

PEDRO DE GUZMAN, PETITIONER, VS. COURT OF APPEALS AND ERNESTO CENDAÑA, RESPONDENTS.*G.R. No. L-47822. December 22, 1988*

Ponente: FELICIANO, J.

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Respondent Ernesto Cendaña, a junk dealer, was engaged in buying up used bottles and scrap metal in Pangasinan. Upon gathering sufficient quantities of such scrap material, respondent would bring such material to Manila for resale. He utilized two (2) six-wheeler trucks which he owned for hauling the material to Manila. On the return trip to Pangasinan, respondent would load his vehicles with cargo which various merchants wanted delivered to differing establishments in Pangasinan. For that service, respondent charged freight rates which were commonly lower than regular commercial rates.

Sometime in November 1970, petitioner Pedro de Guzman, a merchant and authorized dealer of General Milk Company (Philippines), Inc. in Urdaneta, Pangasinan, contracted with respondent for the hauling of 750 cartons of Liberty filled milk from a warehouse of General Milk in Makati, Rizal, to petitioner's establishment in Urdaneta on or before 4 December 1970. Accordingly, on 1 December 1970, respondent loaded in Makati the merchandise on to his trucks: 150 cartons were loaded on a truck driven by respondent himself; while 600 cartons were placed on board the other truck which was driven by Manuel Estrada, respondent's driver and employee.

Only 150 boxes of Liberty filled milk were delivered to petitioner. The other 600 boxes never reached petitioner, since the truck which carried these boxes was hijacked somewhere along the MacArthur Highway in Paniqui, Tarlac, by armed men who took with them the truck, its driver, his helper and the cargo.

On 6 January 1971, petitioner commenced action against private respondent in the Court of First Instance of Pangasinan, demanding payment of P22,150.00, the claimed value of the lost merchandise, plus damages and attorney's fees. Petitioner argued that private respondent, being a common carrier, and having failed to exercise the extraordinary diligence required of him by the law, should be held liable for the value of the undelivered goods.

In his Answer, private respondent denied that he was a common carrier and argued that he could not be held responsible for the value of the lost goods, such loss having been due to force majeure.

On 10 December 1975, the trial court rendered a Decision^[1] finding private respondent to be a common carrier and holding him liable for the value of the undelivered goods (P22,150.00) as well as for P4,000.00 as damages and P2,000.00 as attorney's fees.

On appeal before the Court of Appeals, respondent urged that the trial court had erred in considering him a common carrier: in finding that he had habitually offered trucking services to the public; in not exempting him from liability on the ground of force majeure; and in ordering him to pay damages and attorney's fees.

The Court of Appeals reversed the judgment of the trial court and held that respondent had been engaged in

transporting return loads of freight "as a casual occupation -- a sideline to his scrap iron business" and not as a common carrier.

Petitioner came to this Court by way of a Petition for Review assigning as errors the following conclusions of the Court of Appeals:

- that private respondent was not a common carrier;
- that the hijacking of respondent's truck was force majeure; and
- that respondent was not liable for the value of the undelivered cargo. (Rollo, p. 111)

We consider first the issue of whether or not private respondent Ernesto Cendaña may, under the facts earlier set forth, be properly characterized as a common carrier.

The Civil Code defines "common carriers" in the following terms:

"Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."

The above article makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as "a sideline"). Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1733 deliberately refrained from making such distinctions.

So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service" under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:

"x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. x x x." (Underscoring supplied).

It appears to the Court that private respondent is properly characterized as a common carrier even though he merely "back-hauled" goods for other merchants from Manila to Pangasinan, although such backhauling was done on a periodic or occasional rather than regular or scheduled manner, and even though private respondent's principal occupation was not the carriage of goods for others. There is no dispute that private respondent charged his customers a fee for hauling their goods; that that fee frequently fell below commercial freight rates is not relevant here.

The Court of Appeals referred to the fact that private respondent held no certificate of public convenience, and concluded he was not a common carrier. This is palpable error. A certificate of public convenience is not a

requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability arises the moment a person or firm acts as a common carrier, without regard to whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements. The business of a common carrier impinges directly and intimately upon the safety and well being and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.

We turn then to the liability of private respondent as a common carrier.

Common carriers, "by the nature of their business and for reasons of public policy,"[2] are held to a very high degree of care and diligence ("extraordinary diligence") in the carriage of goods as well as of passengers. The specific import of extraordinary diligence in the care of goods transported by a common carrier is, according to Article 1733, "further expressed in Articles 1734, 1735 and 1745, numbers 5, 6 and 7" of the Civil Code.

Article 1734 establishes the general rule that common carriers are responsible for the loss, destruction or deterioration of the goods which they carry, "unless the same is due to any of the following causes only;

(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; and

(5)

Order or act of competent public authority."

It is important to point out that the above list of causes of loss, destruction or deterioration which exempt the common carrier for responsibility therefor, is a closed list. Causes falling outside the foregoing list, even if they appear to constitute a species of force majeure, fall within the scope of Article 1735, which provides as follows:

"In all cases other than those mentioned in numbers 1, 2, 3, 4 and 5 of the preceeding 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."
(Underscoring supplied)

Applying the above-quoted Articles 1734 and 1735, we note firstly that the specific cause alleged in the instant case -- the hijacking of the carrier's truck -- does not fall within any of the five (5) categories of exempting causes listed in Article 1734. It would follow, therefore, that the hijacking of the carrier's vehicle must be dealt with under the provisions of Article 1735, in other words, that the private respondent as common carrier is presumed to have been at fault or to have acted negligently. This presumption, however, may be overthrown by proof of extraordinary diligence on the part of private respondent.

Petitioner insists that private respondent had not observed extraordinary diligence in the care of petitioner's goods. Petitioner argues that in the circumstances of this case, private respondent should have hired a security guard presumably to ride with the truck carrying the 600 cartons of Liberty filled milk. We do not believe, however, that in the instant case, the standard of extraordinary diligence required private respondent to retain a security guard to ride with the truck and to engage brigands in a firefight at the risk of his own life and the lives of the driver and his helper.

The precise issue that we address here relates to the specific requirements of the duty or extraordinary diligence in the vigilance over the goods carried in the specific context of hijacking or armed robbery.

As noted earlier, the duty of extraordinary diligence in the vigilance over goods is, under Article 1733, given additional specification not only by Articles 1734 and 1735 but also by Article 1745, numbers 4, 5 and 6. Article 1745 provides in relevant part:

"Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

x x x x x x x x

(5)

that the common carrier shall not be responsible for the acts or omissions of his or its employees;

(6)

that the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished; and

(7)

that the common carrier shall not responsible for the loss, destruction or deterioration of goods on account of the defective condition of the car, vehicle, ship, airplane or other equipment used in the contract of carriage."
(Underscoring supplied)

Under Article 1745 (6) above, a common carrier is held responsible -- and will not be allowed to divest or to diminish such responsibility -- even for acts of strangers like thieves or robbers, except where such thieves or robbers in fact acted "with grave or irresistible threat, violence or force." We believe and so hold that the limits of the duty of extraordinary diligence in the vigilance over the goods carried are reached where the goods are lost as a result of a robbery which is attended by "grave or irresistible threat, violence or force."

In the instant case, armed men held up the second truck owned by private respondent which carried petitioner's cargo. The record shows that an information for robbery in band was filed in the Court of First Instance of Tarlac, Branch 2, in Criminal Case No. 198 entitled "People of the Philippines v. Felipe Boncorno, Napoleon Presno, Armando Mesina, Oscar Oria and one John Doe." There, the accused were charged with willfully and unlawfully taking and carrying away with them the second truck, driven by Manuel Estrada and loaded with the 600 cartons of Liberty filled milk destined for delivery at petitioner's store in Urdaneta, Pampanga. The decision of the trial court shows that the accused acted with grave, if not irresistible threat, violence or force.[3] Three (3) of the five (5) hold-uppers were armed with firearms. The robbers not only took away the truck and its cargo but also kidnapped the driver and his helper, detaining them for several days and later releasing them in another province (in Zambales). The hijacked truck was subsequently found by the police in Quezon City. The Court of First Instance convicted all the accused of robbery, though not of robbery in band.[4]

In these circumstances, we hold that the occurrence of the loss must reasonably be regarded as quite beyond the control of the common carrier and properly regarded as a fortuitous event. It is necessary to recall that even common carriers are not made absolute insurers against all risks of travel and of transport of goods, and are not held liable for acts or events which cannot be foreseen or are inevitable, provided that they shall have complied with the rigorous standard of extraordinary diligence.

We, therefore, agree with the result reached by the Court of Appeals that private respondent Cendaña is not liable for the value of the undelivered merchandise which was lost because of an event entirely beyond private respondent's control.

ACCORDINGLY, the Petition for Review on Certiorari is hereby DENIED and the Decision of the Court of Appeals dated 3 August 1977 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 14.

[2] Article 1733, Civil Code.

[3] Rollo, p. 22.

[4] The evidence of the prosecution did not show that more than three (3) of the five (5) hold-uppers were armed. Thus, the existence of a "band" within the technical meaning of Article 306 of the Revised Penal Code, was not affirmatively proved by the prosecution.

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