

**MAURO GANZON, PETITIONER, VS. COURT OF APPEALS AND
GELACIO E. TUMAMING, RESPONDENTS.***G.R. No. L-48757. May 30, 1988*

Ponente: SARMIENTO, J.

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The private respondent instituted in the Court of First Instance of Manila[1] an action against the petitioner for damages based on culpa contractual. The antecedent facts, as found by the respondent Court,[2] are undisputed:

On November 28, 1956, Gelacio Tumaming contracted the services of Mauro B. Ganzon to haul 305 tons of scrap iron from Mariveles, Bataan, to the port of Manila on board the lighter LCT "Batman" (Exhibit 1, Stipulation of Facts, Amended Record on Appeal, p. 38). Pursuant to this agreement, Mauro B. Ganzon sent his lighter "Batman" to Mariveles where it docked in three feet of water (t.s.n., September 28, 1972, p. 31). On December 1, 1956, Gelacio Tumaming delivered the scrap iron to defendant Filomeno Niza, captain of the lighter, for loading which was actually began on the same date by the crew of the lighter under the captain's supervision. When about half of the scrap iron was already loaded (t.s.n., December 14, 1972, p. 20), Mayor Jose Advincula of Mariveles, Bataan, arrived and demanded P5,000.00 from Gelacio Tumaming. The latter resisted the shakedown and after a heated argument between them, Mayor Jose Advincula drew his gun and fired at Gelacio Tumaming (t.s.n., March 19, 1971, p.9; September 28, 1972, pp. 6-7). The gunshot was not fatal but Tumaming had to be taken to a hospital in Balanga, Bataan, for treatment (t.s.n., March 19, 1971, p. 13; September 28, 1972, p. 15).

After sometime, the loading of the scrap iron was resumed. But on December 4, 1956, Acting Mayor Basilio Rub, accompanied by three policemen, ordered captain Filomeno Niza and his crew to dump the scrap iron (t.s.n., June 16, 1972, pp. 8-9) where the lighter was docked (t.s.n., September 28, 1972 1972, p. 31}. The rest was brought to the compound of NASSCO (Record on Appeal, pp. 20-22). Later on Acting Mayor Rub issued a receipt stating that the Municipality of Mariveles had taken custody of the scrap iron (Stipulation of Facts, Record on Appeal, p. 40; t.s.n., September 28, 1972, p. 10).

On the basis of the above findings, the respondent Court rendered a decision, the dispositive portion of which states:

WHEREFORE, the decision appealed from is hereby reversed and set aside and a new one entered ordering defendant-appellee Mauro Ganzon to pay plaintiff-appellant Gelacio E. Tumaming the sum of P5,895.00 as actual damages, the sum of P5,000.00 as exemplary damages, and the amount of P2,000.00 as attorney's fees. Costs against defendant-appellee Ganzon.[3]

In this petition for review on certiorari, the alleged errors in the decision of the Court of Appeals are:

I

THE COURT OF APPEALS FINDING THE HEREIN PETITIONER GUILTY OF BREACH OF THE

CONTRACT OF TRANSPORTATION AND IN IMPOSING A LIABILITY AGAINST HIM COMMENCING FROM THE TIME THE SCRAP WAS PLACED IN HIS CUSTODY AND CONTROL HAVE NO BASIS IN FACT AND IN LAW.

II

THE APPELLATE COURT ERRED IN CONDEMNING THE PETITIONER FOR THE ACTS OF HIS EMPLOYEES IN DUMPING THE SCRAP INTO THE SEA DESPITE THAT IT WAS ORDERED BY THE LOCAL GOVERNMENT OFFICIAL WITHOUT HIS PARTICIPATION.

III

THE APPELLATE COURT FAILED TO CONSIDER THE LOSS OF THE SCRAP WAS DUE TO A FORTUITOUS EVENT AND THE PETITIONER IS THEREFORE NOT LIABLE FOR ANY LOSSES AS A CONSEQUENCE THEREOF.[4]

The petitioner, in his first assignment of error, insists that the scrap iron had not been unconditionally placed under his custody and control to make him liable. However, he completely agrees with the respondent Court's finding that on December 1, 1956, the private respondent delivered the scraps to Captain Filomeno Niza for loading in the lighter "Batman." That the petitioner, thru his employees, actually received the scraps is freely admitted. Significantly, there is not the slightest allegation or showing of any condition, qualification, or restriction accompanying the delivery by the private respondent-shipper of the scraps, or the receipt of the same by the petitioner. On the contrary, soon after the scraps were delivered to, and received by the petitioner-common carrier, loading was commenced.

By the said act of delivery, the scraps were unconditionally placed in the possession and control of the common carrier, and upon their receipt by the carrier for transportation, the contract of carriage was deemed perfected. Consequently, the petitioner-carrier's extraordinary responsibility for the loss, destruction, or deterioration of the goods commenced. Pursuant to Art. 1736, such extraordinary responsibility would cease only upon the delivery, actual or constructive, by the carrier to the consignee, or to the person who has a right to receive them.[5] The fact that part of the shipment had not been loaded on board the lighter did not impair the said contract of transportation as the goods remained in the custody and control of the carrier, albeit still unloaded.

The petitioner has failed to show that the loss of the scraps was due to any of the following causes enumerated in Article 1734 of the Civil Code, namely:

- (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act or omission of the shipper or owner of the goods;
- (4) The character of the goods or defects in the packing or in the containers;
- (5) Order or act of competent public authority.

Hence, the petitioner is presumed to have been at fault or to have acted negligently.[6] By reason of this presumption, the court is not even required to make an express finding of fault or negligence before it could hold the petitioner answerable for the breach of the contract of carriage. Still, the petitioner could have been exempted from any liability had he been able to prove that he observed extraordinary diligence in the vigilance over the goods in his custody, according to all the circumstances of the case, or that the loss was due to an unforeseen event or to force majeure. As it was, there was hardly any attempt on the part of the petitioner to prove that he exercised such extraordinary diligence.

It is in the second and third assignments of error where the petitioner maintains that he is exempt from any liability because the loss of the scraps was due mainly to the intervention of the municipal officials of Mariveles which constitutes a *caso fortuito* as defined in Article 1174 of the Civil Code.[7]

We cannot sustain the theory of *caso fortuito*. In the courts below, the petitioner's defense was that the loss of the scraps was due to an "order or act of competent public authority," and this contention was correctly passed upon by the Court of Appeals which ruled that:

x x x In the second place, before the appellee Ganson could be absolved from responsibility on the ground that he was ordered by competent public authority to unload the scrap iron, it must be shown that Acting Mayor Basilio Rub had the power to issue the disputed order, or that it was lawful, or that it was issued under legal process of authority. The appellee failed to establish this. Indeed, no authority or power of the acting mayor to issue such an order was given in evidence. Neither has it been shown that the cargo of scrap iron belonged to the Municipality of Mariveles. What we have in the record is the stipulation of the parties that the cargo of scrap iron was accumulated by the appellant through separate purchases here and there from private individuals (Record on Appeal, pp. 38-39). The fact remains that the order given by the acting mayor to dump the scrap iron into the sea was part of the pressure applied by Mayor Jose Advincula to shakedown the appellant for P5,000.00. The order of the acting mayor did not constitute valid authority for appellee Mauro Ganzon and his representatives to carry out.

Now the petitioner is changing his theory to *caso fortuito*. Such a change of theory on appeal we cannot, however, allow. In any case, the intervention of the municipal officials was not of a character that would render impossible the fulfillment by the carrier of its obligation. The petitioner was not duty bound to obey, the illegal order to dump into the sea the scrap iron. Moreover, there is absence of sufficient proof that the issuance of the same order was attended with such force or intimidation as to completely overpower the will of the petitioner's employees. The mere difficulty in the fulfillment of the obligation is not considered *force majeure*. We agree with the private respondent that the scraps could have been properly unloaded at the shore or at the NASSCO compound, so that after the dispute with the local officials concerned was settled, the scraps could then be delivered in accordance with the contract of carriage.

There is no incompatibility between the Civil Code provisions on common carriers and Articles 361[8] and 362[9] of the Code of Commerce which were the basis for this Court's ruling in *Government of the Philippine Islands vs. Ynchausti & Co.*[10] and which the petitioner invokes in this petition. For Art. 1735 of the Civil Code, conversely stated, means that the shipper will suffer the losses and deterioration arising from the causes enumerated in Art. 1734; and in these instances, the burden of proving that damages were caused by the fault or negligence of the carrier rests upon him. However, the carrier must first establish that the loss or deterioration was occasioned by one of the excepted causes or was due to an unforeseen event or to *force majeure*. Be that as it may, insofar as Art. 362 appears to require of the carrier only ordinary diligence, the same is deemed to have been modified by Art. 1733 of the Civil Code.

Finding the award of actual and exemplary damages to be proper, the same will not be disturbed by us. Besides, these were not sufficiently controverted by the petitioner.

WHEREFORE, the petition is DENIED; the assailed decision of the Court of Appeals is hereby AFFIRMED. Costs against the petitioner.

This decision is IMMEDIATELY EXECUTORY.

Yap, C.J., Paras, and Padilla, JJ., concur.

[1] Presided by Judge Jesus P. Morfe.

[2] Pascual, Chairman, ponente; Agrava and Climaco, JJ., concurring.

[3] Decision, 9; Rollo 19.

[4] Petitioner's Brief, 3, 7, 9; Rollo, 41.

[5] Article 1736, Civil Code of the Philippines:

Art. 1736. The extraordinary responsibility of the common carriers 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 a right to receive them, without prejudice to the provisions of article 1738.

[6] Article 1735, *supra*.

Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in article 1733.

[7] Art. 1174, *supra*:

Art. 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.

[8] Article 361, Code of Commerce:

Art. 361. The merchandise shall be transported at the risk and venture of the shipper, if the contrary has not been expressly stipulated.

As a consequence, all the losses and deterioration which the goods may suffer during the transportation by reason of fortuitous event, force majeure, or the inherent nature and defect of the goods, shall be for the account and risk of the shipper.

Proof of these accidents is incumbent upon the carrier.

[9] Article 362, Code of Commerce:

Art. 362. Nevertheless, the carrier shall be liable for the losses and damages resulting from the causes mentioned in the preceding article if it is proved, as against him, that they arose through his negligence or by reason of his having failed to take the precautions which usage has established among careful persons, unless the shipper has committed fraud in the bill of lading, representing the goods to be of a kind or quality different from what they really were.

If, notwithstanding the precautions referred to in this article, the goods transported run the risk of being lost, on account of their nature or by reason of unavoidable accident, there being no time for their owners to dispose of them, the carrier may proceed to sell them, placing them for this purpose at the disposal of the judicial authority or of the officials designated by special provisions.

[10] No. 14191, September 29, 1919, 40 Phil. 219.

MELENCIO-HERRERA, J., dissenting

I am constrained to dissent.

It is my view that petitioner can not be held liable in damages for the loss and destruction of the scrap iron. The loss of said cargo was due to an excepted cause - an "order or act of competent public authority" (Article 1734[5], Civil Code).

The loading of the scrap iron on the lighter had to be suspended because of Municipal Mayor Jose Advincula's intervention, who was a "competent public authority." Petitioner had no control over the situation as, in fact, Tumambing himself, the owner of the cargo, was impotent to stop the "act" of said official and even suffered a gunshot wound on the occasion.

When loading was resumed, this time it was Acting Mayor Basilio Rub, accompanied by three policemen, who ordered the dumping of the scrap iron into the sea right where the lighter was docked in three feet of water. Again, could the captain of the lighter and his crew have defied said order?

Through the "order" or "act" of "competent public authority," therefore, the performance of a contractual obligation was rendered impossible. The scrap iron that was dumped into the sea was "destroyed" while the rest of the cargo was "seized." The seizure is evidenced by the receipt issued by Acting Mayor Rub stating that the Municipality of Mariveles had taken custody of the scrap iron. Apparently, therefore, the seizure and destruction of the goods was done under legal process or authority so that petitioner should be freed from responsibility.

"Art. 1743. If through order of public authority the goods are seized or destroyed, the common carrier is not responsible, provided said public authority had power to issue the order."

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