

THIRD DIVISION

[G.R. No. 118126, March 04, 1996]

TRANS-ASIA SHIPPING LINES, INC., PETITIONER, VS. COURT OF APPEALS AND ATTY. RENATO T. ARROYO, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., J.:

As formulated by the petitioner, the issue in this petition for review on certiorari under Rule 45 of the Rules of Court is as follows:

In case of interruption of a vessel's voyage and the consequent delay in that vessel's arrival at its port of destination, is the right of a passenger affected thereby to be determined and governed by the vague Civil Code provision on common carriers, or shall it be, **in the absence of a specific provision thereon**, governed by Art. 698 of the Code of Commerce?^[1]

The petitioner considers it a "novel question of law."

Upon a closer evaluation, however, of the challenged decision of the Court of Appeals of 23 November 1994,^[2] *vis-a-vis*, the decision of 29 June 1992 in Civil Case No. 91-491 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 24,^[3] as well as the allegations and arguments adduced by the parties, we find the petitioner's formulation of the issue imprecise. As this Court sees it, what stands for resolution is a common carrier's liability for damages to a passenger who disembarked from the vessel upon its return to the port of origin, after it suffered engine trouble and had to stop at sea, having commenced the contracted voyage on one engine.

The antecedents are summarized by the Court of Appeals as follows:

Plaintiff [herein private respondent Atty. Renato Arroyo], a public attorney, bought a ticket [from] defendant [herein petitioner], a corporation engaged in x x x inter-island shipping, for the voyage of M/V Asia Thailand vessel to Cagayan de Oro City from Cebu City on November 12, 1991.

At around 5:30 in the evening of November 12, 1991, plaintiff boarded the M/V Asia Thailand vessel. At that instance, plaintiff noticed that some repair works [sic] were being undertaken on the engine of the vessel. The vessel departed at around 11:00 in the evening with only one (1)

engine running.

After an hour of slow voyage, the vessel stopped near Kawit Island and dropped its anchor thereat. After half an hour of stillness, some passengers demanded that they should be allowed to return to Cebu City for they were no longer willing to continue their voyage to Cagayan de Oro City. The captain acceded [sic] to their request and thus the vessel headed back to Cebu City.

At Cebu City, plaintiff together with the other passengers who requested to be brought back to Cebu City, were allowed to disembark. Thereafter, the vessel proceeded to Cagayan de Oro City. Plaintiff, the next day, boarded the M/V Asia Japan for its voyage to Cagayan de Oro City, likewise a vessel of defendant.

On account of this failure of defendant to transport him to the place of destination on November 12, 1991, plaintiff filed before the trial court a complaint for damages against defendant.^[4]

In his complaint, docketed as Civil Case No. 91-491, plaintiff (*hereinafter private respondent*) alleged that the engines of the M/V Asia Thailand conked out in the open sea, and for more than an hour it was stalled and at the mercy of the waves, thus causing fear in the passengers. It sailed back to Cebu City after it regained power, but for unexplained reasons, the passengers, including the private respondent, were arrogantly told to 'disembark without the necessary precautions against possible injury to them. They were thus unceremoniously dumped, which only exacerbated the private respondent's mental distress. He further alleged that by reason of the petitioner's wanton, reckless, and willful acts, he was unnecessarily exposed to danger and, having been stranded in Cebu City for a day, incurred additional expenses and loss of income. He then prayed that he be awarded P1,100.00, P50,000.00, and P25,000.00 as compensatory, moral, and exemplary damages, respectively.^[5]

In his pre-trial brief, the private respondent asserted that his complaint was "an action for damage& arising from bad faith, breach of contract and from tort," with the former arising from the petitioner's "failure to carry [him] to his place of destination as contracted," while the latter from the "conduct of the [petitioner] resulting [in] the infliction of emotional distress" to the private respondent.^[6]

After due trial, the trial court rendered its decision^[7] and ruled that the action was only for breach of contract, with Articles 1170, 1172, and 1173 of the Civil Code as applicable law - not Article 2180 of the same Code. It was of the opinion that Article 1170 made a person liable for damages if, in the performance of his obligation, he was guilty of fraud, negligence, or delay, or in any manner contravened the tenor thereof; moreover, pursuant to Article 2201 of the same Code, to be entitled to damages, the non-performance of the obligation must have been tainted not only by fraud, negligence, or delay, but also bad faith, malice, and wanton attitude. It then disposed of the case as follows:

WHEREFORE, it not appearing from the evidence that plaintiff was left in the Port of Cebu because of the fault, negligence, malice or wanton attitude of defendant's employees, the complaint is DISMISSED. Defendant's counterclaim is likewise dismissed it not appearing also that filing of the case by plaintiff was motivated by malice or bad faith.^[8]

The trial court made the following findings to support its disposition:

In the light of the evidence adduced by the parties and of the above provisions of the New Civil Code, the issue to be resolved, in the resolution of this case is whether or not, defendant thru its employee in [sic] the night of November 12, 1991, committed fraud, negligence, bad faith or malice when it left plaintiff in the Port of Cebu when it sailed back to Cagayan de Oro City after it has [sic] returned from Kawit Island.

Evaluation of the evidence of the parties tended to show nothing that defendant committed fraud. As early as 3:00 p.m. of November 12, 1991, defendant did not hide the fact that the cylinder head cracked. Plaintiff even saw during its repair. If he had doubts as to the vessel's capacity to sail, he had time yet to take another boat. The ticket could be returned to defendant and corresponding cash [would] be returned to him.

Neither could negligence, bad faith or malice on the part of defendant be inferred from the evidence of the parties. When the boat arrived at [the] Port of Cebu after it returned from Kawit Island, there was an announcement that passengers who would like to disembark were given ten (10) minutes only to do so. By this announcement, it could be inferred that the boat will [sic] proceed to Cagayan de Oro City. If plaintiff entertained doubts, he should have asked a member of the crew of the boat or better still, the captain of the boat. But as admitted by him, he was of the impression only that the boat will not proceed to Cagayan de Oro that evening so he disembarked. He was instead, the ones [sic] negligent. Had he been prudent, with the announcement that those who will disembark were given ten minutes only, he should have lingered a little by staying in his cot and inquired whether the boat will proceed to Cagayan de Oro City or not. Defendant cannot be expected to be telling [sic] the reasons to each passenger. Announcement by microphone was enough.

The court is inclined to believe that the story of defendant that the boat returned to the Port of Cebu because of the request of the passengers in view of the waves. That it did not return because of the defective engines as shown by the fact that fifteen (15) minutes after the boat docked [at] the Port of Cebu and those who wanted to proceed to Cagayan de Oro disembarked, it left for Cagayan de Oro City.

The defendant got nothing when the boat returned to Cebu to let those who did not want to proceed to Cagayan de Oro City including plaintiff

disembarked. On the contrary, this would mean its loss instead because it will have to refund their tickets or they will use it the next trip without paying anymore. It is hard therefore, to imagine how defendant by leaving plaintiff in Cebu could have acted in bad faith, negligently, want only and with malice.

If plaintiff, therefore, was not able to [m]ake the trip that night of November 12, 1991, it was not because defendant maliciously did it to exclude him [from] the trip. If he was left, it was because of his fault or negligence.^[9]

Unsatisfied, the private respondent appealed to the Court of Appeals (CA-G.R. CV No. 39901) and submitted for its determination the following assignment of errors: (1) the trial court erred in not finding that the defendant-appellee was guilty of fraud, delay, negligence, and bad faith; and (2) the trial court erred in not awarding moral and exemplary damages.^[10]

In its decision of 23 November 1994,^[11] the Court of Appeals reversed the trial court's decision by applying Article 1755 in relation to Articles 2201, 2208, 2217, and 2232 of the Civil Code and, accordingly, awarded compensatory, moral, and exemplary damages as follows:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE and another one is rendered ordering defendant-appellee to pay plaintiff-appellant:

1. P20,000.00 as moral damages;
2. P10,000.00 as exemplary damages;
3. P5,000.00 as attorney's fees;
4. Cost of suit.

SO ORDERED.^[12]

It did not, however, allow the grant of damages for the delay in the performance of the petitioner's obligation as the requirement of demand set forth in Article 1169 of the Civil Code had not been met by the private respondent. Besides, it found that the private respondent offered no evidence to prove that his contract of carriage with the petitioner provided for liability in case of delay in departure, nor that a designation of the time of departure was the controlling motive for the establishment of the contract. On the latter, the court a quo observed that the private respondent even admitted he was unaware of the vessel's departure time, and it was only when he boarded the vessel that he became aware of such. Finally, the respondent Court found no reasonable basis for the private respondent's belief that demand was useless because the petitioner had rendered it beyond its power to

perform its obligation; on the contrary, he even admitted that the petitioner had been assuring the passengers that the vessel would leave on time, and that it could still perform its obligation to transport them as scheduled.

To justify its award of damages, the Court of Appeals ratiocinated as follows:

It is an established and admitted fact that the vessel before the voyage had undergone some repair work on the cylinder head of the engine. It is likewise admitted by defendant-appellee that it left the port of Cebu City with only one engine running. Defendant-appellee averred:

x x x The dropping of the vessel's anchor after running slowly on only one engine when it departed earlier must have alarmed some nervous passengers x x x

The entries in the logbook which defendant-appellee itself offered as evidence categorically stated therein that the vessel stopped at Kawit Island because of engine trouble. It reads:

2330 HRS STBD ENGINE EMERGENCY STOP
2350 HRS DROP ANCHOR DUE TO. ENGINE TROUBLE, 2
ENGINE STOP.

The stoppage was not to start and synchronized [sic] the engines of the vessel as claimed by defendant-appellee. It was because one of the engines of the vessel broke down; it was because of the disability of the vessel which from the very beginning of the voyage was known to defendant-appellee.

Defendant-appellee from the very start of the voyage knew for a fact that the vessel was not yet in its sailing condition because the second engine was still being repaired. In spite of this knowledge, defendant-appellee still proceeded to sail with only one engine running.

Defendant-appellee at that instant failed to exercise the diligence which all common carriers should exercise in transporting or carrying passengers. The law does not merely require extraordinary diligence in the performance of the obligation. The law mandates that common carrier[s] should exercise utmost diligence in the transport of passengers.

Article 1755 of the New Civil Code provides:

ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using