

MARITIME COMPANY OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND RIZAL SURETY & INSURANCE CO., RESPONDENTS.

G.R. No. L-47004. March 08, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

In the Court of First Instance of Manila, Rizal Surety & Insurance Co. (hereafter, simply Rizal Surety) sued the National Development Company (NDC) and Maritime Co. of the Philippines (hereafter simply Maritime Co.) for the recovery of a sum of money paid by it as insurer for the value of goods lost in transit on board the vessel known as the SS Doña Nati.[1] After due proceedings and trial, the complaint was "dismissed with costs against plaintiff." [2] The Trial Court's judgment was founded upon the following findings and conclusions, to wit:

1. Rizal Surety "was the insurer of 800 packages of PVC compound loaded on the SS Doña Nati at Yokohama and consigned to the Acme Electrical Manufacturing Company."
2. "The SS Doña Nati was owned by the National Development Company whereas the Maritime Company of the Philippines was its Agent. This appears indubitably in the Bill of Lading, Exhibit D."
- 3: "The goods were never delivered to the consignee (Acme Electrical, etc., supra) so that ** (Rizal), as Insurer, paid ** (said) consignee the sum of P38,758.50."
4. "The cause of the non-delivery of the goods, from the evidence presented by both Defendants is that in Nagoya Bay, while the SS Doña Nati was being piloted by a Japanese pilot, the SS Doña Nati was rammed by M/V Yasushima Maru, causing damage to the hull of the SS Doña Nati and the resultant flooding of the holds damaged beyond repair the goods of the consignee in question."
5. "There is no doubt that under our Code of Commerce, it would be the vessel at fault in this collision, that would be responsible for the damage to the cargo. And the evidence of both Defendants, which has not been rebutted, is that the M/V Yasushima Maru was at fault in the collision, so that the cause of action of plaintiff should be directed to the owners of the negligent vessel. However, as Plaintiff has brought this action in good faith, attorney's fees are not recoverable."

Rizal Surety elevated the case to the Court of Appeals.¹ That Court found merit in its appeal. It thus rendered judgment,² setting aside that of the Trial Court and "ordering defendants-appellees (NDC and Maritime Co.) jointly and severally to pay jointly and severally to plaintiff-appellant (Rizal Surety) the sum of P38,758.50 with legal rate of interest from the filing of the complaint."³

This judgment of the Appellate Tribunal was in turn appealed by Maritime Company. To that Court Maritime Co. attributes the following errors, in a bid to have its judgment reversed by this Court, viz:

- 1) holding that it was a ship agent under the Code of Commerce instead of merely an agent under the Civil

Code;

2) not holding that under the Bill of Lading sued upon, Rizal Surety had no cause of action against either impleaded defendant;

3) not holding that the collision between the SS Doña Nati and the MV Yasushima Maru -- which caused the loss of the insured goods -- was due solely to the fault or negligence of the complement of the Yasushima Maru, as well as the character of the goods themselves and the defect in their packing; and

4) not holding that Rizal Surety's cause of action was barred by prescription as well as Stipulation No. 19 of the Bill of Lading.

The evidence establishes that NDC had appointed petitioner Maritime Co. as its agent to manage and operate three vessels owned by it, including the SS Doña Nati, for and in its behalf and account, and for a determinable period (i.e., until full reimbursement of all moneys advanced and/or full relief from or payment of all guarantees made by Maritime Co. for account of the vessels). Under their written agreement, Maritime Co. was bound to "provision and victual" the SS Doña Nati and the other two vessels, and to render a complete report of the operations of the vessels within 60 days after conclusion of each voyage; it was also authorized to appoint sub-agents at any ports or places that it might deem necessary, remaining however responsible to the ship-owner (NDC) for the timely and satisfactory performance of said sub-agents. These facts preponderantly demonstrate the character of Maritime Co. as ship agent under the Code of Commerce, a ship agent, according to that Code, being "the person entrusted with provisioning or representing the vessel in the port in which it may be found."⁴

Maritime Co. however insists that it was not the ship agent of NDC in Japan but "the Fuji Asano Co., Ltd., which supplied her with provisions, and represented her therein and which issued the bill of lading for the owner NDC." The claim is belied by the bill of lading referred to.¹ The letterhead of the bill of lading is in two (2) parts, and is printed in the following manner:

PHILIPPINE NATIONAL LINES

NATIONAL DEVELOPMENT COMPANY

MARITIME COMPANY OF THE PHILIPPINES

AGENT

PHILIPPINES-HONGKONG-JAPAN-U.S. PACIFIC COAST-GULF PORTS

HONGKONG-COSMOS DEVELOPMENT COMPANY * JAPAN-FUJI ASANO KAIUN CO., LTD.

***U.S.A.-NORTH AMERICAN MARITIME AGENCIES**

As will be observed, in what may be described as the main letterhead, Maritime Co. is indicated as "Agent" for the (1) Philippines, (2) Hongkong (3) Japan, and the (4) U.S. Pacific Coast-Gulf Ports. Underneath this main letterhead is a sort of secondary sub-head: "Hongkong-Cosmos Development Company; Japan-Fuji Asano Kaiun Co., Ltd., U.S.A.-North American Maritime Agencies." The necessary connotation is that the firms thus named are sub-agents or secondary representatives of Maritime Co., Fuji Asano Kaiun Co., Ltd., particularly, being the representative of NDC and Maritime Co. in Japan, as distinguished from the Maritime Co., which is described as AGENT not only in Japan but also in other places: the Philippines, Hongkong, U.S. Pacific Coast, and the Gulf Ports. Moreover, the bill shows on its face that it was issued 'FOR THE MASTER' by "Maritime Company of

the Philippines, Agent."

Equally unacceptable is the contention that "Acme Electrical Manufacturing, Manila," was not the consignee of the goods described in the bill of lading and therefore, payment to it for the loss of said goods did not operate to make Rizal Surety its subrogee. The contention is in the first place belied by the bill of lading which states that if the goods are "consigned to the Shipper's Order" -- and the bill is so consigned: "to the order of China Banking Corporation, Manila, or assigns" -- the "Acme Electrical Manufacturing, Manila," shall be notified. This shows, in the context of the other documents hereafter adverted to, that Acme was the importer and China Banking Corporation the financing agency. The contention is also confuted by the Commercial Invoice of the shipper² which recites that it was "by order and for account of Messrs. Acme Electrical Manufacturing, Manila" that the 800 bags of PVC compound were shipped from Yokohama to Manila. It is also disproved by the fact that it was Acme that insured the goods with Rizal Surety and the latter did insure them³ on the strength of the former's Marine Risk Note,⁴ long before the goods were lost at sea, and it was Acme, thru its broker, that claimed the proceeds for the loss.⁵ The contention is finally discredited by Maritime Co.'s own certification which states that the "800 packages PVC Compound ** ** consigned to Acme Electrical Manufacturing was 'carried away' to sea as a result of the accident and same was unrecovered **." ⁶

There is thus no question of the entitlement of Acme Electrical Manufacturing to the proceeds of the insurance against loss of the goods in question, nor about the fact that it did receive such proceeds from the Rizal Surety, as insurer, which made payment upon due ascertainment of the actuality of the loss. The legal effect is inescapable. Rizal Surety was subrogated to Acme's rights against the shipowner and the ship agent arising from the loss of the goods.¹

Now, according to the Court of Appeals, Acme's rights are to be determined by the Civil Code, not the Code of Commerce. This conclusion derives from Article 1753 of the Civil Code to the effect that it is the "law of the country to which the goods are to be transported (which) shall govern the liability of the common carrier for their loss, destruction or deterioration." It is only in "matters not regulated by ** (the Civil) Code," according to Article 1766, that "the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws." Since there are indeed specific provisions regulating the matter of such liability in the Civil Code, these being embodied in Article 1734, as well as prescribing the period of prescription of actions, it follows that the Code of Commerce, or the Carriage of Goods by Sea Act, has no relevancy in the determination of the carrier's liability in the instant case. In *American President Lines v. Klepper*,² for instance, we ruled that in view of said Articles 1753 and 1756, the provisions of the Carriage of Goods by Sea Act are merely supplementary to the Civil Code.

Under the established facts, and in accordance with Article 1734 above mentioned, petitioner Maritime Co. and NDC, as "common carriers," are liable to Acme for "the loss, destruction or deterioration of the goods," and may be relieved of responsibility if the loss, etc., "is due to any of the following causes only:³

1. Flood, storm, earthquakes, 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."

Since none of the specified absolutory causes is present, the carrier's liability is palpable.

The petitioner's other claim that the loss of the goods was due entirely to the fault of the Japanese vessel, Yasushima Maru, which rammed into the Doña Nati, cannot be sustained. The Appellate Tribunal found, as a fact, after a review and study of the evidence, that the Dona Nati "did not exercise even due diligence to avoid the collision." In line with the familiar axiom that factual conclusions of the Court of Appeals are conclusive and may not be reviewed, the petitioner's attempt to shift the blame to the Japanese vessel is futile. Having failed to exercise extraordinary diligence to avoid any loss of life and property, as commanded by law, not having in fact exercised "even due diligence to avoid the collision," it must be held responsible for the loss of the goods in question. Besides, as remarked by the Court of Appeals, "the principal cause of action is not derived from a maritime collision, but rather, from a contract of carriage, as evidenced by the bill of lading."

WHEREFORE, the Decision of the Court of Appeals subject of the petition for review is AFFIRMED, with costs against petitioner.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The suit was docketed as Civil Case No. 60601 and was assigned to Branch XIV presided over by Hon. Judge Jesus de Veyra

[2] Judgment, February 16, 1968, Rollo, p. 47 - Rec. on App., pp. 50-52

1 Its appeal was docketed as CA-GR. No. 42168-R

2 Rollo, pp. 19-31

3 Ponente was Gopengco, J., with whom concurred Melencio-Herrera and Ericta, JJ.

4 ART. 586, Code of Commerce; see *Switzerland General Insurance Co., Ltd. v. Ramirez*, 96 SCRA 297 [1980]

1 Exhs. D and D-1; folio of exhibits, pp. 5-6

2 Exh. E; folio of exhibits, p. 7

3 Exh. H; folio of exhibits, p. 10

4 Exh. B; folio of exhibits, p. 3

5 Exh. C; folio of exhibits, p. 4

6 Exh. G; folio of exhibits, p. 9

1 ART. 2207, Civil Code; *Manila Mahogany Mfg. Corp. v. C.A.*, G.R. No. 52756, Oct. 12, 1987

2 110 Phil. 243, 248; see also *Eastern Shipping Lines, Inc. v. IAC*, 150 SCRA 463, 470; of, *Yangco v. Laserna*, 73 Phil. 330, 341

3 Emphasis supplied

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