EN BANC

G.R. No. 236263 – OCEANMARINE RESOURCES CORPORATION, *petitioner,* v. JENNY ROSE G. NEDIC, on behalf of her minor son, JEROME NEDIC ELLAO, *respondent.*

Promulgated:

July 19, 2022

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CONCURRING OPINION

LEONEN, *J.*:

I concur that an action for damages based on the provisions of the Civil Code is an alternative remedy from filing compensation claims under the Workmen's Compensation Act, now the Labor Code of the Philippines.

As discussed in my Separate Concurring Opinion in *Interorient Maritime Enterprises, Inc. v. Creer III*,[1] while most seafarers pursue claims on the basis of breaches of contractual obligations, recovery of damages against an employer due to a tortious violation under the Civil Code and special laws is not precluded.

> The Philippine Overseas Employment Administration or POEA regulations require certain provisions to be put in the employment contract. Necessarily, it prescribes a procedure that finds a balance of interest in both the amount and the process for recovery of compensation as a result of occupational hazards suffered by the seafarer. The cause of action in such recovery is based on contract inclusive of both statutory and regulatory provisions impliedly included in it.
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> While this may be the theory pursued in practice, substantive law still allows recovery of damages for injuries suffered by the seafarer as a result of a tortious violation on the part of the employer. This may be on the basis of the provisions of the Civil Code as well as special laws. These special laws may relate, among others, to environmental regulations and requirements to ensure the reduction of risks to occupational hazards both for the seafarer and the public in general. In such cases, the process for recovery should not be constrained by contract.[2]

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1 J. Leonen, Concurring Opinion in *Interorient Maritime Enterprises, Inc. v. Creer III,* 743 Phil. 164 (2014) [Per J. Del Castillo, Second Division].

2 Id. at 188. *See also Dayo v. Status Maritime Corporation,* 751 Phil. 778 (2015) [Per J. Leonen, Second Division].

This has been reiterated by this Court in *Monana v. MEC Global Shipmanagement*:[3]

> We observe that most seafarer complaints for compensation pursue the cause of action petitioner took in this case — breach of contractual obligations by its employer by invoking provisions of the POEA contract. This course follows a procedure that considers a balance of interests in the amount of compensation for the occupational hazards a seafarer suffers, and the process to recover such compensation.
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> Seafarers who suffer from occupational hazards are not necessarily constrained to contractual breach as cause of action in claiming compensation. ***Our laws allow seafarers, in a proper case, to seek damages based on tortious violations by their employers by invoking Civil Code provisions, and even special laws*** such as environmental regulations requiring employers to ensure the reduction of risks to occupational hazards.[4] (Emphasis supplied, citations omitted)

This Court recognizes that the provisions of a contract, like the POEA Standard Employment Contract, should not limit the right of the seafarer to be compensated as work-related illnesses may progress at a slow pace and may occur beyond the term of the employment contract.[5]

Similarly, injured workers have an option to pursue their monetary claim against the employer under the Workmen's Compensation Act—now Labor Code of the Philippines—or under Civil Code provisions on damages.

In *Floresca v. Philex Mining Corporation*,[6] this Court differentiated an award of compensation under the Workmen's Compensation Act from damages under the Civil Code:

> The rationale in awarding compensation under the Workmen's Compensation Act differs from that in giving damages under the Civil Code. The compensation acts are based on a theory of compensation distinct from the existing theories of damages, payments under the acts being made as compensation and not as damages[.] Compensation is given to mitigate the harshness and insecurity of industrial life for the workman and his family. Hence, an employer is liable whether negligence exists or not since liability is created by law. Recovery under the Act is not based on any theory of actionable wrong on the part of the employer[.]
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> In other words, under the compensation acts, the employer is liable to pay compensation benefits for loss of income, as long as the death, sickness or injury is work-connected or work-aggravated, even if the death or injury is not due to the fault of the employer[.] On the other hand, damages are awarded to one as a vindication of the wrongful invasion of his rights. It is the indemnity recoverable by a person who has sustained

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3 746 Phil. 736 (2014) [Per J. Leonen, Second Division].
4 Id. at 756–757.
5 *Dayo v. Status Maritime Corporation*, 751 Phil. 778 (2015) [Per J. Leonen, Second Division].
6 220 Phil. 533 (1985) [Per J. Makasiar, En Banc].

> injury either in his person, property or relative rights, through the act or default of another[.]
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> The claimant for damages under the Civil Code has the burden of proving the causal relation between the defendant's negligence and the resulting injury as well as the damages suffered. While under the Workmen's Compensation Act, there is a presumption in favor of the deceased or injured employee that the death or injury is work-connected or work-aggravated; and the employer has the burden to prove otherwise[.][7] (Citations omitted)

In the 1938 case of *Murillo v. Mendoza*,[8] this Court highlighted the intent in creating the Workmen's Compensation Act, under the theory of compensation, and distinguished it from the theory of damages as indemnity:

> The intention of the Legislature in enacting the Workmen's Compensation Act was to secure workmen and their dependents against becoming objects of charity, by making a reasonable compensation for such accidental calamities as are incidental to the employment. Under such Act[,] injuries to workmen and employees are to be considered no longer as results of fault or negligence, but as the products of the industry in which the employee is concerned. Compensation for such injuries is, under the theory of such statute, like any other item in the cost of production or transportation, and ultimately charged to the consumer. The law substitutes for liability for negligence an entirely new conception; that is, that if the injury arises out of and in the course of the employment, under the doctrine of man's humanity to man, the cost of compensation must be one of the elements to be liquidated and balanced in the course of consumption. In other words, the theory of the law is that, if the industry produces an injury, that cost of that injury shall be included in the cost of the product of the industry. Hence the provision that the injury must arise out of and in the course of the employment[.]
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> . . . .
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> This court is of the opinion that the Legislature, in enacting the Workmen's Compensation Act and the amendments thereto, intended to create a new source of compensation in favor of workmen and employees [*sic*], by granting them the right to the compensation, in the cases provided therein, independently of the fault or negligence incurred by the employers. The rights and responsibilities defined in said Act must be governed by its own peculiar provisions in complete disregard of other similar provisions of the civil as well as the mercantile law. If an accident is compensable under the Workmen's Compensation Act, it must be compensated even when the [employee's] right is not recognized by or is in conflict with other provisions of the Civil Code or of the Code of Commerce. The reason behind this principle is that the Workmen's Compensation Act was enacted by the Legislature in abrogation of the other existing laws. Workmen's compensation acts follow the natural and logical evolution of society and the theory upon which they are based is that each time an employee is killed or injured, there is an economic loss which must be made up or compensated in some way. The burden of this

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7 Id. at 547–548.

8 66 Phil. 689 (1938) [Per J. Imperial, En Banc].

> economic loss should be borne by the industry rather than by society as a whole. A fund should be provided by the industry from which a fixed sum should be set apart as every accident occurs to compensate the person[s] injured, or [their] dependents, for [their] loss.[9] (Citations omitted)

Because of this difference in causes of action, an injured employee, or their heirs, have a right of selection or choice of action between filing a claim under the Workmen's Compensation Act and suing in the regular courts under the Civil Code for damages due to the employer's negligence or fault:

> In disposing of a similar issue, this Court in *Pacaña vs. Cebu Autobus Company*[,] ruled that an injured worker has a choice of either to recover from the employer the fixed amounts set by the Workmen's Compensation Act or to prosecute an ordinary civil action against the tortfeasor for higher damages but he cannot pursue both courses of action simultaneously.
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> In *Pacaña* WE said:
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> > "In the analogous case of *Esguerra vs. Muñoz Palma*, involving the application of Section 6 of the Workmen's Compensation Act on the injured workers' right to sue third-party tortfeasors in the regular courts, Mr. Justice J.B.L. Reyes, again speaking for the Court, pointed out that the injured worker has the choice of remedies but cannot pursue both courses of action simultaneously and thus balanced the relative advantage of recourse under the Workmen's Compensation Act as against an ordinary action.["]
> >
> > "As applied to this case, petitioner Esguerra cannot maintain his action for damages against the respondents (defendants below), because he has elected to seek compensation under the Workmen's Compensation Law, and his claim (case No. 44549 of the Compensation Commission) was being processed at the time he filed this action in the Court of First Instance. It is argued for petitioner that as the damages recoverable under the Civil Code are much more extensive than the amounts that may be awarded under the Workmen's Compensation Act, they should not be deemed incompatible. As already indicated, the injured laborer was initially free to choose either to recover from the employer the fixed amounts set by the Compensation Law or else, to prosecute an ordinary civil action against the tortfeasor for higher damages. While perhaps not as profitable, the smaller indemnity obtainable by the first course is balanced by the claimant's being relieved of the burden of proving the causal connection between the defendant's negligence and the resulting injury, and of having to establish the extent of the damage suffered; issues that are apt to be troublesome to establish satisfactorily. Having staked his fortunes on a particular

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[9] Id. at 700–705.

> remedy, petitioner is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission. Anyway, under the proviso of Section 6 aforequoted, if the employer Franklin Baker Company recovers, by derivative action against the alleged tortfeasors, a sum greater than the compensation he may have paid the herein petitioner, the excess accrues to the latter."
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> Although the doctrine in the case of *Esguerra vs. Muñoz Palma*. . . applies to third-party tortfeasor, said rule should likewise apply to the employer-tortfeasor.[10] (Citations omitted)

This option, given to an employee or their heirs, subsists to give effect and more meaning to the constitutional guarantees of protection to labor and social justice notwithstanding the fact that Article 173[11] of the Labor Code was differently worded when *Floresca* was decided:

> ARTICLE 171. *Exclusiveness of liability.* — Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title ***shall bar*** the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act Numbered Eleven hundred sixty-one, as amended, Commonwealth Act Numbered One hundred eighty-six, as amended, Commonwealth Act Numbered Six hundred ten, as amended, Republic Act Numbered Forty-eight hundred Sixty-four, as amended, and other laws whose benefits are administered by the System, during the period of such payment for the same disability or death, and conversely.[12] (Emphasis supplied)

In 1984, Presidential Decree No. 1921 amended this provision. Under the current Labor Code,[13] it now reads as follows:

> ARTICLE 179. [173] *Extent of Liability.* — Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title ***shall not bar*** the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act Numbered Eleven Hundred Sixty-One, as amended, Republic Act Numbered Six Hundred Ten, as amended, Republic Act Numbered Forty-Eight Hundred Sixty-Four, as amended, and other laws whose benefits are administered by the System or by other agencies of the government. (Emphasis supplied)

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10 *Floresca v. Philex Mining Corporation*, 220 Phil. 533, 549–550 (1985) [Per J. Makasiar, En Banc].

11 Formerly Article 171 in the 1974 Labor Code as amended by Presidential Decree No. 626 (1974).

12 1974 LABOR CODE, art. 171, as amended by Presidential Decree No. 626 (1974).

13 Presidential Decree No. 442 as Amended and Renumbered (2015).

Even with the amendment, the ratio in *Floresca* providing for a choice of remedy was still applied in the subsequent cases of *Ysmael Maritime Corporation v. Avelino*,[14] *Limquiaco, Jr. v. Ramolete*,[15] *Marcopper Mining Corp. v. Abeleda*,[16] *D.M. Consunji v. Court of Appeals*[17] and *Heirs of Andag v. DMC Construction Equipment*.[18]

As it stands, the general rule is that the claimants may invoke either the Workmen's Compensation Act or the provisions of the Civil Code against the employer. The right of selection cannot be done simultaneously and the choice of one remedy will exclude the other. This has been applied in *Marcopper, Limquiaco, Jr.*, and in *Ysmael*, where this Court held that:

> As thus applied to the case at bar, respondent Lim spouses cannot be allowed to maintain their present action to recover additional damages against petitioner under the Civil Code. In open court, respondent Consorcia Geveia admitted that they had previously filed a claim for death benefits with the WCC and had received the compensation payable to them under the WCA[.] It is therefore clear that respondents had not only opted to recover under the Act but they had also been duly paid. ***At the very least, a sense of fair play would demand that if a person entitled to a choice of remedies made a first election and accepted the benefits thereof, he should no longer be allowed to exercise the second option. "Having staked his fortunes on a particular remedy, [he] is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission."***[19] (Emphasis supplied, citations omitted)

As an exception, a claimant already paid under the Workmen's Compensation Act may still sue for damages under the Civil Code based on supervening facts or developments occurring after opting for the first remedy. As applied in *Floresca:*

> WE hold that although the other petitioners had received the benefits under the Workmen's Compensation Act, such may not preclude them from bringing an action before the regular court because they became cognizant of the fact that Philex has been remiss in its contractual obligations with the deceased miners only after receiving compensation under the Act. Had petitioners been aware of said violation of government rules and regulations by Philex, and of its negligence, they would not have sought redress under the Workmen's Compensation Commission which awarded a lesser amount for compensation. The choice of the first remedy was based on ignorance or a mistake of fact, which nullifies the choice as it was not an intelligent choice. The case should therefore be remanded to the lower court for further proceedings. However, should the petitioners be successful in their bid before the lower court, the payments made under

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14 235 Phil. 324 (1987) [Per J. Fernan, En Banc].
15 240 Phil. 165 (1987) [Per J. Padilla, Second Division].
16 247 Phil. 279 (1988) [Per J. Cruz, First Division].
17 409 Phil. 275 (2001) [Per J. Kapunan, First Division].
18 G.R. No. 244361, July 13, 2020, <https://sc.judiciary.gov.ph/13403/> [Per J. Perlas-Bernabe, Second Division].
19 *Ysmael Maritime Corp. v. Avelino*, 235 Phil. 324, 330 (1987) [Per J. Fernan, En Banc]..

> the Workmen's Compensation Act should be deducted from the damages that may be decreed in their favor.[20]

Applying the exception, this Court in *D.M. Consunji* explained the rationale for the doctrine of election of remedies and how one choice results to a waiver by election:

> When a party having knowledge of the facts makes an election between inconsistent remedies, the election is final and bars any action, suit, or proceeding inconsistent with the elected remedy, in the absence of fraud by the other party. The first act of election acts as a bar. Equitable in nature, the doctrine of election of remedies is designed to mitigate possible unfairness to both parties. It rests on the moral premise that it is fair to hold people responsible for their choices. The purpose of the doctrine is not to prevent any recourse to any remedy, but to prevent a double redress for a single wrong.
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> The choice of a party between inconsistent remedies results in a *waiver* by election. Hence, the rule in *Floresca* that a claimant cannot simultaneously pursue recovery under the Labor Code and prosecute an ordinary course of action under the Civil Code. The claimant, by [their] choice of one remedy, is deemed to have waived the other.
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> Waiver is the intentional relinquishment of a *known* right.
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> > [It] is an act of understanding that presupposes that a party has knowledge of its rights, but chooses not to assert them. It must be generally shown by the party claiming a waiver that the person against whom the waiver is asserted had at the time knowledge, actual or constructive, of the existence of the party's rights or of all material facts upon which they depended. Where one lacks knowledge of a right, there is no basis upon which waiver of it can rest. Ignorance of a material fact negates waiver, and waiver cannot be established by a consent given under a mistake or misapprehension of fact.
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> > A person makes a knowing and intelligent waiver when that person knows that a right exists and has adequate knowledge upon which to make an intelligent decision. Waiver requires a knowledge of the facts basic to the exercise of the right waived, with an awareness of its consequences. That a waiver is made knowingly and intelligently must be illustrated on the record or by the evidence.
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> That lack of knowledge of a fact that nullifies the election of a remedy is the basis for the exception in *Floresca.*[21] (Emphasis in the original, citations omitted)

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[20] *Floresca v. Philex Mining Corporation*, 220 Phil. 533, 551 (1985) [Per J. Makasiar, En Banc].

[21] *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275, 298–299 (2001) [Per J. Kapunan, First Division].

In *Heirs of Andag v. DMC Construction Equipment*,[22] this Court recognized petitioners' right to claim for death benefits under the Labor Code, particularly Articles 174, 178, 179, and 200 (a),[23] and their right to claim for damages due to respondent's purported negligence:

> At this juncture, the Court deems it worthy to point out that petitioners seek the following: (a) death compensation/benefits for Reynaldo; (b) damages arising from DMCI's purported negligence which resulted in Reynaldo's death; (c) additional death benefits; and (d) other monetary claims due to Reynaldo, *e.g.*, holiday pay, service incentive leave pay, and 13th month pay.
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> Anent the death compensation/benefits, the NLRC aptly noted that while Reynaldo was indeed employed by DMCI as a seafarer, it must nevertheless be pointed out that he was merely deployed in an inter-island vessel sailing domestic waters. This being the case, his employment was not covered by any POEA-Standard Employment Contract typical to employment contracts involving seafarers sailing in international waters — a contract which specifically contains provisions which make an employer liable should a seafarer perish while on duty. Absent any specific provision in his employment contract with DMCI, Reynaldo's death on duty is governed by the Labor Code, particularly, Articles 174, 178, 179, and 200 (a) [formerly Articles 168, 172, 173, and 194 (a)] thereof. In this regard, case law instructs that "[t]he clear intent of the law is that the employer should be relieved of the obligation of directly paying his employees compensation for work-connected illness or injury on the theory that this is part of the cost of production or business activity; and that no longer would there be need for adversarial proceedings between an employer and his employee in which there were specific legal presumptions operating in favor of the employee and statutorily specified defenses available to an employer." Hence, "[o]nce the employer pays his share to the fund, all obligation on his part to his employees is ended." Given the foregoing, the Labor Tribunals correctly ruled that DMCI is not liable for Reynaldo's death benefits as it is the State Insurance Fund, more particularly the SSS, which is liable therefor.
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> Anent petitioner's claim for damages arising from DMCI's purported negligence which resulted in Reynaldo's death, the NLRC correctly ruled that petitioners' allegations in their Position Paper before the LA make out a cause of action for a tort, which is cognizable not by the labor tribunals, but by the regular courts. On this note, while the maintenance of a safe and healthy workplace is ordinarily a subject of labor cases, case law nevertheless clarifies that a claim ***specifically grounded on the employer's negligence*** to provide a safe, healthy and workable environment for its employees is no longer a labor issue, but rather, is a case for quasi-delict which is under the jurisdiction of the regular courts, as in this case. Hence, should petitioners wish to pursue this cause of action against DMCI, it should file the proper case therefor before the regular courts.[24] (Emphasis in the original, citations omitted)

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22 G.R. No. 244361, July 13, 2020, <https://sc.judiciary.gov.ph/13403/> [Per J. Perlas-Bernabe, Second Division].

23 Formerly Articles 168, 172, 173, and 194 (a).

24 G.R. No. 244361, July 13, 2020, <https://sc.judiciary.gov.ph/13403/> 4–5 [Per J. Perlas-Bernabe, Second Division].

However, in *Candano Shipping Lines Inc. v, Sugata-on*,[25] this Court held the employer liable for the death or personal injury of its employees in the course of employment under Article 1711 of the New Civil Code.

I agree with the *ponencia* that Book IV, Title II of the Labor Code has impliedly repealed Article 1711 of the Civil Code given the irreconcilable inconsistency between those two laws on compensation, and their nature as special law and general law.

Book IV, Title II of the Labor Code specifically provides that the State Insurance Fund shall be liable for compensation to employees or their dependents in case of injury, sickness, disability or death occurring on or after January 1, 1975.[26] *Floresca,* as reiterated and applied in the abovementioned cases, did not sanction the filing of an action under Article 1711 of the Civil Code as an alternative remedy for filing compensation claims under the Workmen's Compensation Act, now the Labor Code. As I have previously opined and subsequently settled in jurisprudence, an alternative remedy from contractual breach, or even from filing a claim under the Labor Code, would be recovery of damages against an employer due to a tortious violation under the Civil Code or special laws.

ACCORDINGLY, I vote to **PARTLY GRANT** the Petition and join the ponente in modifying the awards.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

[25] 547 Phil. 131 (2007) [Per J. Chico-Nazario, Third Division].
[26] LABOR CODE, arts. 178 [172] and 214 [208].