

## COMPANIA MARITIMA, PETITIONER, VS. COURT OF APPEALS AND VICENTE CONCEPCION, RESPONDENTS.

*G.R. No. L-31379. August 29, 1988*

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### FERNAN, C.J.:

Petitioner Compañía Maritima seeks to set aside through this petition for review on certiorari the decision[1] of the Court of Appeals dated December 5, 1965, adjudging petitioner liable to private respondent Vicente E. Concepcion for damages in the amount of P24,652.97 with legal interest from the date said decision shall have become final, for petitioner's failure to deliver safely private respondent's payloader, and for costs of suit. The payloader was declared abandoned in favor of petitioner.

The facts of the case are as follows:

Private respondent Vicente E. Concepcion, a civil engineer doing business under the name and style of Consolidated Construction with office address at Room 412, Don Santiago Bldg., Taft Avenue, Manila, had a contact with the Civil Aeronautics Administration (CAA) sometime in 1964 for the construction of the airport in Cagayan de Oro City, Misamis Oriental.

Being a Manila-based contractor, Vicente E. Concepcion had to ship his construction equipment to Cagayan de Oro city. Having shipped some of his equipment through petitioner and having settled the balance of P2,628.77 with respect to said shipment, Concepcion negotiated anew with petitioner, thru its collector, Pacifico Fernandez, on August 28, 1964 for the shipment to Cagayan de Oro City of one (1) unit payloader, four (4) units 6x6 Reo trucks and two (2) pieces of water tanks. He was issued Bill of Lading 113 on the same date upon delivery of the equipment at the Manila North Harbor.[2]

These equipment were loaded aboard the MV Cebu in its Voyage No. 316, which left Manila on August 30, 1964 and arrived at Cagayan de Oro City in the afternoon of September 1, 1964. The Reo trucks and water tanks were safely unloaded within a few hours after arrival, but while the payloader was about two (2) meters above the pier in the course of unloading, the swivel pin of the heel block of the port block of Hatch No. 2 gave way, causing the payloader to fall.[3] The payloader was damaged and was thereafter taken to petitioner's compound in Cagayan de Oro City.

On September 7, 1964, Consolidated Construction, thru Vicente E. Concepcion, wrote Compañía Maritima to demand a replacement of the payloader which it was considering as a complete loss because of the extent of damage.[4] Consolidated Construction likewise notified petitioner of its claim for damages. Unable to elicit response, the demand was repeated in a letter dated October 2, 1964.[5]

Meanwhile, petitioner shipped the payloader to Manila where it was weighed at the San Miguel Corporation. Finding that the payloader weighed 7.5 tons and not 2.5 tons as declared in the Bill of Lading, petitioner denied the claim for damages of Consolidated Construction in its letter dated October 7, 1964, contending that had Vicente E. Concepcion declared the actual weight of the payloader, damage to their ship as well as to his payloader could have been prevented.[6]

To replace the damaged payloader, Consolidated Construction in the meantime bought a new one at P45, 000.00 from Bormaheco, Inc. on December 3, 1964, and on July 6, 1965, Vicente E. Concepcion filed an action for damages against petitioner with the then Court of First Instance of Manila, Branch VII, docketed as Civil case No. 61551, seeking to recover damages in the amount of P41,225.00 allegedly suffered for the period of 97 days that he was not able to employ a payloader in the construction job at the rate of P450.00 a day; P34,000.00 representing the cost of the damaged payloader; P11,000.00 representing the difference between the cost of the damaged payloader and that of the new payloader; P20,000.00 representing the losses suffered by him due to the diversion of funds to enable him to buy a new payloader; P10,000.00 as attorney's fees; P5,000.00 as exemplary damages; and cost of the suit.[7]

After trial, the then Court of First Instance of Manila, Branch VII, dismissed on April 24, 1968 the complaint with costs against therein plaintiff, herein private respondent Vicente E. Concepcion, stating that the proximate cause of the fall of the payloader was Vicente E. Concepcion's act or omission in having misrepresented the weight of the payloader as 2.5 tons instead of its true weight of 7.5 tons, which underdeclaration was intended to defraud Compañia Maritima of the payment of the freight charges and which likewise led the Chief Officer of the vessel to use the heel block of hatch No. 2 in unloading the payloader.[8]

From the adverse decision against him, Vicente E. Concepcion appealed to the Court of Appeals which, on December 5, 1965 rendered a decision, the dispositive portion of which reads:

“IN VIEW WHEREOF, judgment must have to be as it is hereby reversed, defendant is condemned to pay unto plaintiff the sum in damages of P24,652.07 with legal interest from the date the present decision shall have become final; the payloader is declared abandoned to defendant; cost against the latter.”[9]

Hence, the instant petition.

The principal issue in the instant case is whether or not the act of private respondent Vicente E. Concepcion in furnishing petitioner Compañia Maritima with an inaccurate weight of 2.5 tons instead of the payloader's actual weight of 7.5 tons was the proximate and only cause of the damage on the Oliver Payloader OC-12 when it fell while being unloaded by petitioner's crew, as would absolutely exempt petitioner from liability for damages under paragraph 3 of Article 1734 of the Civil Code, which provides:

“Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

X X X

X X X

X X X

“(3) Act or omission of the shipper or owner of the goods.”

Petitioner claims absolute exemption under provision upon the reasoning that private respondent's act of furnishing it with an inaccurate weight of the payloader constitutes misrepresentation within the meaning of “act or omission of the shipper or owner of the goods” under the above-quoted article. It likewise faults the respondent Court of Appeals for reversing the decision of the trial court notwithstanding that said appellate court also found that by representing the weight of the payloader to be only 2.5 tons, private respondent had led petitioner's officer to believe that the same was within the 5-ton capacity of the heel block of Hatch No. 2. petitioner would thus insist that the proximate and only cause of the damage to the payloader was private respondent's alleged

misrepresentation of the weight of the machinery in question; hence, any resultant damage to it must be borne by private respondent Vicente E. Concepcion.

The general rule under Articles 1735 and 1752 of the Civil Code is that common carriers are presumed to have been at fault or to have acted negligently in case the goods transported by them are lost, destroyed or had deteriorated. To overcome the presumption of liability for the loss, destruction or deterioration of the goods under Article 1735, the common carriers must prove that they observed extraordinary diligence as required in Article 1733 of the Civil Code. The responsibility of observing extraordinary diligence in the vigilance over the goods is further expressed in Article 1734 of the same Code, the article invoked by petitioner to avoid liability for damages.

Corollary is the rule that mere proof of delivery of the goods in good order to a common carrier, and of their arrival at the place of destination in bad order, makes out prima facie case against the common carrier, so that if no explanation is given as to how the loss, deterioration or destruction of the goods occurred, the common carrier must be held responsible.<sup>[10]</sup> Otherwise stated, it is incumbent upon the common carrier to prove that the loss, deterioration or destruction was due to accident or some other circumstances inconsistent with its liability.

In the instant case, We are not persuaded by the proffered explanation of petitioner alleged to be proximate cause of the fall of the payloader while it was being unloaded at the Cagayan de Oro City pier. Petitioner seems to have overlooked the extraordinary diligence required of common carriers in the vigilance over the goods transported by them by virtue of the nature of their business, which is impressed with a special public duty.

Thus, Article 1733 of the Civil Code provides:

“Art. 1733. Common carriers, from the nature of their business and for reason of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them according to all the circumstances of each case.

“Such extraordinary diligence in the vigilance over the goods is further expressed in Articles 1734, 1735 and 1745, Nos. 5, 6 and 7, x x x”

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for safe carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and “to due all reasonable means to ascertain the nature and characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires.”<sup>[11]</sup> Under Article 1736 of the Civil Code, the responsibility to observe extraordinary diligence commences and lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has the right to receive them without prejudice to the provisions of Article 1738.

Where, as in the instant case, petitioner, upon the testimonies of its own crew, failed to take the necessary and adequate precautions for avoiding damage to, or destruction of, the payloader entrusted to it for safe carriage and delivery to Cagayan de Oro City, it cannot be reasonably concluded that the damage caused to the payloader was due to the alleged misrepresentation of private respondent Concepcion as to the correct and accurate weight of the payloader. As found by the respondent Court of Appeals, the fact is that petitioner used a 5-ton capacity lifting apparatus to lift and unload a visibly heavy cargo like a payloader. Private respondent has, likewise, sufficiently established the laxity and carelessness of petitioner’s crew in their methods of ascertaining the weight of heavy cargoes offered for shipment before loading and unloading them, as is customary among careful persons.

It must be noted that the weight submitted by private respondent Concepcion appearing at the left-hand portion of Exhibit 8[12] as an addendum to the original enumeration of equipment to be shipped was entered into the bill of lading by petitioner, thru Pacifico Fernandez, a company collector, without seeing the equipment to be shipped.[13] Mr. Mariano Gupana, assistant traffic manager of petitioner, confirmed in his testimony that the company never checked the information entered in the bill of lading.[14] Worse, the weight of the payload as entered in the bill of lading was assumed to be correct by Mr. Felix Pisang, Chief Officer of MV Cebu.[15]

The weights stated in a bill of lading are prima facie evidence of the amount received and the fact that the weighing was done by another will not relieve the common carrier where it accepted such weight and entered it on the bill of lading.[16] Besides, common carriers can protect themselves against mistakes in the bill of lading as to weight by exercising diligence before issuing the same.[17]

While petitioner has proven that private respondent Concepcion did furnish it with an inaccurate weight of the payload, petitioner is nonetheless liable, for the damage caused to the machinery could have been avoided by the exercise of reasonable skill and attention on its part in overseeing the unloading of such a heavy equipment. And circumstances clearly show that the fall of the payload could have been avoided by petitioner's crew. Evidence on record sufficiently show that the crew of petitioner had been negligent in the performance of its obligation by reason of their having failed to take the necessary precaution under the circumstances which usage has established among careful persons, more particularly its Chief Officer, Mr. Felix Pisang, who is tasked with the over-all supervision of loading and unloading heavy cargoes and upon whom rests the burden of deciding as to what particular winch the unloading of the payload should be undertaken.[18] While it was his duty to determine the weight of heavy cargoes before accepting them, Mr. Felix Pisang took the bill of lading on its face value and presumed the same to be correct by merely "seeing" it.[19] Acknowledging that there was a "jumbo" in the MV Cebu which has the capacity of lifting 20 to 25 ton cargoes, Mr. Felix Pisang chose not to use it, because according to him, since the ordinary boom has a capacity of 5 tons while the payload was only 2.5 tons, he did not bother to use the "jumbo" anymore.[20]

In that sense, therefore, private respondent's act of furnishing petitioner with an inaccurate weight of the payload upon being asked by petitioner's collector, cannot be used by said petitioner as an excuse to avoid liability for the damage caused, as the same could have been avoided had petitioner utilized the "jumbo" lifting apparatus which has a capacity of lifting 20 to 25 tons of heavy cargoes. It is a fact known to the Chief Officer of MV Cebu that the payload was loaded aboard the MV Cebu at the Manila North Harbor on August 28, 1964 by means of a terminal crane.[21] Even if petitioner chose not to take the necessary precaution to avoid damage by checking the correct weight of the payload, extraordinary care and diligence compel the use of the "jumbo" lifting apparatus as the most prudent course for petitioner.

While the act of private respondent in furnishing petitioner with an inaccurate weight of the payload cannot successfully be used as an excuse by petitioner to avoid liability to the damage thus caused, said act constitutes a contributory circumstance to the damage caused on the payload, which mitigates the liability for damages of petitioner in accordance with Article 1741 of the Civil Code, to wit:

"Art. 1741. If the shipper or owner merely contributed to the loss, destruction or deterioration of the goods, the proximate cause thereof being the negligence of the common carrier, the latter shall be liable in damages, which however, shall be equitably reduced."

We find equitable the conclusion of the Court of Appeals reducing the recoverable amount of damage by 20% or 1/5 of the value of the payload, which at the time the instant case arose, was valued at P34,000.00, thereby reducing the recoverable amount at 80% or 4/5 of P34, 000.00 or the sum of P27,200.00. Considering that the freight charges for the entire cargoes shipped by private respondent amounting to P2,318.40 remained unpaid, the

same would be deducted from the P27,000.00 plus an additional deduction of P228.63 representing the freight charges for the undeclared weight of 5 tons (difference between 7.5 and 2.5 tons) leaving, therefore, a final recoverable amount of damages of P24,652.97 due to private respondent Concepcion.

Notwithstanding the favorable judgment in his favor, private respondent assailed the Court of Appeals' decision insofar as it limited the damages due him to only P24,652.97 and the cost of the suit. Invoking the provision on damages under the Civil Code, more particularly Articles 2200 and 2208, private respondent further seeks additional damages allegedly because the construction project was delayed and that in spite of his demands, petitioner failed to take any steps to settle his valid, just and demandable claim for damages.

We find private respondent's submission erroneous. It is well-settled that an appellee, who is not an appellant, may assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he may not do so if his purpose is to have the judgment modified or reversed, for, in such case, he must appeal.[22] Since private respondent did not appeal from the judgment insofar as it limited the award of damages due him, the reduction of 20% or 1/5 of the value of the payload stand.

WHEREFORE, in view of the foregoing, the petition is DENIED. The decision of the Court of Appeals is hereby AFFIRMED in all respects with costs against petitioner. In view of the length of time this case has been pending, this decision is immediately executory.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

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[1] Penned by Justice Magno S. Gatmaitan and concurred in by Justices Julio Villamor and Ruperto G. Martin.

[2] Exhibit "A", p. 1, Records.

[3] Exhibit "4", p. 25, Records.

[4] Exhibit "D", p. 4, Records.

[5] Exhibit "E", p. 5, Records.

[6] Exhibit "F", p. 7, records.

[7] pp. 1-7, Record on Appeal, p. 28, Rollo.

[8] pp. 34-47, Ibid.

[9] pp. 25-26, Rollo.

[10] *Mirasol vs. Robert Dollar Co.*, 53 Phil 129; *Ynchausti Steamship Co. vs. Dexter and Unson*, 41 Phil. 289.

[11] *The Ensley City DC, Ma*; 71 F. Suppl. 444, citing *Schnell vs. The Vallescura*, 293 U.S. 296, 55 Sct. 194, 79 L. Ed. 373; *The Nichiyo Maru*, 4 Cir., 89 F. 2d 539; *Bank Line v. Porter*, 4 Cir., 25 F. 2d. 843.

[12] p. 36, Records.

[13] TSN, December 16, 1966, pp. 111-113.

[14] TSN, January 19, 1967, pp. 119-120.

[15] TSN, September 29, 1968, pp. 84-85.

[16] *Baker vs. H. Dittinger Roller Mills, Co. Tex. Civ. Appl.* 203 SW 798.

[17] Ibid.

[18] TSN, September 29, 1966, p. 57.

[19] p. 80, Ibid.

[20] p. 78, Ibid.

[21] p. 71, Ibid.

[22] Gorospe, et al. vs. Peñaflorida, et al., 101 Phil. 886, citing Pineda & Ampil Mfg. Co., et al. vs. Arsenio Bartolome, et al., 95 Phil. 930; Saenz v. Mitchell, 60 Phil. 69; Mendoza v. Mendiola, 53 Phil. 267.

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