

EASTERN AND AUSTRALIAN STEAMSHIP CO., LTD. AND F.E. ZUELLIG, INC., PETITIONERS, VS. GREAT AMERICAN INSURANCE CO. AND COURT OF FIRST INSTANCE OF MANILA, BRANCH XIII, RESPONDENTS.

G.R. No. L-37604. October 23, 1981

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DE CASTRO, J.:*

This is a petition for review on certiorari of the decision of the Court of First Instance of Manila, Branch XIII, dated July 25, 1973, in Civil Case No. 88985, entitled "Great American Insurance Co., plaintiff, vs. Eastern & Australian Steamship Co., Ltd. and/or F.E. Zuellig, Inc., defendants," the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered, finding the defendants liable to the plaintiff in the amount of \$500.00, or its peso equivalent of P3,217.50, with legal interest thereon from November 20, 1972; and to further pay to the plaintiff an amount equivalent to twenty-five per centum (25%) thereof by way of damages as and for attorney's fees."

The facts of the case are as follows:

On December 10, 1971, the Jackson and Spring (Sydney) Pty. Ltd. shipped from Sydney, Australia, one (1) case of impellers for warman pump on board the SS "Chitral," a vessel owned and operated in the Philippines by Eastern & Australian Steamship Co., Ltd., thru its agent F.E. Zuellig, Inc. under Bill of Lading No. 31, for delivery to Manila, Philippines in favor of consignee Benguet Consolidated, Inc. The shipment was insured with Great American Insurance, Co. for P35,921.81 against all risks. On December 22, 1971 the SS "Chitral" arrived in Manila but failed to discharge the shipment or any part thereof. Demand was made on herein petitioners for the delivery of said shipment, but having failed to make delivery, a claim was presented against them for the value of the ship-ment. Petitioners, likewise, failed to make good the claim. As a consequence of the loss of the shipment, private respon-dent Great American Insurance Co. was compelled to pay the consignee P35,921.81. As subrogee, said private respondent filed a complaint dated Nov. 20, 1972 against herein peti-tioners for recovery of the said amount with legal interest and attorney's fees.

In the answer dated Nov. 27, 1972 petitioners alleged that their liability for the loss of the shipment is only limited to £100 Sterling or its peso equivalent of P1,544.40 as per stipulation in the Bill of Lading and that even before the filing of the complaint, petitioners have signified their willingness to pay the claim up to their limit of liability as stipulated in the Bill of Lading.

During the pre-trial on May 28, 1973, the loss of the subject shipment was admitted, and the parties submitted the case for decision on one issue: whether petitioners' liabi-lity is limited to £100 Sterling or its peso equivalent of P1,544.40 as stipulated in Clause 17 of the Bill of Lading[1] or whether petitioners' liability should be \$500 or its peso equivalent in the sum of P3, 217.50 pursuant to Sec. 4 (5) of the Carriage of Goods by Sea Act.[2]

The court a quo found that under Section 4 (5) of the Carriage of Goods by Sea Act, the carrier and the shipper

may, in the absence of a declaration in the Bill of Lading of the value of the goods shipped, fix a maximum liability of the shipper for the cargo lost or damaged, but such maximum shall not be less than \$500.00 per package. Consequently, the agreement for a maximum liability of only £100 Sterling contained in Clause 17 of the Bill of Lading was declared void for being contrary to law and as adverted to above, petitioners were held liable.

From the decision of the lower court the present petition for review was instituted by petitioners assigning the following errors:

I

THAT RESPONDENT CFI ERRED IN DECIDING THAT THE LIMIT OF LIABILITY IN THE SUM OF £100 STERLING OR ITS PESO EQUIVALENT OF THE VESSEL/CARRIER, PER PACKAGE, AS STIPULATED IN CLAUSE 17 OF THE BILL OF LADING, IS CONTRARY TO LAW, AND, THEREFORE, VOID; and

II

THAT RESPONDENT COURT ERRED IN AWARDING ATTORNEY'S FEES AND COSTS IN FAVOR OF PRIVATE RESPONDENT AND AGAINST THE HEREIN PETITIONERS.

Petitioners contend that the first paragraph of Section 4 (5) of the Carriage of Goods by Sea Act prescribes a maximum liability of the vessel/carrier in the amount of \$500.00 per package; that said maximum liability, however, is not applicable in a shipment wherein the nature and a higher valuation of the goods are indicated in the Bill of Lading; that the second paragraph refers to an agreement of the shipper and the carrier which provides for another maximum necessarily higher than \$500.00 and that said proviso should not be read in connection with stipulations in Bills of Lading limiting the vessel's liability to less than \$500.00 per package, otherwise, the very intent of the law setting the sum of \$500.00 as the maximum liability of the carrier, per package, in the absence of a higher valuation of the goods as indicated in the Bill of Lading would be nullified, for it would thereby become not the maximum, but the minimum liability of the carrier.

Petitioners also contend that the New Civil Code, particularly Articles 1749[3] and 1750,[4] expressly allow the limitation of the carrier's liability, provided it is just and reasonable. Hence, the limitation of petitioners' liability to £100 Sterling or its peso equivalent as stipulated in the Bill of Lading is perfectly legal and binding to the parties.

Private respondent alleges that Article 1749 imposes certain conditions for the validity of a stipulation limiting the carrier's liability. These conditions are: (1) it must be in writing, signed by the shipper or owner; (2) it must be supported by a valuable consideration other than the service rendered by the carrier; and (3) it must be reasonable, just and not contrary to public policy.

Respondent believes that an agreement limiting the carrier's liability does not per se give validity thereto but it must be shown, among others, that the amount agreed upon is just and reasonable under the circumstances.

There is no inconsistency between Section 4 (5) of the Carriage of Goods by Sea Act and Clause 17 of the Bill of Lading. The first part of the provision of Section 4 (5) of the Carriage of Goods by Sea Act limits the maximum amount that may be recovered by the shipper in the absence of an agreement as to the nature and value of goods shipped. Said provision does not prescribe the minimum and hence, it could be any amount which is below \$500.00. Clause 17 of the questioned Bill of Lading also provides the maximum for which the carrier is liable. It prescribes that the carrier may only be held liable for an amount not more than £100 Sterling which is below the

maximum limit required in the Carriage of Goods by Sea Act.

It should be noted that both the Carriage of Goods by Sea Act and Clause 17 of the Bill of Lading allow the payment beyond the respective maximum limit imposed therein, provided that the value of the goods have been declared in the Bill of Lading.

The second paragraph of Section 4 (5) of the Carriage of Goods by Sea Act prescribing the maximum amount shall not be less than \$500.00 refers to a situation where there is an agreement other than set forth in the Bill of Lading providing for a maximum higher than \$500.00 per package. In the case at bar, it is apparent that there had been no agreement between the parties, and hence, Clause 17 of the Bill of Lading shall prevail.

Petitioners' stand that the condition imposed in Clause 17 of the Bill of Lading should not be read in the light of second paragraph of Section 4 (5) of the Carriage of Goods by Sea Act, is well taken. Indeed, it would be to render ineffective the very intent of the law setting the sum of \$500.00 as the maximum liability of the vessel/carrier, per package, in the absence of a higher valuation of the goods as indicated in the Bill of Lading. By providing that \$500.00 is the maximum liability, the law does not disallow an agreement for liability at a lesser amount.

Significantly, Article 1749 of the New Civil Code expressly allows the limitation of the carrier's liability:

"Art. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding."

Thus, in the case of *Northern Motors, Inc. vs. Prince Line*,^[5] We said:

"This Court has held as valid and binding a similar provision in a bill of lading limiting the carrier's liability to a specific amount unless the shipper expressly declares a higher valuation and pays the corresponding rate thereon."

Again, in *Phoenix Assurance Company vs. Macondray & Co., Inc.*,^[6] We reiterated the validity of a stipulation limiting the carrier's liability.

The right of the carrier to limit its liability has been recognized not only in Our jurisdiction but also in American jurisprudence:

"A stipulation in a contract of carriage that the carrier will not be liable beyond a specified amount unless the shipper declares the goods to have a greater value is generally deemed to be valid and will operate to limit the carrier's liability, even if the loss or damage results from the carrier's negligence. Pursuant to such provision, where the shipper is silent as to the value of his goods, the carrier's liability for loss or damage thereto is limited to the amount specified in the contract of carriage and where the shipper states the value of his goods, the carrier's liability for loss or damage thereto is limited to that amount. Under a stipulation such as this, it is the duty of the shipper to disclose, rather than the carrier's to demand the true value of the goods and silence on the part of the shipper will be sufficient to limit recovery in case of loss to the amount stated in the contract of carriage."^[7]

In view of the above findings, it is no longer necessary to discuss the second assignment of error.

WHEREFORE, the decision of the court a quo is hereby reversed and another one is entered finding petitioners liable to private respondent in the amount of £100 Sterling or its peso equivalent of P1,544.40. Without pronouncement as to costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Teehankee, J., (Chairman), in the result.

* Mr. Justice de Castro, was designated to sit with the First Division under Special Order No. 225.

[1] Clause 17. - The carrier will not be accountable for goods of any description beyond 100 Sterling in respect of any one package or unit unless the value thereof shall have been stated in writing both on the broker's order, which must be obtained before shipment, and on the shipping note presented on shipment, and extra freight agreed upon and paid, and bill of lading signed with a declaration of the nature and value of the goods appearing thereon. When the value is declared and extra freight agreed as aforesaid, the carrier's liability shall not exceed such value or pro rata on that basis in the event of partial loss or damage. Subject to the above, the carrier's liability in case of loss or detention of or injury to goods, for which they may be responsible, shall be calculated on and in no case exceed the net invoice cost and disbursements.

[2] Sec. 4 (5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package of lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: Provided, that such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

[3] Art. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.

[4] Art. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances has been fairly and freely agreed upon.

[5] 107 Phil. 254.

[6] 64 SCRA 20.

[7] 14 Am. Jur. 2d p. 88.

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