

HOME INSURANCE COMPANY, PLAINTIFF-APPELLEE, VS. AMERICAN STEAMSHIP AGEN-CIES, INC. AND LUZON STE-VEDORING CORPORATION, DEFENDANTS, AMERICAN STEAMSHIP AGEN-CIES, INC., DEFENDANT-...*G.R. No. L-25599. April 04, 1968*

Ponente: BENGZON, J.P., J.

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"Consorcio Pesquero del Peru of South America" ship-ped freight pre-paid at Chimbate, Peru, 21,740 jute bags of Peruvian fish meal through SS Crowborough, covered by clean bills of lading Numbers 1 and 2, both dated January 17, 1963. The cargo, consigned to San Miguel Brewery, Inc., now San Miguel Corporation, and insured by Home Insurance Company for \$202,505, arrived in Manila on March 7, 1963 and was discharged into the lighters of Luzon Stevedoring Company. When the cargo was delivered to consignee San Miguel Brewery, Inc., there were shortages amounting to P12,033.85, causing the latter to lay claims against Luzon Stevedoring Corporation, Home Insurance Company and the American Steamship Agencies, owner and operator of SS Crowborough.

Because the others denied liability, Home Insurance Company paid the consignee P14,870.71 - the insurance value of the loss, as full settlement of the claim. Having been refused reimbursement by both the Luzon Stevedoring Corporation and American Steamship Agencies, Home Insurance Company, as subrogee to the consignee, filed against them on March 6, 1964 before the Court of First Instance of Manila a complaint for recovery of P14,870.71 with legal interest, plus attorney's fees.

In answer, Luzon Stevedoring Corporation alleged that it delivered with due diligence the goods in the same quantity and quality that it had received the same from the carrier. It also claimed that plaintiff's claim had prescribed under Article 366 of the Code of Commerce stating that the claim must be made within 24 hours from receipt of the cargo.

American Steamship Agencies denied liability by alleging that under the provisions of the Charter party referred to in the bills of lading, the charterer, not the shipowner, was responsible for any loss or damage of the cargo. Furthermore, it claimed to have exercised due diligence in stowing the goods and that as a mere forwarding agent, it was not responsible for losses or damages to the cargo.

On November 17, 1965, the Court of First Instance, after trial, absolved Luzon Stevedoring Corporation, having found the latter to have merely delivered what it received from the carrier in the same condition and quality, and ordered American Steamship Agencies to pay plaintiff P14,870.71 with legal interest plus P1,000 attorneys fees. Said court cited the following grounds:

(a) The non-liability claim of American Steamship Agencies under the charter party contract is not tenable because Article 587 of the Code of Commerce makes the ship agent also civilly liable for damages in favor of

third persons due to the conduct of the captain of the carrier;

(b) The stipulation in the charter party contract exempting the owner from liability is against public policy under Article 1744 of the Civil Code;

(c) In case of loss, destruction or deterioration of goods, common carriers are presumed at fault or negligent under Article 1735 of the Civil Code unless they prove extraordinary diligence, and they cannot by contract exempt themselves from liability resulting from their negligence or that of their servants; and

(d) When goods are delivered to the carrier in good order and the same are in bad order at the place of destination, the carrier is prima facie liable.

Disagreeing with such judgment, American Steamship Agencies appealed directly to Us. The appeal brings forth for determination this legal issue: Is the stipulation in the charter party of the owner's non-liability valid so as to absolve the American Steamship Agencies from liability for loss?

The bills of lading,[1] covering the shipment of Peruvian fish meal provide at the back thereof that the bills of lading shall be governed by and subject to the terms and conditions of the charter party, if any, otherwise, the bills of lading prevail over all the agreements.[2] On the face of the bills are stamped "Freight prepaid as per charter party. Subject to all terms, conditions and exceptions of charter party dated London, Dec. 13, 1962."

A perusal of the charter party[3] referred to shows that while the possession and control of the ship were not entirely transferred to the charterer,[4] the vessel was chartered to its full and complete capacity (Exh. 3). Furthermore, the charterer had the option to go north or south, or vice-versa,[5] loading, stowing and discharging at its risk and expense.[6] Accordingly, the charter party contract is one of affranchisement over the whole vessel rather than a demise. As such, the liability of the shipowner for acts or negligence of its captain and crew, would remain in the absence of stipulation.

Section 2, paragraph 2 of the charter party, provides that the owner is liable for loss or damage to the goods caused by personal want of due diligence on its part or its manager to make the vessel in all respects seaworthy and to secure that she be properly manned, equipped and supplied or by the personal act or default of the owner or its manager. Said paragraph, however, exempts the owner of the vessel from any loss or damage or delay arising from any other source, even from the neglect or fault of the captain or crew or some other person employed by the owner on board, for whose acts the owner would ordinarily be liable except for said paragraph.

Regarding the stipulation, the Court of First Instance declared the contract as contrary to Article 587 of the Code of Commerce making the ship agent civilly liable for indemnities suffered by third persons arising from acts or omissions of the captain in the care of the goods and Article 1744 of the Civil Code under which a stipulation between the common carrier and the shipper or owner limiting the liability of the former for loss or destruction of the goods to a degree less than extraordinary diligence is valid provided it be reasonable, just and not contrary to public policy. The release from liability in this case was held unreasonable and contrary to the public policy on common carriers.

The provisions of our Civil Code on common carriers were taken from Anglo-American law.[7] Under American Jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier.[8] As a private carrier, a stipulation exonerating the owner from liability for the negligence of its agent is not against public policy,[9] and is deemed valid.

Such doctrine We find reasonable. The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier. The stipulation in the charter party absolving the owner

from liability for loss due to the negligence of its agent would be void only if the strict public policy governing common carriers is applied. Such policy has no force where the public at large is not involved, as in the case of a ship totally chartered for the use of a single party.

And furthermore, in a charter of the entire vessel, the bill of lading issued by the master to the charterer, as shipper, is in fact and legal contemplation merely a receipt and a document of title not a contract, for the contract is the charter party.[10] The consignee may not claim ignorance of said charter party because the bills of lading expressly referred to the same. Accordingly, the consignees under the bills of lading must likewise abide by the terms of the charter party. And as stated recovery cannot be had thereunder, for loss or damage to the cargo, against the shipowners, unless the same is due to personal acts or negligence of said owner or its manager, as distinguished from its other agents or employees. In this case, no such personal act or negligence has been proved.

WHEREFORE, the judgment appealed from is hereby re-verses and appellant is absolved from liability to plain-tiff. No costs.

SO ORDERED.

Reyes, J.B.L., (Acting C.J.), Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Exhibits 1 & 2.

[2] No. 26 of the bills of lading.

[3] Exhibit 3, page 78 of the records.

[4] Owner shoulders payment for overtime work officers and crew (Clauses 17 & 29), duties and taxes on vessel (Clause 14), and rigging opening and closing of hatches at owner's time and expense (Clause 41).

[5] Clause 1 paragraph 2 of contract.

[6] Clause 18 of contract.

[7] Maranan v. Perez, L-22272, June 26, 1967.

[8] C.J.S., pp. 692-693.

[9] The Crowe, 294 Fed. 506; The Fri, 154 Fed. 333.

[10] The Crowe, The Fri, supra.

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