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THIRD DIVISION

[G.R. NO. 156978, May 02, 2006]

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. NEW INDIA ASSURANCE COMPANY, LTD., RESPONDENT.

DECISION

QUISUMBING, J.:

For review on certiorari are the Decision[1] dated August 29, 2002 of the Court of Appeals in CA-G.R. CV No. 28770 and its Resolution[2] dated January 23, 2003 denying reconsideration. The Court of Appeals affirmed the Decision[3] dated November 20, 1989 of the Regional Trial Court of Manila in Civil Case No. 82-1475, in favor of respondent New India Assurance Company, Ltd.

This petition stemmed from the action for damages against petitioner, Aboitiz Shipping Corporation, arising from the sinking of its vessel, *M/V P. Aboitiz*, on October 31, 1980.

The pertinent facts are as follows:

Societe Francaise Des Colloides loaded a cargo of textiles and auxiliary chemicals from France on board a vessel owned by Franco-Belgian Services, Inc. The cargo was consigned to General Textile, Inc., in Manila and insured by respondent New India Assurance Company, Ltd. While in Hongkong, the cargo was transferred to *M/V P. Aboitiz* for transshipment to Manila.[4]

Before departing, the vessel was advised by the Japanese Meteorological Center that it was safe to travel to its destination.[5] But while at sea, the vessel received a report of a typhoon moving within its general path. To avoid the typhoon, the vessel changed its course. However, it was still at the fringe of the typhoon when its hull leaked. On October 31, 1980, the vessel sank, but the captain and his crew were saved.

On November 3, 1980, the captain of *M/V P. Aboitiz* filed his "Marine Protest", stating that the wind force was at 10 to 15 knots at the time the ship foundered and described the weather as "moderate breeze, small waves, becoming longer, fairly frequent white horses."[6]

Thereafter, petitioner notified[7] the consignee, General Textile, of the total loss of the vessel and all of its cargoes. General Textile, lodged a claim with respondent for the amount of its loss. Respondent paid General Textile and was subrogated to the rights of the latter.[8]

Respondent hired a surveyor, Perfect, Lambert and Company, to investigate the

cause of the sinking. In its report,[9] the surveyor concluded that the cause was the flooding of the holds brought about by the vessel's questionable seaworthiness. Consequently, respondent filed a complaint for damages against petitioner Aboitiz, Franco-Belgian Services and the latter's local agent, F.E. Zuellig, Inc. (Zuellig). Respondent alleged that the proximate cause of the loss of the shipment was the fault or negligence of the master and crew of the vessel, its unseaworthiness, and the failure of defendants therein to exercise extraordinary diligence in the transport of the goods. Hence, respondent added, defendants therein breached their contract of carriage.[10]

Franco-Belgian Services and Zuellig responded, claiming that they exercised extraordinary diligence in handling the shipment while it was in their possession; its vessel was seaworthy; and the proximate cause of the loss of cargo was a fortuitous event. They also filed a cross-claim against petitioner alleging that the loss occurred during the transshipment with petitioner and so liability should rest with petitioner.

For its part, petitioner also raised the same defense that the ship was seaworthy. It alleged that the sinking of *M/V P. Aboitiz* was due to an unforeseen event and without fault or negligence on its part. It also alleged that in accordance with the real and hypothecary nature of maritime law, the sinking of *M/V P. Aboitiz* extinguished its liability on the loss of the cargoes.[11]

Meanwhile, the Board of Marine Inquiry (BMI) conducted its own investigation to determine whether the captain and crew were administratively liable. However, petitioner neither informed respondent nor the trial court of the investigation. The BMI exonerated the captain and crew of any administrative liability; and declared the vessel seaworthy and concluded that the sinking was due to the vessel's exposure to the approaching typhoon.

On November 20, 1989, the trial court, citing the Court of Appeals decision in *General Accident Fire and Life Assurance Corporation v. Aboitiz Shipping Corporation*[12] involving the same incident, ruled in favor of respondent. It held petitioner liable for the total value of the lost cargo plus legal interest, thus:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of New India and against Aboitiz ordering the latter to pay unto the former the amount of P142,401.60, plus legal interest thereon until the same is fully paid, attorney's fees equivalent to fifteen [percent] (15%) of the total amount due and the costs of suit.
>
> The complaint with respect to Franco and Zuellig is dismissed and their counterclaim against New India is likewise dismissed
>
> SO ORDERED.[13]

Petitioner elevated the case to the Court of Appeals and presented the findings of the BMI. However, on August 29, 2002, the appellate court affirmed *in toto* the trial court's decision. It held that the proceedings before the BMI was only for the administrative liability of the captain and crew, and was unilateral in nature, hence not binding on the courts. Petitioner moved for reconsideration but the same was denied on January 23, 2003.

Hence, this petition for review, alleging that the Court of Appeals gravely erred in:

I.

> x x x DISREGARDING THE RULINGS OF THE HONORABLE SUPREME COURT ON THE APPLICATION OF THE RULE ON LIMITED LIABILITY UNDER ARTICLE 587, 590 AND 837 OF THE CODE OF COMMERCE TO CASES INVOLVING THE SINKING OF THE M/V "P. ABOITIZ;

A.

> x x x NOT APPLYING THE RULINGS IN THE CASES OF *MONARCH INSURANCE CO., INC. ET AL. V. COURT OF APPEALS ET AL. AND ABOITIZ SHIPPING CORPORATION V. GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD.;*

B.

> x x x RULING THAT THE ISSUE ON THE APPLICATION OF THE RULE ON LIMITED LIABILITY UNDER ARTICLES 587, 590 AND 837 OF THE CODE OF COMMERCE HAD BEEN CONSIDERED AND PASSED UPON IN ITS DECISION;

II.

> x x x NOT LIMITING THE AWARD OF DAMAGES TO RESPONDENT TO ITS PRO-RATA SHARES IN THE INSURANCE PROCEEDS FROM THE SINKING OF THE M/V "P. ABOITIZ".[14]

Stated simply, we are asked to resolve whether the limited liability doctrine, which limits respondent's award of damages to its pro-rata share in the insurance proceeds, applies in this case.

Petitioner, citing *Monarch Insurance Co. Inc. v. Court of Appeals*, [15] contends that respondent's claim for damages should only be against the insurance proceeds and limited to its pro-rata share in view of the doctrine of limited liability.

Respondent counters that the doctrine of real and hypothecary nature of maritime law is not applicable in the present case because petitioner was found to have been negligent. Hence, according to respondent, petitioner should be held liable for the total value of the lost cargo.

It bears stressing that this Court has variedly applied the doctrine of limited liability to the same incident - the sinking of *M/V P. Aboitiz* on October 31, 1980. *Monarch*, the latest ruling, tried to settle the conflicting pronouncements of this Court relative to the sinking of *M/V P. Aboitiz*. In *Monarch*, we said that the sinking of the vessel was not due to *force majeure*, but to its unseaworthy condition.[16] Therein, we found petitioner concurrently negligent with the captain and crew.[17] But the Court stressed that the circumstances therein still made the doctrine of limited liability applicable.[18]