

SECOND DIVISION

[G.R. No. 125483, February 01, 2001]

LUDO AND LUYM CORPORATION, PETITIONER, VS. COURT OF APPEALS, GABISAN SHIPPING LINES, INC. AND/OR ANSELMO OLASIMAN RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This petition for review^[1] under Rule 45 of the Revised Rules of Court seeks to annul and set aside the decision^[2] dated January 10, 1996 of the Court of Appeals which reversed and set aside the decision of the Regional Trial Court of Cebu City, Branch IX, and the resolution^[3] dated June 11, 1996, denying petitioner's motion for reconsideration.

Petitioner Ludo & Luym Corporation is a domestic corporation engaged in copra processing with plant and business offices in Cebu City. Private Respondent Gabisan Shipping Lines was the registered owner and operator of the motor vessel *MV Miguela*, while the other private respondent, Anselmo Olasiman, was its captain.

Petitioner owns and operates a private wharf used by vessels for loading and unloading of copra and other processed products. Among its wharf's facilities are fender pile clusters for docking and mooring.

On May 21, 1990, at around 1:30 P.M., while *MV Miguela* was docking at petitioner's wharf, it rammed and destroyed a fender pile cluster. Petitioner demanded damages from private respondents. The latter refused. Hence, petitioner filed a complaint for damages before the Regional Trial Court of Cebu.

Petitioner's evidence during trial showed that on May 21, 1990, at 1:30 P.M., *MV Miguela* came to dock at petitioner's wharf. Irene Naval, petitioner's employee, guided the vessel to its docking place. After the guide (small rope) was thrown from the vessel and while the petitioner's security guard was pulling the big rope to be tied to the bolar, *MV Miguela* did not slow down. The crew did not release the vessel's anchor. Naval shouted "Reverse" to the vessel's crew, but it was too late when the latter responded, for the vessel already rammed the pile cluster. The impact disinclined the pile cluster and deformed the cable wires wound around it. Naval immediately informed the vessel's captain and its chiefmate of the incident, and instructed the guard-on-duty, Alfredo Espina, to make a spot report. The incident was reported to Atty. Du, petitioner's vice-president for legal and corporate affairs. Atty. Du in turn sent formal demand letters to private respondents. Marine surveyor Carlos Degamo inspected the damage on the pile cluster and found that one post was uprooted while two others were loosened and that the pile cluster was leaning shoreward. Degamo hired skin diver Marvin Alferez, who found that one post was broken at about 7 inches from the seabed and two other posts rose and cracked

at the bottom. Based on these findings, Degamo concluded that the two raised posts were also broken under the seabed and estimated the cost of repair and replacement at P95,000.00.

Private respondents denied the incident and the damage. Their witnesses claimed that the damage, if any, must have occurred prior to their arrival and caused by another vessel or by ordinary wear and tear. They averred that *MV Miguela* started to slow down at 100 meters and the crew stopped the engine at 50 meters from the pier; that Capt. Anselmo Olasiman did not order the anchor's release and chief mate Manuel Gabisan did not hear Naval shout "Reverse". Respondents claimed that Naval had no business in the vessels' maneuvering. When Naval informed the vessel's officers of the incident, Olasiman sent their bodega man, Ronilo Lazara, to dive on the same afternoon to check on the alleged damage. Lazara told Olasiman that there was no damage. However, during direct examination, Lazara testified that he found a crack on the side of the pile cluster, one post detached from the seabed at a distance of about 7 inches, and seashells and seaweeds directly underneath the uprooted post. There were scattered pieces of copra at the place where *MV Miguela* docked, which indicated the prior docking by other vessels. After *MV Miguela* left, another vessel docked in the same area. Petitioner did not prevent *MV Miguela* from departing. When chiefmate Gabisan went to Atty. Du, the latter told him not to mind the incident.

On rebuttal, petitioner presented Atty. Du who testified that Gabisan never went to his office after receiving the letter-complaint; that petitioner never received any reply to its demand letters; and that the first time Atty. Du saw Gabisan was during the pre-trial.

On May 14, 1993, the trial court disposed the case in favor of petitioner, thus:

WHEREFORE, premises considered, this court hereby renders judgment in favor of the plaintiff, ordering the defendants, jointly and severally, to pay the plaintiff the following:

- 1) Php 70,000.00 actual damages, plus interest at the rate of 12% per annum from the time the decision is received by defendants until fully paid;
- 2) Php 15,000.00 exemplary damages;
- 3) Php 15,000.00 attorney's fees;
- 4) Php 10,000.00 litigation expenses.

COSTS AGAINST THE DEFENDANTS.

SO ORDERED.^[4]

In finding in favor of petitioner, the trial court found that it was able to prove by preponderance of evidence that *MV Miguela* rammed and damaged the pile cluster; that petitioner's witnesses, Naval and Espina, actually saw the incident; that respondents failed to refute the testimony of marine surveyor Degamo and skin diver Alferez on the damages; that the officers and crew of *MV Miguela* were

negligent; and that respondents are solidarily liable for the damages. Upon private respondent's appeal, the Court of Appeals reversed the trial court on January 10, 1996, in its decision that reads:

WHEREFORE, in view of the foregoing, judgment is rendered REVERSING and SETTING aside the decision of the Court a quo, hereby entering a new one DISMISSING the Complaint for lack of merit.

No pronouncement as to costs.

SO ORDERED.^[5]

The CA found that petitioner's eyewitness Naval was incompetent to testify on the negligence of the crew and officers of *MV Miguela*; that there were other vessels that used the wharf for berthing and petitioner's evidence did not positively prove that it was *MV Miguela* that rammed the pile cluster; that the photographs of the pile cluster taken after the incident showed no visible damages; that, as shown by private respondents' witness, there were seashells and seaweeds directly under the uprooted post, which indicated that the breaking happened a long time ago.

The CA denied the motion for reconsideration. Hence, this petition for review where petitioner assigns the following errors:

- A. THE COURT OF APPEALS ACTED IN EXCESS OF ITS JURISDICTION WHEN IT WENT BEYOND THE ISSUES RAISED IN THE ASSIGNMENT OF ERRORS OF PRIVATE RESPONDENT.
- B. THE DECISION OF THE COURT OF APPEALS IS GROUNDED ON SPECULATION, SURMISES AND CONJECTURES AND HAS DEPARTED FROM THE RULES ON EVIDENCE.
- C. THE COURT OF APPEALS MISAPPREHENDED THE FACTS AND ITS FINDINGS IS TOTALLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD.
- D. THE COURT OF APPEALS DEPARTED FROM THE RULE OF *RES IPSA LOQUITUR*.^[6]

The issues for resolution can be reduced into three:

1. Did the CA go beyond the issues raised?
2. Can this Court review factual questions in this case?
3. Is the doctrine of *res ipsa loquitur* applicable to this case?

On the first issue, petitioner argues that private respondents did not assign as an error eyewitness Ireneo Naval's incompetence to testify on the negligence of *MV Miguela*'s officers and crew. Private respondent's brief contained nothing but general statements and reproductions of excerpts of the transcript of stenographic notes (TSN) which could not pass for a valid assignment of errors.

We note that Naval's incompetence was not one of the assigned errors in private