

THIRD DIVISION

[G.R. No. 93291, March 29, 1999]

**SULPICIO LINES, INC. AND CRESENCIO G. CASTANEDA,
PETITIONERS, VS. COURT OF APPEALS AND AQUARIUS FISHING
CO., INC., RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision, dated November 29, 1989, of the Court of Appeals^[1] in CA GR No. 15081, and the Resolution, dated April 24, 1990, denying petitioners' Motion for Reconsideration.

The facts that matter are as follows:

The case stemmed from a complaint for damages of Aquarius Fishing Co., Inc. against Sulpicio Lines, Inc. and Cresencio G. Castaneda, docketed as Civil Case No. 14510 before Branch 44 of Regional Trial Court in Bacolod City. In due time, said defendants submitted their Answer with counterclaim.

On May 31, 1986, the trial court came out with its Decision in favor of plaintiff Aquarius Fishing Co., Inc. ratiocinating and disposing thus:

The question to be determined is whether the collision between M/V Don Sulpicio and F/B Aquarius 'G' was due to the negligence of the defendants or of the plaintiff. It is admitted in the evidence that at a distance of about 4 miles M/V Don Sulpicio has sighted 2 fishing boats, namely: F/B Aquarius 'C' and F/B Aquarius 'G' although defendants maintained it was F/B Aquarius 'B'. From the evidence it appears that the 2 fishing boats had a speed of about 7.5 to 8 knots per hour while M/V Don Sulpicio was running about 15.5 knots per hour. It would appear that the speed of M/V Don Sulpicio was more than twice as fast as the speed of the two fishing boats. The weather at that time the accident happened was clear and visibility was good. In other words, from the distance of about four miles at sea, the men of Don Sulpicio could clearly see the 2 fishing boats which were ahead about 4 miles and likewise, the men of the 2 fishing boats could clearly see M/V Don Sulpicio following. The plaintiff claims that they continued on their speed in their course and while maintaining their speed they were rammed by M/V Don Sulpicio.

Defendants claim that plaintiff was negligent and that the collision was due to the negligence of the men manning F/B Aquarius 'B' and submit that considering that F/B Aquarius 'B' had no lookout and that the fishing boat was ahead, F/B Aquarius 'B' should have given way to M/V Don

Sulpicio who was following in order to avoid collision. And considering that F/B Aquarius 'B' was at fault, it should suffer its own damage.

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It appears in the theory of defendants that simply because a vessel had no lookout and that the vessel was ahead, if it is rammed by another vessel that is following, the fault would be on the vessel that is ahead because the vessel that is ahead should always give way to the vessel that is following.

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From this argument, it would appear that whether actual negligence was committed by the vessel ahead or not, but as long as the vessel had no lookout and has not given way to the vessel following, the vessel following, if it ram the vessel ahead, has no fault.

It should be noted that F/B Aquarius 'G' is a fishing vessel with a speed of only 7.5 or 8 knots per hour and according to the master of the vessel, they are not required by law to have a lookout because the vessel is small. M/V Don Sulpicio is a passenger boat with a speed of about 15.5 knots an hour and being a passenger boat, it is bigger boat and a faster boat. It is incumbent upon its master to see to it that the direction to which they are proceeding is clear. Having seen for the first time the 2 vessels, F/B Aquarius 'C' and F/B Aquarius 'G' about 4 miles ahead and that they were almost parallel to each other or in the same line with each other, as M/V Don Sulpicio was following, M/V Don Sulpicio should have used sufficient diligence to avoid collision. It appears from the evidence that during the incident, the weather was clear and visibility was very good. The M/V Don Sulpicio had a clear opportunity to avoid collision, but it failed to do so. M/V Don Sulpicio believed, that considering that it was a following vessel, it can just go thru and proceed irrespective of danger. The Court believes that the evidence is abundant to show negligence on the part of the master of the defendants and as such, defendants should be held responsible for all the damages suffered by F/B Aquarius 'G'.

Defendants claim that the vessel involved was F/B Aquarius 'B'. However, the evidence show that the fishing vessel that sunk was F/B Aquarius 'G' and not F/B Aquarius 'B'. And as shown by the evidence, the total loss of F/B Aquarius 'G' together with its articles and provisions was P564,448.80."^[2]

WHEREFORE, the Court finds the complaint duly supported by evidence and judgment is hereby rendered in favor of the plaintiff and against the defendants, who are hereby ordered to pay, jointly and severally, the plaintiff the sum of P564,448.80 for the actual loss of F/B Aquarius 'G' including its articles and provisions; the sum of P10,000.00 per month from the date of the accident representing deprivation of the use and services of F/B Aquarius 'G' and another sum of P10,000.00 for actual expenses and costs of litigation, another sum of P10,000.00 by way of exemplary damages, another sum equivalent to 15% of the total claim of

plaintiff as attorney's fees plus P300.00 per court appearance, and to pay legal rate of interest of all the amounts so adjudged from November 18, 1978 until the entire amount is fully paid, and to pay the costs. Counterclaim is dismissed."^[3]

The defendants appealed to the Court of Appeals, assigning seven (7) errors which the appellate court summed up and treated as two pivotal issues, to wit:

"1. THE COURT A QUO ERRED IN DISREGARDING THE REGULATION FOR PREVENTING COLLISION AT SEA, MORE POPULARLY KNOWN AS THE RULE OF THE ROAD IN DETERMINING WHICH OF THE TWO VESSELS WAS NEGLIGENT AND LIABLE, CONSIDERING THAT M/V DON SULPICIO COMPLIED WITH THEIR PROVISIONS, WHILE F/B AQUARIUS `G' DID NOT; AND

2. THE COURT A QUO ERRED IN AWARDING DAMAGES, ATTORNEY'S FEES, ACTUAL EXPENSES AND COSTS OF LITIGATION, LEGAL RATE OF INTEREST OF ALL THE AWARDS FROM NOVEMBER 18, 1978 UNTIL ALL THE AMOUNTS ARE FULLY PAID."^[4]

On November 29, 1989, the Court of Appeals affirmed the Decision of the trial court of origin. The Motion for Reconsideration interposed on December 23, 1989 by appellants met the same fate. It was denied on April 24, 1990.

Undaunted, petitioners found their way to this Court via the present Petition for Review on Certiorari, contending that:

I

THE LOWER COURT ERRED IN EXONERATING THE VESSEL F/B "AQUARIUS B" AND HER MASTER FROM NEGLIGENCE DESPITE THE ADMISSION BY AGAPITO GERBOLINGA, PATRON OF SAID VESSEL THAT THEY HAD NO LOOKOUT DURING THE COLLISION.

II

THE LOWER COURT ERRED IN DISREGARDING THE REGULATION FOR PREVENTING COLLISION AT SEA, MORE POPULARLY KNOWN AS THE RULES OF THE ROAD IN DETERMINING WHICH OF THE TWO VESSELS WAS NEGLIGENT AND LIABLE.

III

THE LOWER COURT ERRED IN IMPUTING NEGLIGENCE ON THE VESSEL M/V "DON SULPICIO", THE PRIVILEGED VESSEL WHICH COMPLIED WITH RULES 19 AND 21, RULES OF THE ROAD.

IV

THE LOWER COURT ERRED IN AWARDING TO PLAINTIFF-APPELLEE THE AMOUNT OF P564,448.80 AS ACTUAL LOSS PLUS P10,000.00 PER MONTH FROM THE PERIOD OF NOVEMBER 18, 1978 REPRESENTING DEPRIVATION OF USE AND SERVICES OF F/B "AQUARIUS B" AND

ANOTHER SUM OF P10,000.00 FOR ACTUAL EXPENSES AND COST OF LITIGATION.

V

THE LOWER COURT ERRED IN AWARDING PLAINTIFF AND AGAINST DEFENDANTS THE SUM OF P10,000.00 AS EXEMPLARY DAMAGES.

VI

THE LOWER COURT ERRED IN AWARDING PLAINTIFF AND AGAINST THE DEFENDANT-APPELLEE THE SUM EQUIVALENT TO 15% OF THE TOTAL CLAIM AS ATTORNEY'S FEES PLUS P300.00 PER COURT APPEARANCE.

VII

THE LOWER COURT ERRED IN AWARDING LEGAL RATE OF INTEREST OF ALL THE AWARDS TO PLAINTIFF-APPELLEE FROM NOVEMBER 18, 1978 UNTIL ALL THE AMOUNTS ARE FULLY PAID.^[5]

Placing reliance on the Rules of the Road and Regulations on the Prevention of Collision, petitioners maintain:

"xxx that respondent Court of Appeals completely disregarded the rule of admission in matters adverse to one's interest. It is very clear that the F/B `Aquarius B', her patron and crew were negligent in this case. The Rules of the Road which is Annex `A' of the Philippine Merchant Rules and Regulations requires that all vessels must have a lookout (Rule 29, Rules of the Road). All vessels irrespective of size and make must keep a lookout. There is no exception to this rule.

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It was clearly established by the positive testimony of second mate, Aurelio Villacampa, Jr. on July 14, 1981 and the sketch prepared by said witness (Exhibit 2) that the two vessels were in a crossing situation. The vessel M/V `Don Sulpicio' was approaching on the starboard or right side of the crossing vessel F/B `Aquarius B'. The applicable rules in such a crossing situation are Rules 19, 21, 22 and 23. We quote the above Rules as follows:

`Rule 19. When two power driven vessels are crossing, so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other.'

`Rule 21. Where, by any of the Rules, one of two vessels is to keep out of the way, the other shall keep her course and speed.'

`Rule 22. Every vessel which is directed by these Rules to keep out of the way of another vessel, so far as possible, take positive early action to comply with this obligation, and shall, if the circumstance of the case admit, avoid crossing ahead of the other.'