

## THIRD DIVISION

[ G.R. No. 143008, June 10, 2002 ]

**SMITH BELL DODWELL SHIPPING AGENCY CORPORATION,  
PETITIONER, VS. CATALINO BORJA AND INTERNATIONAL TO  
WAGE AND TRANSPORT CORPORATION, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

The owner or the person in possession and control of a vessel is liable for all natural and proximate damages caused to persons and property by reason of negligence in its management or navigation. The liability for the loss of the earning capacity of the deceased is fixed by taking into account the net income of the victim at the time of death -- of the incident in this case -- and that person's probable life expectancy.

### The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, challenging the March 6, 2000 Decision<sup>[1]</sup> and the April 25, 2000 Resolution<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> (CA) in CA-GR CV No. 57470. The assailed Decision disposed as follows:

"WHEREFORE, premises considered, the instant appeal is hereby DENIED. The questioned decision of the lower court is hereby AFFIRMED *in toto*. No pronouncement as to costs."<sup>[4]</sup>

Reconsideration was denied in the assailed Resolution.

### The Facts

The facts of the case are set forth by the CA as follows:

"It appears that on September 23, 1987, Smith Bell [herein petitioner] filed a written request with the Bureau of Customs for the attendance of the latter's inspection team on vessel M/T King Family which was due to arrive at the port of Manila on September 24, 1987.

"Said vessel contained 750 metric tons of alkyl benzene and methyl methacrylate monomer.

"On the same day, Supervising Customs Inspector Manuel Ma. D. Nalgan instructed [Respondent Catalino Borja] to board said vessel and perform his duties as inspector upon the vessel's arrival until its departure. At that time, [Borja] was a customs inspector of the Bureau of Customs receiving a salary of P31,188.25 per annum.

"At about 11 o'clock in the morning on September 24, 1987, while M/T King Family was unloading chemicals unto two (2) barges [--] ITTC 101 and CLC-1002 [--] owned by [Respondent] ITTC, a sudden explosion occurred setting the vessels afire. Upon hearing the explosion, [Borja], who was at that time inside the cabin preparing reports, ran outside to check what happened. Again, another explosion was heard.

"Seeing the fire and fearing for his life, [Borja] hurriedly jumped over board to save himself. However, the [water] [was] likewise on fire due mainly to the spilled chemicals. Despite the tremendous heat, [Borja] swam his way for one (1) hour until he was rescued by the people living in the squatters' area and sent to San Juan De Dios Hospital.

"After weeks of intensive care at the hospital, his attending physician diagnosed [Borja] to be permanently disabled due to the incident. [Borja] made demands against Smith Bell and ITTC for the damages caused by the explosion. However, both denied liabilities and attributed to each other negligence."<sup>[5]</sup>

The trial court<sup>[6]</sup> (RTC) ruled in favor of Respondent Borja and held petitioner liable for damages and loss of income. The RTC disposed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering [Petitioner] Smith Bell Dodwell [S]hipping Agency Corporation to pay [Borja]:

1. The amount of P495,360.00 as actual damages for loss of earning capacity:
2. The amount of P100,000.00 for moral damages; and
3. The amount of P50,000.00 for and as reasonable attorney's fees.

"The cross-claim of [Petitioner] Smith Bell Dodwell Shipping Agency Corporation against co-defendant International Towage and Transport Corporation and the latter's counterclaim against [Borja] and cross-claim with compulsory counterclaim against Smith Bell are hereby ordered dismissed."<sup>[7]</sup>

### **Ruling of the Court of Appeals**

Affirming the trial court, the CA rejected the plea of petitioner that it be exonerated from liability for Respondent Borja's injuries. Contrary to the claim of petitioner that no physical evidence was shown to prove that the explosion had originated from its vessel, the CA held that the fire had originated from *M/T King Family*. This conclusion was amply supported by the testimonies of Borja and Eulogio Laurente (the eyewitness of International Towage and Transport Corporation or ITTC) as well as by the investigation conducted by the Special Board of Marine Inquiry and affirmed by the secretary of the Department of National Defense. On the other hand, the RTC, which the CA sustained, had not given probative value to the evidence of petitioner, whose sole eyewitness had not shown up for cross-examination.

Hence, this Petition.<sup>[8]</sup>

### **The Issues**

In its Memorandum,<sup>[9]</sup> petitioner raises the following issues:

"1. Whether petitioner should be held liable for the injuries of Respondent Catalino Borja.

"2. Whether Respondent ITTC should be held liable for the injuries of Respondent Catalino Borja.

"3. Assuming without admitting that Respondent Catalino Borja is entitled to damages, whether Respondent Borja is entitled to the amount of damages awarded to him by the trial court."<sup>[10]</sup>

Simply put, these issues can be summed up in these two questions: (1) Who, if any, is liable for Borja's injuries? (2) What is the proper amount of liability?

### **This Court's Ruling**

The Petition is partly meritorious.

#### **First Issue:** **Responsibility for Injuries**

Petitioner avers that both lower courts labored under a misapprehension of the facts. It claims that the documents adduced in the RTC conclusively revealed that the explosion that caused the fire on *M/T King Family* had originated from the barge *ITTC-101*, a conclusion based on three grounds. *First*, the Survey Report (Exh. "10") dated October 21, 1987 submitted by the Admiral Surveyors and Adjusters, Inc., showed that no part of *M/T King Family* sustained any sharp or violent damage that would otherwise be observed if indeed an explosion had occurred on it. On the other hand, the fact that the vessel sustained cracks on its shell plating was noted in two Survey Reports from Greutzman Divers Underwater Specialist, dated October 6, 1987 (Exh. "11"), and during the underwater inspection on the sunken barge *ITTC-101*.

*Second*, external fire damage on the hull of *M/T King Family* indicated that the fire had started from outside the vessel and from *ITTC-101*. The port side of the vessel to which the ITTC barge was tied was completely gutted by fire, while the starboard side to which the barge *CLC-1002* was tied sustained only slight fire damage.

*Third*, testimonial evidence proved that the explosion came from the barge of the ITTC and not from its vessel. Security Guard Vivencio Estrella testified that he had seen the sudden explosion of monomer on the barge with fire that went up to about 60 meters. Third Mate Choi Seong Hwan and Second Mate Nam Bang Choun of *M/T King Family* narrated that while they were discharging the chemicals, they saw and heard an explosion from the barge *ITTC-101*. Chief Security Guard Reynaldo Patron, in turn, testified that he was 7 to 10 meters away from the barge when he heard the explosion from the port side of *M/T King Family* and saw the barge already on fire.

We are not persuaded. Both the RTC and the CA ruled that the fire and the explosion had originated from petitioner's vessel. Said the trial court:

"The attempts of [Petitioner] Smith Bell to shift the blame on x x x ITTC were all for naught. First, the testimony of its alleged eyewitness was stricken off the record for his failure to appear for cross-examination (p. 361, Record). Second, the documents offered to prove that the fire originated from barge ITTC-101 were all denied admission by the [c]ourt for being, in effect, hearsay (pp. 335 and 362). x x x Thus, there is nothing in the record to support [petitioner's] contention that the fire and explosion originated from barge ITTC-101."<sup>[11]</sup>

We find no cogent reason to overturn these factual findings. Nothing is more settled in jurisprudence than that this Court is bound by the factual findings of the Court of Appeals when these are supported by substantial evidence and are not under any of the exceptions in *Fuentes v. Court of Appeals*;<sup>[12]</sup> more so, when such findings affirm those of the trial court.<sup>[13]</sup> Verily, this Court reviews only issues of law.

Negligence is conduct that creates undue risk of harm to another. It is the failure to observe that degree of care, precaution and vigilance that the circumstances justly demand, whereby that other person suffers injury.<sup>[14]</sup> Petitioner's vessel was carrying chemical cargo -- alkyl benzene and methyl methacrylate monomer.<sup>[15]</sup> While knowing that their vessel was carrying dangerous inflammable chemicals, its officers and crew failed to take all the necessary precautions to prevent an accident. Petitioner was, therefore, negligent.

The three elements of *quasi delict* are: (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages inflicted on the plaintiff.<sup>[16]</sup> All these elements were established in this case. Knowing fully well that it was carrying dangerous chemicals, petitioner was negligent in not taking all the necessary precautions in transporting the cargo.

As a result of the fire and the explosion during the unloading of the chemicals from petitioner's vessel, Respondent Borja suffered the following damage: and injuries: "(1) chemical burns of the face and arms; (2) inhalation of fumes from burning chemicals; (3) exposure to the elements [while] floating in sea water for about three (3) hours; (4) homonymous *hemianopsia* or blurring of the right eye [which was of] possible toxic origin; and (5) [c]erebral infract with neo-vascularization, left occipital region with right sided headache and the blurring of vision of right eye."<sup>[17]</sup>

Hence, the owner or the person in possession and control of a vessel and the vessel are liable for all natural and proximate damage caused to persons and property by reason of negligent management or navigation.<sup>[18]</sup>

### **Second Issue:** **Amount of Liability**

Petitioner insists that Borja is not entitled to the full amount of damages awarded by the lower courts. It disputes the use of his gross earning as basis for the computation of the award for loss of earning capacity. Both courts, in computing the