,[4] demanded indemnification from respondent for the death of their son in the amount of at least P4,000,000.

Replying, respondent, by letter dated November 7, 2000,[5] denied any responsibility for the incident which it considered to be a fortuitous event. It nevertheless offered, as an act of commiseration, the amount of P10,000 to petitioners upon their signing of a waiver.

As petitioners declined respondent's offer, they filed the Complaint, as earlier reflected, alleging that respondent, as a common carrier, was guilty of negligence in allowing *M/B Coco Beach III* to sail notwithstanding storm warning bulletins issued by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) as early as 5:00 a.m. of September 11, 2000.[6]

In its Answer,[7] respondent denied being a common carrier, alleging that its boats are not available to the general public as they only ferry Resort guests and crew members. Nonetheless, it claimed that it exercised the utmost diligence in ensuring the safety of its passengers; contrary to petitioners' allegation, there was no storm on September 11, 2000 as the Coast Guard in fact cleared the voyage; and *M/B Coco Beach III* was not filled to capacity and had sufficient life jackets for its passengers. By way of Counterclaim, respondent alleged that it is entitled to an award for attorney's fees and litigation expenses amounting to not less than P300,000.

Carlos Bonquin, captain of *M/B Coco Beach III*, averred that the Resort customarily requires four conditions to be met before a boat is allowed to sail, to wit: (1) the sea is calm, (2) there is clearance from the Coast Guard, (3) there is clearance from the captain and (4) there is clearance from the Resort's assistant manager.[8] He added that *M/B Coco Beach III* met all four conditions on September 11, 2000,[9] but a *subasco* or squall, characterized by strong winds and big waves, suddenly occurred, causing the boat to capsize.[10]

By Decision of February 16, 2005,[11] Branch 267 of the Pasig RTC dismissed petitioners' Complaint and respondent's Counterclaim.

Petitioners' Motion for Reconsideration having been denied by Order dated September 2, 2005,[12] they appealed to the Court of Appeals.

By Decision of August 19, 2008,[13] the appellate court denied petitioners' appeal,

holding, among other things, that the trial court correctly ruled that respondent is a private carrier which is only required to observe ordinary diligence; that respondent in fact observed extraordinary diligence in transporting its guests on board *M/B Coco Beach III*; and that the proximate cause of the incident was a squall, a fortuitous event.

Petitioners' Motion for Reconsideration having been denied by Resolution dated January 16, 2009,[14] they filed the present Petition for Review.[15]

Petitioners maintain the position they took before the trial court, adding that respondent is a common carrier since by its tour package, the transporting of its guests is an integral part of its resort business. They inform that another division of the appellate court in fact held respondent liable for damages to the other survivors of the incident.

Upon the other hand, respondent contends that petitioners failed to present evidence to prove that it is a common carrier; that the Resort's ferry services for guests cannot be considered as ancillary to its business as no income is derived therefrom; that it exercised extraordinary diligence as shown by the conditions it had imposed before allowing *M/B Coco Beach III* to sail; that the incident was caused by a fortuitous event without any contributory negligence on its part; and that the other case wherein the appellate court held it liable for damages involved different plaintiffs, issues and evidence.[16]

The petition is impressed with merit.

Petitioners correctly rely on *De Guzman v. Court of Appeals*[17] in characterizing respondent as a common carrier.

> The Civil Code defines "common carriers" in the following terms:
>
> > Article 1732. 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.
>
> The above article makes **no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity** (in local idiom, as "a sideline"). **Article 1732 also carefully avoids making any distinction between** a person or enterprise offering transportation service on a **regular or scheduled basis and** one offering such service on an **occasional, episodic or unscheduled basis**. **Neither does Article 1732 distinguish between** a carrier offering its services to the **"general public,"** i.e., the general community or population, **and** one who offers services or solicits business only from a **narrow segment of the general population**. We think that Article 1733 deliberately refrained from making such distinctions.

So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service," under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:

> . . . every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services . . .[18] (emphasis and underscoring supplied.)

Indeed, respondent is a common carrier. Its ferry services are so intertwined with its main business as to be properly considered ancillary thereto. The constancy of respondent's ferry services in its resort operations is underscored by its having its own *Coco Beach* boats. And the tour packages it offers, which include the ferry services, may be availed of by anyone who can afford to pay the same. These services are thus available to the public.

That respondent does not charge a separate fee or fare for its ferry services is of no moment. It would be imprudent to suppose that it provides said services at a loss. The Court is aware of the practice of beach resort operators offering tour packages to factor the transportation fee in arriving at the tour package price. That guests who opt not to avail of respondent's ferry services pay the same amount is likewise inconsequential. These guests may only be deemed to have overpaid.

As *De Guzman* instructs, Article 1732 of the Civil Code defining "common carriers" has deliberately refrained from making distinctions on whether the carrying of persons or goods is the carrier's principal business, whether it is offered on a regular basis, or whether it is offered to the general public. The intent of the law is thus to not consider such distinctions. Otherwise, there is no telling how many other distinctions may be concocted by unscrupulous businessmen engaged in the carrying of persons or goods in order to avoid the legal obligations and liabilities of common carriers.

Under the Civil Code, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each

case.[19] They are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.[20]

When a passenger dies or is injured in the discharge of a contract of carriage, it is presumed that the common carrier is at fault or negligent. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence.[21]

Respondent nevertheless harps on its strict compliance with the earlier mentioned conditions of voyage before it allowed *M/B Coco Beach III* to sail on September 11, 2000. Respondent's position does not impress.

The evidence shows that PAGASA issued 24-hour public weather forecasts and tropical cyclone warnings for shipping on September 10 and 11, 2000 advising of tropical depressions in Northern Luzon which would also affect the province of Mindoro.[22] By the testimony of Dr. Frisco Nilo, supervising weather specialist of PAGASA, squalls are to be expected under such weather condition.[23]

A very cautious person exercising the utmost diligence would thus not brave such stormy weather and put other people's lives at risk. The extraordinary diligence required of common carriers demands that they take care of the goods or lives entrusted to their hands as if they were their own. This respondent failed to do.

Respondent's insistence that the incident was caused by a fortuitous event does not impress either.

The elements of a "fortuitous event" are: (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[24]

To fully free a common carrier from any liability, the fortuitous event must have been the **proximate and only cause** of the loss. And it should have exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the fortuitous event.[25]

Respondent cites the squall that occurred during the voyage as the fortuitous event that overturned *M/B Coco Beach III*. As reflected above, however, the occurrence of squalls was expected under the weather condition of September 11, 2000. Moreover, evidence shows that *M/B Coco Beach III* suffered engine trouble before it capsized and sank.[26] The incident was, therefore, not completely free from human intervention.

The Court need not belabor how respondent's evidence likewise fails to demonstrate