

## FIRST DIVISION

**[ G.R. No. 131166, September 30, 1999 ]**

**CALTEX (PHILIPPINES), INC. PETITIONER, VS. SULPICIO LINES, INC., GO SIOC SO, ENRIQUE S. GO, EUSEBIO S. GO, CARLOS S. GO, VICTORIANO S. GO, DOMINADOR S. GO, RICARDO S. GO, EDWARD S. GO, ARTURO S. GO, EDGAR S. GO, EDMUND S. GO, FRANCISCO SORIANO, VECTOR SHIPPING CORPORATION, TERESITA G. CAÑEZAL AND SOTERA E. CAÑEZAL, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

Is the charterer of a sea vessel liable for damages resulting from a collision between the chartered vessel and a passenger ship?

When MT Vector left the port of Limay, Bataan, on December 19, 1987 carrying petroleum products of Caltex (Philippines), Inc. (hereinafter Caltex) no one could have guessed that it would collide with MV Doña Paz, killing almost all the passengers and crew members of both ships, and thus resulting in one of the country's worst maritime disasters.

The petition before us seeks to reverse the Court of Appeals decision<sup>[1]</sup> holding petitioner jointly liable with the operator of MT Vector for damages when the latter collided with Sulpicio Lines, Inc.'s passenger ship MV Doña Paz.

The facts are as follows:

On December 19, 1987, motor tanker MT Vector left Limay, Bataan, at about 8:00 p.m., enroute to Masbate, loaded with 8,800 barrels of petroleum products shipped by petitioner Caltex.<sup>[2]</sup> MT Vector is a tramping motor tanker owned and operated by Vector Shipping Corporation, engaged in the business of transporting fuel products such as gasoline, kerosene, diesel and crude oil. During that particular voyage, the MT Vector carried on board gasoline and other oil products owned by Caltex by virtue of a charter contract between them.<sup>[3]</sup>

On December 20, 1987, at about 6:30 a.m., the passenger ship MV Doña Paz left the port of Tacloban headed for Manila with a complement of 59 crew members including the master and his officers, and passengers totaling 1,493 as indicated in the Coast Guard Clearance.<sup>[4]</sup> The MV Doña Paz is a passenger and cargo vessel owned and operated by Sulpicio Lines, Inc. plying the route of Manila/ Tacloban/ Catbalogan/ Manila/ Catbalogan/ Tacloban/ Manila, making trips twice a week.

At about 10:30 p.m. of December 20, 1987, the two vessels collided in the open sea within the vicinity of Dumali Point between Marinduque and Oriental Mindoro. All the crewmembers of MV Doña Paz died, while the two survivors from MT Vector claimed

that they were sleeping at the time of the incident.

The MV Doña Paz carried an estimated 4,000 passengers; many indeed, were not in the passenger manifest. Only 24 survived the tragedy after having been rescued from the burning waters by vessels that responded to distress calls.<sup>[5]</sup> Among those who perished were public school teacher Sebastian Cañezal (47 years old) and his daughter Corazon Cañezal (11 years old), both unmanifested passengers but proved to be on board the vessel.

On March 22, 1988, the board of marine inquiry in BMI Case No. 653-87 after investigation found that the MT Vector, its registered operator Francisco Soriano, and its owner and actual operator Vector Shipping Corporation, were at fault and responsible for its collision with MV Doña Paz.<sup>[6]</sup>

On February 13, 1989, Teresita Cañezal and Sotera E. Cañezal, Sebastian Cañezal's wife and mother respectively, filed with the Regional Trial Court, Branch 8, Manila, a complaint for "Damages Arising from Breach of Contract of Carriage" against Sulpicio Lines, Inc. (hereafter Sulpicio). Sulpicio, in turn, filed a third party complaint against Francisco Soriano, Vector Shipping Corporation and Caltex (Philippines), Inc. Sulpicio alleged that Caltex chartered MT Vector with gross and evident bad faith knowing fully well that MT Vector was improperly manned, ill-equipped, unseaworthy and a hazard to safe navigation; as a result, it rammed against MV Doña Paz in the open sea setting MT Vector's highly flammable cargo ablaze.

On September 15, 1992, the trial court rendered decision dismissing the third party complaint against petitioner. The dispositive portion reads:

"WHEREFORE, judgement is hereby rendered in favor of plaintiffs and against defendant-3rd party plaintiff Sulpicio Lines, Inc., to wit:

"1. For the death of Sebastian E. Cañezal and his 11-year old daughter Corazon G. Cañezal, including loss of future earnings of said Sebastian, moral and exemplary damages, attorney's fees, in the total amount of P 1,241,287.44 and finally;

"2. The statutory costs of the proceedings.

"Likewise, the 3rd party complaint is hereby DISMISSED for want of substantiation and with costs against the 3rd party plaintiff.

"IT IS SO ORDERED.

"DONE IN MANILA, this 15th day of September 1992.

"ARSENIO M. GONONG

"Judge"<sup>[7]</sup>

On appeal to the Court of Appeals interposed by Sulpicio Lines, Inc., on April 15, 1997, the Court of Appeal modified the trial court's ruling and included petitioner Caltex as one of the those liable for damages. Thus:

"WHEREFORE, in view of all the foregoing, the judgment rendered by the Regional Trial Court is hereby MODIFIED as follows:

"WHEREFORE, defendant Sulpicio Lines, Inc., is ordered to pay the heirs of Sebastian E. Cañezal and Corazon Cañezal:

"1. Compensatory damages for the death of Sebastian E. Cañezal and Corazon Cañezal the total amount of ONE HUNDRED THOUSAND PESOS (P100,000);

"2. Compensatory damages representing the unearned income of Sebastian E. Cañezal, in the total amount of THREE HUNDRED SIX THOUSAND FOUR HUNDRED EIGHTY (P306,480.00) PESOS;

"3. Moral damages in the amount of THREE HUNDRED THOUSAND PESOS (P 300,000.00);

"4. Attorney's fees in the concept of actual damages in the amount of FIFTY THOUSAND PESOS (P 50,000.00);

"5. Costs of the suit.

"Third party defendants Vector Shipping Co. and Caltex (Phils.), Inc. are held equally liable under the third party complaint to reimburse/indemnify defendant Sulpicio Lines, Inc. of the above-mentioned damages, attorney's fees and costs which the latter is adjudged to pay plaintiffs, the same to be shared half by Vector Shipping Co. (being the vessel at fault for the collision) and the other half by Caltex (Phils.), Inc. (being the charterer that negligently caused the shipping of combustible cargo aboard an unseaworthy vessel).

"SO ORDERED.

"JORGE S. IMPERIAL  
"Associate Justice

"WE CONCUR:

"RAMON U. MABUTAS. JR.  
"Associate Justice

PORTIA ALIÑO HERMACHUELOS  
Associate Justice"[8]

Hence, this petition.

We find the petition meritorious.

First: The charterer has no liability for damages under Philippine Maritime laws.

The respective rights and duties of a shipper and the carrier depends not on whether the carrier is public or private, but on whether the contract of carriage is a bill of lading or equivalent shipping documents on the one hand, or a charter party

or similar contract on the other.<sup>[9]</sup>

Petitioner and Vector entered into a contract of affreightment, also known as a voyage charter.<sup>[10]</sup>

A charter party is a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use; a contract of affreightment is one by which the owner of a ship or other vessel lets the whole or part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight.<sup>[11]</sup>

A contract of affreightment may be either **time charter**, wherein the leased vessel is leased to the charterer for a fixed period of time, or **voyage** charter, wherein the ship is leased for a single voyage. In both cases, the charter-party provides for the hire of the vessel only, either for a determinate period of time or for a single or consecutive voyage, the ship owner to supply the ship's store, pay for the wages of the master of the crew, and defray the expenses for the maintenance of the ship.<sup>[12]</sup>

Under a **demise or bareboat charter** on the other hand, the charterer mans the vessel with his own people and becomes, in effect, the owner for the voyage or service stipulated, subject to liability for damages caused by negligence.

If the charter is a contract of affreightment, which leaves the general owner in possession of the ship as owner for the voyage, the rights and the responsibilities of ownership rest on the owner. The charterer is free from liability to third persons in respect of the ship.<sup>[13]</sup>

Second : MT Vector is a common carrier

Charter parties fall into three main categories: (1) Demise or bareboat, (2) time charter, (3) voyage charter. Does a charter party agreement turn the common carrier into a private one? We need to answer this question in order to shed light on the responsibilities of the parties.

In this case, the charter party agreement did not convert the common carrier into a private carrier. The parties entered into a voyage charter, which retains the character of the vessel as a common carrier.

In *Planters Products, Inc. vs. Court of Appeals*,<sup>[14]</sup> we said:

"It is therefore imperative that a public carrier shall remain as such, notwithstanding the charter of the whole or portion of a vessel by one or more persons, provided the charter is limited to the ship only, as in the case of a time-charter or voyage charter. It is only when the charter includes both the vessel and its crew, as in a bareboat or demise that a common carrier becomes private, at least insofar as the particular voyage covering the charter-party is concerned. Indubitably, a ship-owner in a time or voyage charter retains possession and control of the ship, although her holds may, for the moment, be the property of the charterer."

Later, we ruled in *Coastwise Lighterage Corporation vs. Court of Appeals*:<sup>[15]</sup>

“Although a charter party may transform a common carrier into a private one, the same however is not true in a contract of affreightment xxx”

A common carrier is a person or corporation whose regular business is to carry passengers or property for all persons who may choose to employ and to remunerate him.<sup>[16]</sup> MT Vector fits the definition of a common carrier under Article 1732 of the Civil Code. In *Guzman vs. Court of Appeals*,<sup>[17]</sup> we ruled:

“The Civil Code defines “common carriers” in the following terms:

“Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers for passengers or goods or both, by land, water, or air for compensation, offering their services to the public.”

“The above article makes no distinction between one whose *principal* business activity is the carrying of persons or goods or both, and one who does such carrying only as an *ancillary* activity (in local idiom, as “a sideline”). Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a *regular or scheduled basis* and one offering such services on a *an occasional, episodic or unscheduled basis*. Neither does Article 1732 distinguish between a carrier offering its services to the “general public,” i.e., the general community or population, and one who offers services or solicits business only from a narrow *segment* of the general population. We think that Article 1733 deliberately refrained from making such distinctions.

“It appears to the Court that private respondent is properly characterized as a common carrier even though he merely “back-hauled” goods for other merchants from Manila to Pangasinan, although such backhauling was done on a periodic, occasional rather than regular or scheduled manner, and even though respondent’s *principal* occupation was not the carriage of goods for others. There is no dispute that private respondent charged his customers a fee for hauling their goods; that the fee frequently fell below commercial freight rates is not relevant here.”

Under the Carriage of Goods by Sea Act :

Sec. 3. (1) The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to -

(a) **Make the ship seaworthy;**

(b) Properly man, equip, and supply the ship;

xxx                      xxx                      xxx

Thus, the carriers are deemed to warrant impliedly the seaworthiness of the ship. For a vessel to be seaworthy, it must be adequately equipped for the voyage and