

**PHOENIX ASSURANCE COMPANY, PLAINTIFF AND APPELLANT, VS.
MACONDRA Y & CO., INC., DEFENDANT AND APPELLEE.**

G.R. No. L-25048. May 13, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case involving the law of common carriers. There is no dispute as to the facts.

On October 24, 1961 the SS Fernbank received from Saco Lowell Shops, Greenville, South Carolina, a shipment consigned to the order of the Commercial Bank and Trust Company, a Manila bank, with arrival notice to Floro Spinning Mills, 280 Escolta, Manila.

The shipment was insured for \$5,450 with Phoenix Assurance Company of New York against all risks including loss or damage.

In the bill of lading the shipment is described as one box and one carton containing textile machinery spare parts including ball bearings weighing 930 pounds. The bill of lading contains the following notation below the description of the cargo:

"L/C No. FM-1512/61, COMMERCIAL BANK & TRUST CO. OF THE PHILIPPINES, MANILA, DATED
7/ 3/ 61, EXPIRES 10/31/61, AMOUNT: \$4183.74"

That notation means that on July 3, 1961 the consignee, Floro Spinning Mills, opened a letter of credit through the Commercial Bank and Trust Company for the amount of \$4,183.74 which was to expire on October 31, 1961.

The bill of lading further shows on its face that the shipper paid to the vessel's agent at the port of loading the sum of \$46.20 as freightage based on the gross weight of the shipment.

Printed in the smallest type on the back of the bill of lading is the following stipulation limiting the carrier's liability for loss or damage to \$500 per package unless the shipper in writing declares the nature of the goods and a higher valuation and pays additional freightage on the basis of such higher valuation:

"17. In case of any loss or damage to or in connection with goods exceeding in actual value \$500 lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be \$500 per package or per unit, on which basis the freight is adjusted and the Carrier's liability, if any, shall be determined on the basis of a value of \$500 per package or per customary freight unit, unless the nature of the goods and a valuation higher than \$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 or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be the declared value.

"Whenever the value of the goods is less than \$500 per package or other freight unit, their value in the calculation and adjustment of claims for which the Carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value, plus freight and insurance if

paid, irrespective of whether any other value is greater or less.

"The limitation of liability and other provisions herein shall inure not only to the benefit of the carrier, its agents, servants and employees, but also to the benefit of any independent contractor performing services including stevedoring in connection with the goods covered hereunder."

The bill of lading provides that "in accepting this Bill of Lading, the shipper, owner and consignee of the goods, and the holder of the Bill of Lading agree to be bound by all its stipulations, exceptions and conditions, whether written, stamped or printed, as fully as if they were all signed by such shipper, owner, consignee or holder".

The SS Fernbank arrived at the port of Manila on November 23, 1961. The shipment was discharged into the custody of the Manila Port Service. The second carton was in bad order and was almost empty. It contained only a small package containing a steel wire clip which was worthless.

The Floro Spinning Mills, which is operated by P. Floro & Sons, Inc., filed claims with Macondray & Co., Inc., the agent of the vessel, and with Ker & Company, Ltd., the agent of the insurance company, for the value of the missing cargo in the total sum of \$1,512.78 (including freight, insurance premium and other charges) which was equivalent to P4,554.98 at the prevailing rate of exchange of 3.011.

Macondray & Co., Inc. replied that the maximum limitation of the vessel's liability was \$500 per package.

Phoenix Assurance Company paid the claim of Floro Spinning Mills in the sum of P4,554.98. As subrogee, it filed this action against Macondray & Co., Inc. for the recovery of the actual value of the missing cargo in the sum of P4,554.98.

Macondray & Co., Inc. pleaded the defense that it is liable only up to the sum of \$500 as stipulated in the aforementioned Clause 17 of the bill of lading.

After trial, the lower court rendered judgment, ordering Macondray & Co., Inc. to pay Phoenix Assurance Company the sum of P1,505.50, as the peso equivalent of five hundred dollars at the conversion rate of P3.011 to the dollar, "with costs against the plaintiff, deductible" from the amount of the judgment (Civil Case No. 51900).

Phoenix Assurance Company appealed to this Court on a question of law. Its contention is that, as the assignee of the consignee, it is entitled to collect from the carrier or its agent the sum of P4,554.98 as the actual value of the missing cargo and not \$500 only.

Phoenix Assurance Company admits that the shipment in question was subject to all the provisions, exceptions and conditions appearing in the bill of lading. It admits that it is bound by the aforequoted Clause 17 of the bill of lading. It admits that under Clause 17 in order that the carrier's liability may exceed \$500 the nature of the goods and a valuation higher than \$500 should be declared in writing by the shipper and inserted in the bill of "lading and that extra freight, "if required", should be paid on the basis of the actual value of the cargo.

Appellant company then points out that the nature of the shipment is indicated in the bill of lading as textile machinery spare parts, including hall hearings and that the value thereof is shown in the aforequoted notation regarding the letter of credit for \$4,183.74 which notation was allegedly made by the shipper. It argues that extra freight was not paid because the carrier did not demand the payment of an increased freight.

Phoenix Assurance Company specified in its notice of appeal that it is appealing to this Court because the lower court's decision "is contrary to law and applicable jurisprudence." Appellant company is bound by the facts found by the lower court (*Millar vs. Nadres*, 74 Phil. 307; 2 *Moran's Comments on the Rules of Court*, 1970 Ed., p. 456). It is not necessary in such a case to elevate the evidence to this Court (Sec. 2, Rule 42, Rules of Court).

The lower court found that the notation in the bill of lading as to the amount of the letter of credit was not the declaration of the value of the shipment which was required by Clause 17 and which would render the carrier liable for loss or damage to the cargo in an amount exceeding \$500. The lower court said that that notation was made for the convenience of the shippers and the bank in processing the letter of credit.

The decisive fact in this case is that the shipper paid the freight on the basis of the weight of the cargo and not on the basis of its actual value which was not properly declared. It was not an ad valorem shipment. Had it been an ad valorem shipment the freight rate would have been \$213.55 instead of \$46.20 (Exh. 2).

The lower court did not err in holding that Macondray & Co., Inc. is liable to Phoenix Assurance Company only in the amount of \$500 under Clause 17 of the bill of lading. Clause 17 is sanctioned by section 4 of the Carriage of Goods by Sea Act which provides:

"(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 the amount exceeding \$500 per package 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.

"Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading."

It has been held that the foregoing provisions on limited liability are as much a part of a bill of lading as though physically in it and as much a part thereof as though placed therein by agreement of the parties (*Shackman vs. Cunard White Star*, D.C.N.Y. 1940, 31 F. Supp. 948, 46 USCA 866).

The legal issue posed by appellant insurance company is not new. This Court has already upheld the validity of a stipulation limiting the carrier's liability, similar to the stipulation found in Clause 17.

"Common carriers; Bill of lading; Stipulations regarding liability of carrier for loss of or damage to cargo; Validity of such stipulations. — Three kinds of stipulation have often been made in a bill of lading. The first is one exempting the carrier from any and all liability for loss or damage occasioned by its own negligence. The second is one providing for an unqualified limitation of such liability to an agreed valuation. And the third is one limiting the liability of the carrier to an agreed valuation unless the shipper declares a higher value and pays a higher rate of freight.

"According to an almost uniform weight of authority, the first and second kinds of stipulations are invalid as being contrary to public policy, but the third is valid and enforceable." (*Syllabus*, *H.E. Heacock Company vs. Macondray & Company, Inc.*, 42 Phil. 205; *Freixas and Company vs. Pacific Mail Steamship Co.*, 42 Phil. 198; *McCarthy vs. Barber Steamship Lines, Inc.*, 45 Phil. 488; *Northern Motors, Inc. vs. Prince Line*, 107 Phil. 253, 257).

Thus, a stipulation that the value of the goods shipped does not exceed \$500 per freight ton, or, in proportion for any part of a ton, unless the value be expressly stated herein and ad valorem freight paid thereon was regarded as valid (*Syllabus*, *McCarthy vs. Barber Steamship Lines*, *supra*. See Arts. 1749 and 1750, Civil Code. Compare

with Shewaram vs. Philippine Air Lines, Inc., L-20099, July 7, 1966, 17 SCRA 606, where the printed limitation of liability in a plane ticket was declared void.)

Appellant company in its third assignment of error states that the lower court erred in adjudging costs against it on the basis of section 9, Rule 5 of the Rules of Court which provides that "if the defendant, at any time before the trial, offers in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he does not accept such offer before the trial, and fails to recover in the action a sum in excess of the offer, he cannot recover costs, but costs must be adjudged against him, and, if he recovers, be deducted from his recovery. The offer and failure to accept it cannot affect the recovery otherwise than as to costs."

The trial court applied section 9 of Rule 5 because defendant Macondray & Co., Inc. pleaded in its answer that "in order to avoid the inconvenience and expense of litigation", it had offered to pay Phoenix Assurance Company the equivalent in pesos of \$500 as a compromise settlement of its claim (14 Record on Appeal).

Section 9 of Rule 5 refers to a trial in inferior courts. The instant case was commenced in the Court of First Instance of Manila.

However, in view of the result arrived at in this appeal, appellant Phoenix Assurance Company, as the defeated party, is liable for the costs of the suit which are allowed to the winning party as a matter of course (Sec. 1, Rule 142, Rules of Court).

The lower court decided this case on July 12, 1965. It applied the conversion rate which was current at the time of its decision. In justice to the plaintiff, it should be paid the \$500 at the conversion rate prevailing at the time of payment which the trial court should determine if the parties cannot agree on the same.[*]

WHEREFORE, the trial court's judgment is affirmed in the sense that the defendant's liability of \$500 to the plaintiff should be paid at the rate of exchange prevailing at the time the judgment is satisfied instead of at the conversion rate prevailing in 1965. Costs against the plaintiff-appellant. So ordered.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

[*] Under Republic Act No. 4100 which took effect on June 19, 1964 and which amended Republic Act No. 529 (which modifies article 1249 of the Civil Code), in "import-export and other international banking, financial investment and industrial transactions", the parties' agreement as to the currency in which an obligation will be paid is binding. See *Arrieta vs. National Rice and Corn Corporation*, L-15645, January 31, 1964, 62 O.G. 9810, 10 SCRA 79, 88, where an award of damages amounting to \$286,000 was made payable in Philippine pesos according to the prevailing rate of exchange on July 1, 1952 when the contract was executed. Republic Act No. 529 was applied.

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