

**AMPARO C. SERVANDO, CLARA UY BICO, PLAINTIFFS-APPELLEES,
VS. PHILIPPINE STEAM NAVIGATION, CO., DEFENDANT-APPELLANT.**

G.R. Nos. L-36481-82. October 23, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This appeal, originally brought to the Court of Appeals, seeks to set aside the decision of the Court of First Instance of Negros Occidental in Civil Cases Nos. 7354 and 7428, declaring appellant Philippine Steam Navigation liable for damages for the loss of the appellees' cargoes as a result of a fire which gutted the Bureau of Customs' warehouse in Pulupandan, Negros Occidental.

The Court of Appeals certified the case to Us because only pure questions of law are raised therein.

The facts culled from the pleadings and the stipulations submitted by the parties are as follows:

On November 6, 1963, appellees Clara Uy Bico and Amparo Servando loaded on board the appellant's vessel, FS-176, for carriage from Manila to Pulupandan, Negros Occidental, the following cargoes, to wit:

Clara Uy Bico ?

1,528 cavans of rice valued at P40,907.50;

Amparo Servando ?

44 cartons of colored paper,

toys and general merchan-dise valued at P1,070.50;

as evidenced by the corresponding bills of lading issued by the appellant.[1]

Upon arrival of the vessel at Pulupandan in the morning of November 18, 1963, the cargoes were discharged, complete and in good order, unto the warehouse of the Bureau of Customs. At about 2:00 in the afternoon of the same day, said warehouse was razed by a fire of unknown origin, destroying appellees' cargoes. Before the fire, however, appellee Uy Bico was able to take delivery of 907 cavans of rice.[2] Appellees' claims for the value of said goods were rejected by the appellant.

On the bases of the foregoing facts, the lower court rendered a decision, the decretal portion of which reads as follows:

"WHEREFORE, judgment is rendered as follows:

1. In case No. 7354, the defendant is hereby ordered to pay the plaintiff Amparo C. Servando the aggregate sum of P1,070.50 with legal interest thereon from the date of the filing of the complaint until fully paid, and to pay the costs.

2. In case No. 7428, the defendant is hereby ordered to pay to plaintiff Clara Uy Bico the aggregate sum of

P16,625.00 with legal interest thereon from the date of the filing of the complaint until fully paid, and to pay the costs."

Article 1736 of the Civil Code imposes upon common carriers the duty to observe extraordinary diligence from the moment the goods are unconditionally placed in their possession "until the same are delivered, actually or constructively, by the carrier to the consignee or to the person who has a right to receive them, without prejudice to the provisions of Article 1738."

The court a quo held that the delivery of the shipment in question to the warehouse of the Bureau of Customs is not the delivery contemplated by Article 1736; and since the burning of the warehouse occurred before actual or constructive delivery of the goods to the appellees, the loss is chargeable against the appellant.

It should be pointed out, however, that in the bills of lading issued for the cargoes in question, the parties agreed to limit the responsibility of the carrier for the loss or damage that may be caused to the shipment by inserting therein the following stipulation:

"Clause 14. Carrier shall not be responsible for loss or damage to shipments billed 'owner's risk' unless such loss or damage is due to negligence of carrier. Nor shall carrier be responsible for loss or damage caused by force majeure, dangers or accidents of the sea or other waters; war; public enemies; x x x fire x x x."

We sustain the validity of the above stipulation; there is nothing therein that is contrary to law, morals or public policy.

Appellees would contend that the above stipulation does not bind them because it was printed in fine letters on the back of the bills of lading; and that they did not sign the same. This argument overlooks the pronouncement of this Court in *Ong Yiu vs. Court of Appeals*, promulgated June 29, 1979[3], where the same issue was resolved in this wise:

"While it may be true that petitioner had not signed the plane ticket (Exh. '12'), he is nevertheless bound by the provisions thereof. 'Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation'. It is what is known as a contract of 'adhesion', in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent." (Tolentino, Civil Code, Vol. IV, 1962 Ed., p. 462, citing Mr. Justice J.B.L. Reyes, Lawyer's Journal, Jan. 31, 1951, p. 49).

Besides, the agreement contained in the above quoted Clause 14 is a mere iteration of the basic principle of law written in Article 1174 of the Civil Code:

"Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable."

Thus, where fortuitous event or force majeure is the immediate and proximate cause of the loss, the obligor is exempt from liability for non-performance. The *Partidas*[4], the antecedent of Article 1174 of the Civil Code, defines 'caso fortuito' as 'an event that takes place by accident and could not have been foreseen. Examples of this are destruction of houses, unexpected fire, shipwreck, violence of robbers.'

In its dissertation of the phrase 'caso fortuito' the *Enciclopedia Juridica Española*[5] says: "In a legal sense and, consequently, also in relation to contracts, a 'caso fortuito' presents the following essential characteristics: (1) the cause of the unforeseen and unexpected occurrence, or of the failure of the debtor to comply with his obligation,

must be independent of the human will; (2) it must be impossible to foresee the event which constitutes the 'caso fortuito', or if it can be fore-seen, it must be impossible to avoid; (3) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (4) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor." In the case at bar, the burning of the customs warehouse was an extraordinary event which happened independently of the will of the appellant. The latter could not have foreseen the event.

There is nothing in the record to show that appellant carrier incurred in delay in the performance of its obligation. It appears that appellant had not only notified appellees of the arrival of their shipment, but had demanded that the same be withdrawn. In fact, pursuant to such demand, appellee Uy Bico had taken delivery of 907 cavans of rice before the burning of the warehouse.

Nor can the appellant or its employees be charged with negligence. The storage of the goods in the Customs warehouse pending withdrawal thereof by the appellees was undoubtedly made with their knowledge and consent. Since the warehouse belonged to and was maintained by the government, it would be unfair to impute negligence to the appellant, the latter having no control whatsoever over the same.

The lower court in its decision relied on the ruling laid down in *Yu Biao Sontua vs. Ossorio*[6], where this Court held the defendant liable for damages arising from a fire caused by the negligence of the defendant's employees while loading cases of gasoline and petroleum products. But unlike in the said case, there is not a shred of proof in the present case that the cause of the fire that broke out in the Customs warehouse was in any way attributable to the negligence of the appellant or its employees. Under the circumstances, the appellant is plainly not responsible.

WHEREFORE, the judgment appealed from is hereby set aside. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.
Aquino, J., see concurring opinion.

[1] Exhibits A, B, C, D, E, F, G and H.

[2] Par. IV, Complaint; p. 23, Record on Appeal.

[3] 91 SCRA 224.

[4] Law 11, Title 33, Partida 7.

[5] 5 Enciclopedia Juridica Española

[6] 43 Phil. 511.

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CONCURRING OPINION

AQUINO, J.:

I concur. Under article 1738 of the Civil Code "the extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in the warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them".

From the time the goods in question were deposited in the Bureau of Customs' warehouse in the morning of their arrival up to two o'clock in the afternoon of the same day, when the warehouse was burned, Amparo C. Servando and Clara Uy Bico, the consignees, had reasonable opportunity to remove the goods. Clara had removed more than one-half of the rice consigned to her.

Moreover, the shipping company had no more control and responsibility over the goods after they were deposited in the customs warehouse by the arrastre and stevedoring operator.

No amount of extraordinary diligence on the part of the carrier could have prevented the loss of the goods by fire which was of accidental origin.

Under those circumstances, it would not be legal and just to hold the carrier liable to the consignees for the loss of the goods. The consignees should bear the loss which was due to a fortuitous event.

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