

AMERICAN PRESIDENT LINES, LTD., PETITIONER VS. RICHARD A. KLEPPER, ET AL., RESPONDENTS.*G.R. No. L-15671. November 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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Richard A. Klepper brought this action before the Court of First Instance of Manila to recover the sum of P6,729.50 as damages allegedly sustained by his goods contained in a lift van which fell to the ground while being unloaded from a ship owned and operated by the American President Lines, Ltd. to the pier, plus the sum of P2,000.00 as sentimental value of the damaged goods and attorney's fees.

It appears that on February 17, 1955, Klepper shipped on board the S. S. President Cleveland at Yokohama, Japan one lift van under bill of lading No. 82, containing personal and household effects. The ship arrived in the port of Manila on February 22, 1955 and while the lift van was being unloaded by the Gantry crane operated by Delgado Brothers, Inc., it fell on the pier and its contents were spilled and scattered. A survey was made and the result was that Klepper suffered damages totalling P6,729.50 arising out of the breakage, denting and smashing of the goods.

The trial court, on November 5, 1957, rendered decision ordering the shipping company to pay plaintiff the sum of P6,729.50, value of the goods damaged, plus P500.00 as their sentimental, value, with legal interest from the filing of the complaint, and the sum of P1,000.00 as attorney's fees. The court ordered that, once the judgment is satisfied, co-defendant DeJgado Brothers, Inc. should pay the shipping company the same amounts by way of reimbursement. Both defendants appealed to the Court of Appeals which affirmed in toto the decision of the trial court. The shipping company interposed the present petition for review.

Anent the liability of petitioner relative to the damage caused to the goods in question, the Court of Appeals made the following comment: "At the outset, it may be well to state that the party primarily liable to plaintiff is appellant American President Lines, Ltd., the carrier whose duty it, was to deliver the cargo in good order to the consignee. Articles 1734, 1736, Civil Code; Articles 355, 363, Code of Commerce. This appellant does not question the finding below that the damage to plaintiff's goods was due to negligence."

To this we agree. And we may add that, regardless of its negligence, the shipping company's liability would attach because being a common carrier its responsibility is extra-ordinary and lasts from the time the goods are placed in its possession until they are delivered, actually or constructively, to the consignee or to the person who has a right to receive them (Article 1736, Idem.) It can only be exempt therefrom for causes enumerated in Article 1734.

But, while petitioner does not dispute its liability as common carrier, it however contends that the same cannot exceed \$500.00 invoking in its favor the bill of lading Exhibit A and Section 4(5) of the Carriage of Goods by Sea Act (Commonwealth Act No. 65).

The pertinent provision of the bill of lading alluded to is clause 17 which in part provides:

"17. In case of any loss or damage to or in connection with goods exceeding in actual value \$500 lawful

money of the United State, per package. * * * the value of the goods shall be deemed to be SoOil per package * * * on which basis the freight is adjusted and the Carrier's liability, if any, shall be determined on the basis of a valuta of \$500 per package * * * or pro rata in case of partial" loss or damage, unless the nature of the goods and a valuation higher tlian \$500 shall have been declared in writing by the shipper upon delivery to the Carrier and inserted in this bill of lading and extra freight paid if required and in such case if the actual value of the goods per package * * * shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Carrier's liability, if any, shall not exceed the declared value and any partia loss or damage shall be adjusted pro rata on the basis of such declared valued."

While it is apparent from the above that the carrier has expressly agreed that in case of any loss or damage to the goods in question exceeding the sum of \$500.00 per package the extent of its liability shall be deemed to be merely \$500.00 per package, and not more, the Court of Appeals ruled out the above stipulation, holding that the same is not binding upon the shipper. Its reasoning follows: "Neither plaintiff nor any agent of his signed the bill of lading; neither has agreed to the two clauses just recited. In fact, plaintiff received the bill of lading only after, he had arrived at Manila. In this posture and lifting from the decision of the Supreme Court in *Mirasol vs. Robert Dollar Co.*, 53 Phil., 124, 128, we hold that plaintiff 'was not legally bound by the clause which purports to limit defendants' liability' ". Petitioner now assigns this finding as an error.

We are inclined to agree to this contention. Firstly, we cannot but take note of the following clause printed in red ink that appears on the very face of the bill of lading: "in accepting this bill of lading the shipper, consignee and owner of the goods agree to be bound by all its stipulations, exceptions, and conditions whether written, printed, or stamped on the front or back hereof, any local customs or privileges to the contrary notwithstanding." This clause is very revealing. It says that a shipper or consignee who accepts the bill of lading becomes bound by all stipulations contained therein whether on the front or back thereof. Respondent cannot elude its provisions simply because they prejudice him and take advantage of those that are beneficial. Secondly, the fact that respondent shipped his goods on board the ship of petitioner and paid the corresponding freight thereon shows that he im-pliedly accepted the bill of lading which was issued in connection with the shipment in question, and so it may be said that the same is binding upon him as if it has been actually signed by him or by any other person in his behalf. This is more so where respondent is both the shipper and the consignee of the goods in question. These circumstances take this case out of our ruling in the *Mirasol* case (invoked by the Court of Appeals) and places it within our doctrine in the case of *Mendoza vs. Philippine Air Lines, Inc.*, (90 Phil., 836), where we said:

"* * * Later, as already said, he says that he was never a party to he contract of transportation and was a complete stranger to it, that he is now suing on a tort or a violation of his rights as stranger (*culpa aquiliana*). If he does not invoke the contract of carriage entered into with the defendant company, then he would ftsrdly have any leg to stand on. His right to prompt delivery of the can of film at the Pili Air Port stems and is derived from the contract of carriage under which contract, the PAL undertook to carry the can of film safely and to deliver it to him promptly. Take away or ignore that contract and the obligation to carry and to deliver the right to prompt delivery disappear. Common carriers are not obligated by law to carry and to deliver merchandise, and persons are not vested with the Tight to prompt delivery, unless such common carriers previously assume the1' obligation. Said rights and obligations are created by a specific contract entered into by the parties.

* * * * *

"Here, the contract of carriage between the LVN Pictures Inc. and the defendant carrier contains the stipulations of delivery to Mendoza as consignee. His demand for the delivery of the can of film to him at the Pili Air Port may be regarded as a notice of his acceptance of the stipulation of the delivery in his favor contained in the contract of carriage, such demand being one for the fulfillment of the contract of carriage and delivery. In this case he also made himself a party to the contract, or at least has come to court to enforce it. His cause of action must necessarily be founded on its breach."

With regard to the contention that the Carriage of Goods by Sea Act should also control this case, the same is of no moment. Article 1753^[1] provides that the law of the country to which the goods are to be transported shall govern the liability of the common carrier in case of loss, destruction or deterioration. This means the law of the Philippines, or our new Civil Code. Under Article 1766, "In all matters not regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws," and here we have provisions that govern said rights and obligations (Articles 1736, 1737, and 1738). Therefore, although Section 4(5) of the Carriage of Goods by Sea Act states that the carrier shall not be liable in an amount exceeding \$ 500.00 per package unless the value of the goods had been declared by the shipper and inserted in the bill of lading, said section is merely supplementary to the provisions of the Civil Code. In this respect, we agree to the opinion of the Court of Appeals.

On the strength of the opinion we have above expressed, we are constrained to rule that the liability of the carrier with regard to the damage of the goods should only be limited to \$500.00 contrary to the conclusion reached by the Court of Appeals.

Wherefore, with the modification that petitioner shipping company should only pay to respondent the sum of \$500.00 as value of the goods damaged, the decision appealed from should be affirmed in all other respects, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Labrador, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] New Civil Code.

CONCURRING OPINION

REYES, J.B.L., J.,

I concur specifically in view of the difference in requisites between Article 1744 and Article 1749 of the Civil Code of the Philippines.

Judgment affirmed with modification.

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