459 Phil. 156

FIRST DIVISION

[G.R. No. 156034, October 01, 2003]

DELSAN TRANSPORT LINES, INC., PETITIONER, VS. C & A CONSTRUCTION, INC., RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for review under Rule 45 of the Revised Rules of Court are the June 14, 2002 decision[1] of the Court of Appeals in CA-G.R. CV No. 59034, which reversed the decision[2] of the Regional Trial Court of Manila, Branch 46, in Civil Case No. 95-75565, and its November 7, 2002 resolution[3] denying petitioner's motion for reconsideration.

The undisputed facts reveal that respondent C & A Construction, Inc. was engaged by the National Housing Authority (NHA) to construct a deflector wall at the Vitas Reclamation Area in Vitas, Tondo, Manila.[4] The project was completed in 1994 but it was not formally turned over to NHA.

On October 9, 1994, M/V Delsan Express, a ship owned and operated by petitioner Delsan Transport Lines, Inc., anchored at the Navotas Fish Port for the purpose of installing a cargo pump and clearing the cargo oil tank. At around 12:00 midnight of October 20, 1994, Captain Demetrio T. Jusep of M/V Delsan Express received a report from his radio head operator in Japan[5] that a typhoon was going to hit Manila[6] in about eight (8) hours.[7] At approximately 8:35 in the morning of October 21, 1994, Capt. Jusep tried to seek shelter at the North Harbor but could not enter the area because it was already congested.[8] At 10:00 a.m., Capt. Jusep decided to drop anchor at the vicinity of Vitas mouth, 4 miles away from a Napocor power barge. At that time, the waves were already reaching 8 to 10 feet high. Capt. Jusep ordered his crew to go full ahead to counter the wind which was dragging the ship towards the Napocor power barge. To avoid collision, Capt. Jusep ordered a full stop of the vessel.[9] He succeeded in avoiding the power barge, but when the engine was re-started and the ship was maneuvered full astern, it hit the deflector wall constructed by respondent.[10] The damage caused by the incident amounted to P456,198.24.[11]

Respondent demanded payment of the damage from petitioner but the latter refused to pay. Consequently, respondent filed a complaint for damages with the Regional Trial Court of Manila, Branch 46, which was docketed as Civil Case No. 95-75565. In its answer, petitioner claimed that the damage was caused by a fortuitous event.[12]

On February 13, 1998, the complaint filed by respondent was dismissed. The trial

court ruled that petitioner was not guilty of negligence because it had taken all the necessary precautions to avoid the accident. Applying the "emergency rule", it absolved petitioner of liability because the latter had no opportunity to adequately weigh the best solution to a threatening situation. It further held that even if the maneuver chosen by petitioner was a wrong move, it cannot be held liable as the cause of the damage sustained by respondent was typhoon "Katring", which is an act of God.[13]

On appeal to the Court of Appeals, the decision of the trial court was reversed and set aside.[14] It found Capt. Jusep guilty of negligence in deciding to transfer the vessel to the North Harbor only at 8:35 a.m. of October 21, 1994 and thus held petitioner liable for damages.

Hence, petitioner filed the instant petition contending that Capt. Jusep was not negligent in waiting until 8:35 in the morning of October 21, 1994 before transferring the vessel to the North Harbor inasmuch as it was not shown that had the transfer been made earlier, the vessel could have sought shelter.[15] It further claimed that it cannot be held vicariously liable under Article 2180 of the Civil Code because respondent failed to allege in the complaint that petitioner was negligent in the selection and supervision of its employees.[16] Granting that Capt. Jusep was indeed guilty of negligence, petitioner is not liable because it exercised due diligence in the selection of Capt. Jusep who is a duly licensed and competent Master Mariner. [17]

The issues to be resolved in this petition are as follows - (1) Whether or not Capt. Jusep was negligent; (2) If yes, whether or not petitioner is solidarily liable under Article 2180 of the Civil Code for the *quasi-delict* committed by Capt. Jusep?

Article 2176 of the Civil Code provides that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict*. The test for determining the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use the reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence.[18]

In the case at bar, the Court of Appeals was correct in holding that Capt. Jusep was negligent in deciding to transfer the vessel only at 8:35 in the morning of October 21, 1994. As early as 12:00 midnight of October 20, 1994, he received a report from his radio head operator in Japan[19] that a typhoon was going to hit Manila[20] after 8 hours.[21] This, notwithstanding, he did nothing, until 8:35 in the morning of October 21, 1994, when he decided to seek shelter at the North Harbor, which unfortunately was already congested. The finding of negligence cannot be rebutted upon proof that the ship could not have sought refuge at the North Harbor even if the transfer was done earlier. It is not the speculative success or failure of a decision that determines the existence of negligence in the present case, but the failure to take immediate and appropriate action under the circumstances. Capt. Jusep, despite knowledge that the typhoon was to hit Manila in 8 hours, complacently waited for the lapse of more than 8 hours thinking that the typhoon might change

direction.[22] He cannot claim that he waited for the sun to rise instead of moving the vessel at midnight immediately after receiving the report because of the difficulty of traveling at night. The hour of 8:35 a.m. is way past sunrise. Furthermore, he did not transfer as soon as the sun rose because, according to him, it was not very cloudy[23] and there was no weather disturbance yet.[24]

When he ignored the weather report notwithstanding reasonable foresight of harm, Capt. Jusep showed an inexcusable lack of care and caution which an ordinary prudent person would have observed in the same situation.[25] Had he moved the vessel earlier, he could have had greater chances of finding a space at the North Harbor considering that the Navotas Port where they docked was very near North Harbor.[26] Even if the latter was already congested, he would still have time to seek refuge in other ports.

The trial court erred in applying the emergency rule. Under this rule, one who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the danger in which he finds himself is brought about by his own negligence.[27] Clearly, the emergency rule is not applicable to the instant case because the danger where Capt. Jusep found himself was caused by his own negligence.

Anent the second issue, we find petitioner vicariously liable for the negligent act of Capt. Jusep. Under Article 2180 of the Civil Code an employer may be held solidarily liable for the negligent act of his employee. Thus -

> Art. 2180. The obligation imposed in Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> x x x x x x x x x
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection (*culpa in eligiendo*) or supervision (*culpa in vigilando*) of its employees. To avoid liability for a *quasi-delict* committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee. [28]