

**PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC.,
PETITIONER, VS. COURT OF APPEALS AND TRANSPACIFIC TOWAGE,
INC., RESPONDENTS.**

G.R. No. 101426. May 17, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

In this petition for review on certiorari, Philippine American General Insurance Company, Incorporated assails the decision* of the Court of Appeals, dated 31 July 1991, rendered in CA-G.R. CV. No. 21252, which reversed and set aside the decision of the Regional Trial Court of Manila, Branch 16[1] and entered a new one dismissing the petitioner's complaint which sought to collect the sum of P1,511,210.00 from the private respondent.

The facts of the case, as found by the Court of Appeals,[2] are as follows:

"On September 4, 1985 the Davao Union Marketing Corporation of Davao City shipped on board the vessel M/V "Crazy Horse" operated by the Transpacific Towage, Inc. cargo consisting of 9,750 sheets of union brand GI sheets with a declared value of P1,086,750.00 and 86,860 bags of union Pozzolan and union Portland Cement with a declared value of P4,300,000.00. The cargo was consigned to the Bicol Union Center of Pasacao, Camarines Sur, with a certain Pedro Olivan as the "Notify-Party".

The cargo was insured by the Philippine American General Insurance Co., Inc. under Marine Note No. 023408 covering 86,000 of Union Pozzolan and Portland cement for the amount of P3,440,000.00.

The vessel M/V "Crazy Horse" arrived on September 7, 1985 as scheduled at the port of Pasacao, Camarines Sur. Upon arrival the shipmaster notified the consignee's "Notify-Party" that the vessel was already (sic) to discharge the cargo. The discharging, could not be effected immediately and continuously because of certain reasons. First, the buoys were installed only on September 11, 1985; second, the discharge permit was secured by the consignee only on September 13, 1985; third a wooden catwalk had to be installed and extension of the wharf had to be made, which was completed only on September 26, 1985; fourth, the discharging was not continuous because there were intermittent rains and the stevedores supplied by the consignee did not work during the town fiesta. (Underscoring ours)

On October 16, 1985, a super typhoon code named "Saling" entered the Philippine area of responsibility and was felt in the eastern coast of the country on October 17, 1985. It had a strength of 240 KPH and Pasacao was placed under Storm Signal No. 3. The discharging of the cargo had to be suspended at 11:40 A.M. on October 17, 1985 due to the heavy downpour, strong winds, and turbulent sea. To prevent damage to the cargo all hatches of the vessel were closed and secured. (Underscoring ours)

At the time the discharging of the cargo was suspended, a total of 59,625 bags of cement and 26 crates of GI sheets had already been discharged.

In further preparation for the typhoon the vessel was loaded with 22 tons of fresh water and 3,000 liters of fuel. The shipmaster ordered the vessel to be moved about 300 meters seaward in order that it would not hit the

catwalk or the wooden bridge or the wharf, or the rocks. The vessel was ready for any maneuver that may have to be made.

According to the shipmaster who was plotting the typhoon's path in a chart, the radius was so wide that there was no way the typhoon could be evaded. From 8:00 P.M. of October 17, 1985 to 8:00 P.M. of October 18, 1985 the typhoon raged in the area. It was at about 5:20 A.M. of October 18, 1985 when the shipmaster ordered the maneuvering of the vessel but it could not be steered on account of the strong winds and rough seas. The vessel's lines snapped, causing her to be dragged against the rocks, and the anchor chain stopper gave way. The vessel sustained holes in the engine room and there was a power failure in the vessel. Water started to fill the engine room and at about 6:15 A.M. the engine broke down.

The shipmaster had no choice but to order the ship to be abandoned. He told the crew to secure the vessel while he went to the Municipal Mayor of Pasacao to request for police assistance to prevent pilferage of the vessel and its cargo. He was, however, unable to get any assistance. When he returned to the vessel he found that it was being continuously pounded by the strong sea waves against the rocks. This caused the vessel to break into two (2) parts and to sink partially. The shipmaster reported the incident to the Philippine Coast Guard but inspite the presence of three (3) coast guards, nothing could be done about the pilferage done on the vessel and its cargo. Almost the whole barrio came to loot the vessel and its cargo and because there were so many of them the crew and the guards were helpless to stop the pilferage and looting. As a result of the incident the cargo of cement was damaged while the GI sheets were looted and nothing was left of the undischarged pieces.

The total number of cement bags damaged and/or lost was 26,424 costing P1,056,960.00 while there were 4,000 pieces of the GI sheets unrecovered, the cost of which was P454,250.00.

Because the cargo was insured by it the Philippine American General Insurance Co., Inc. paid the shipper Davao Union Marketing Corporation the sum of P1,511,210.00. Thereafter, the said insurer made demands upon the Transpacific Towage, Inc. for the payment of said amount as subrogee of the insured, claiming that the loss of the cargo was directly and exclusively brought about by the fault and negligence of the shipmaster and the crew of M/V "Crazy Horse". Because the latter refused to pay the amount of P1,511,210.00 demanded, the Philippine American General Insurance Co., Inc. filed the present complaint.

The lower court found that although the immediate cause of the loss may have been due to an act of God, the defendant carrier had exposed the property to the accident. The court also found the plaintiff guilty of contributory negligence and mitigated the plaintiff's claim to three-fourths (3/4) of its value. Thus the lower court, in its Decision, ordered the defendant:

- "1) To pay plaintiff the mitigated amount of P1,133,408.00 plus 12% legal interest per annum computed from the date of the filing of herein complaint on May 15, 1986, until fully paid;
- 2) To pay P8,000.00 as attorney's fees; and
- 3) To pay costs of suit.

SO ORDERED."

In its now assailed decision, respondent Court of Appeals reversed the decision of the trial court and ruled instead that private respondent, as a common carrier, is not responsible for the loss of the insured cargo involved in the case at bar, as said loss was due solely to a fortituous event.

Petitioner in the present petition contends that respondent appellate court erred in not holding private respondent liable for the loss of the said insured cargo.

We affirm the decision of the Court of Appeals.

It is not disputed that private respondent is a common carrier as defined in Article 1732 of the Civil Code.[3] The following facts are also not contested: (1) that the cargo-carrying vessel was wrecked and partially sank on 18 October 1985 due to typhoon "Saling"; (2) that typhoon "Saling" was a fortuitous event; and (3) that at the time said vessel sank, the remaining undischarged cargo, consisting of 26,424 cement bags and 4,000 pieces of G.I. sheets, were still on board the vessel.

However, the Court notes the fact that as of 17 October 1985, the time when the Pasacao area was placed under storm signal No. 3 due to "Saling", the unloading of the cargo from the vessel was still unfinished, notwithstanding the lapse of forty (40) days from the time the vessel arrived in Pasacao on 7 September 1985, or the lapse of thirty-four (34) days from the time actual discharge of the cargo commenced on 13 September 1985.

In the opinion of the trial court, this lapse of thirty four (34) days with private respondent not having completed the unloading of the goods, is tantamount to unreasonable delay, which delay exposed the unloaded cargo to accident. The trial court held private respondent liable for the loss of goods under Article 1740 of the Civil Code which provides that if the common carrier negligently incurs in delay in transporting the goods, a natural disaster shall not free the carrier from responsibility.

On the other hand, the appellate court ruled out any negligence committed by private respondent and held that the delay in fully unloading the cargo from the vessel "was occasioned by causes that may not be attributed solely to human factors, among which were the natural conditions of the port where the M/V "Crazy Horse" had docked, the customs of the place and the weather conditions." [4]

The appellate court in exempting private respondent from liability applied Article 1739 of the Civil Code which provides as follows:

"In order that the common carrier may be exempted from responsibility, the natural disaster must have been the proximate and only cause of the loss. However, the common carrier must exercise due diligence to prevent or minimize loss before, during and after the occurrence of flood, storm, or other natural disaster in order that the common carrier may be exempted from liability for the loss, destruction, or deterioration of the goods."

The appellate court ruled that the loss of cargo in the present case was due solely to typhoon "Saling" and that private respondent had shown that it had observed due diligence before, during and after the occurrence of "Saling"; hence, it should not be liable under Article 1739.

Considering the undisputed fact that there really was delay in completing the unloading of the goods from the vessel, the Court believes that the real issue at bar centers on the application of Article 1740 of the Civil Code. In short, the principal question, in determining which of the parties in the present case should bear the loss of the goods, is whether the delay involved in the unloading of the goods is deemed negligently incurred in, so as not to free private respondent from liability, notwithstanding the fact that the ultimate cause of the loss of the goods was the sinking of the vessel brought about by typhoon "Saling."

Indeed, from the time the vessel arrived at port Pasacao on 7 September 1985 up to 17 October 1985 when the Pasacao area was placed under storm signal No. 3 due to typhoon "Saling", forty (40) days had passed. Under normal conditions, a period of forty (40) days is undoubtedly more than enough time within which the unloading of the cargo (given its nature) from the vessel could be completed. Hence, the question boils down further to which party should be faulted for this delay.

Private respondent argues that its duty to unload ceased on 7 September 1985 when the shipmaster notified the consignee's "Notify-Party" that the vessel was ready to discharge the cargo. On the other hand, petitioner contends

that the duty to unload the cargo from the vessel continued to remain with private respondent. Respondent appellate court, however, ruled that the question as to which party had the task to discharge the cargo is actually immaterial under the circumstances, as the delay could not be attributed to any of the parties, but to several causes such as the natural conditions of the Pasacao port, the customs of the place and the weather conditions obtaining at the time. The appellate court made the following observations:

"x x x x x

To our mind whichever of the parties had the obligation to unload the cargo is not material. For, analyzing the causes for the delay in such unloading, we find that such delay was not due to the negligence of any party but was occasioned by causes that may not be attributed solely to human factors, among which were the natural conditions of the port where the M/V "Crazy Horse" had docked, the customs of the place, and the weather conditions.

The wharf where the vessel had to dock was shallow and rocky, hence it had to drop anchor some distance away in a private port. Buoys had to be constructed in order that the vessel may be properly moored. After the buoys were installed a wooden stage had to be constructed so that the stevedores could reach the vessel. For this they needed a floating crane which was not immediately available. The barges that were to load the cargo from the vessel could not go near the wharf because of the shallow and rocky condition. A catwalk had to be installed between the barge and the wharf. This necessitated the dismantling of the wooden stage previously installed.

Apart from these preparations and constuctions that had to be made, the weather was not cooperative. Even before the typhoon struck there were intermittent rains, hence the unloading was not continuous. The actual unloading started on September 13, 1985 and could have been finished in 4 or 5 days but because of the rains it was delayed. Another factor that caused further delay was the fact that the fiesta of the Virgin of Penafrancia was celebrated and for the length of time that the celebrations were held, the stevedores who were from the place refused to work.

x x x x x."[5]

The Court of Appeals summarized the reasons which adversely affected the completion of the unloading of the cargo from the time the vessel arrived at the Pasacao area on 7 September 1985, namely: first, the buoys were installed only on 11 September 1985; second, the consignee secured the discharge permit only on 13 September 1985; third, a wooden catwalk had to be installed and the extension of the wharf had to be made, which was completed only on 16 September 1985; fourth, there were intermittent rains and the stevedores supplied by the consignee did not work during the town fiesta of the Virgin of Penafrancia, hence, the unloading was not continuous.

We respect the above-mentioned factual findings of the appellate court as to the natural conditions of the port of Pasacao where the vessel was docked, and several other factors which harshly affected the completion of the discharge of the cargo, as these findings of fact are substantially supported by evidence.[6]

While it is true that there was indeed delay in discharging the cargo from the vessel, we agree with the Court of Appeals that neither of the parties herein could be faulted for such delay, for the same (delay) was due not to negligence, but to several factors earlier discussed. The cargo having been lost due to typhoon "Saling", and the delay incurred in its unloading not being due to negligence, private respondent is exempt from liability for the loss of the cargo, pursuant to Article 1740 of the Civil Code.

The records also show that before, during and after the occurrence of typhoon "Saling", private respondent through its shipmaster exercised due diligence to prevent or minimize the loss of the cargo, as shown by the

following facts: (1) at 5:20 a.m. of 18 October 1985, as typhoon "Saling" continued to batter the Pasacao area, the shipmaster tried to maneuver the vessel amidst strong winds and rough seas; (2) when water started to enter the engine room and later the engine broke down, the shipmaster ordered the ship to be abandoned, but he sought police assistance to prevent pilferage of the vessel and its cargo; (3) after the vessel broke into two (2) parts and sank partially, the shipmaster reported the incident to the Philippine Coast Guard, but unfortunately, despite the presence of three (3) coast guards, nothing could be done to stop the pilferage as almost the entire barrio folk came to loot the vessel and its cargo, including the G.I. sheets.

The diligence exercised by the shipmaster further supports the exemption of private respondent from liability for the loss of the cargo, in accordance with Article 1739 of the Civil Code.

Although we find private respondent free from liability for the loss of the cargo, we disagree with its contention that the doctrine of res judicata applies in the case at bar, because the Board of Marine Inquiry rendered a decision dated 11 April 1988 (acting on the marine protest filed on 19 October 1985 by the shipmaster of M/V "Crazy Horse") holding that said shipmaster was not guilty of "negligence as the proximate cause of the grounding and subsequent wreckage of M/S "Crazy Horse", hence, recommending that the captain, his officers and crew be absolved from any administrative liability arising out of the subject incident."[7]

The resolution of the present case is not barred by the judgment of the Board of Marine Inquiry. One of the requisites of the principle of res judicata is that there must be, among other things, identity of subject matters and causes of action between a first and second case in order that the judgment in the prior case may bar that in the subsequent case.[8]

The cause of action in the marine protest was to enforce the administrative liability of the shipmaster/captain of M/V "Crazy Horse", its officers and crew for the wreckage and sinking of the subject vessel. On the other hand, the cause of action at bar is to enforce the civil liability of private respondent, a common carrier, for its failure to unload the subject cargo within a period of time considered unreasonably long by the petitioner. While it may be true that the Court is bound to accord great weight to factual findings of the Board,[9] we hold that the protest filed before it and the present case assert different causes of action and seek different reliefs.

All told, we find private respondent not legally liable for the loss of the insured cargo involved in the present case.

WHEREFORE, the petition is DENIED. The appealed decision of the Court of Appeals, dated 31 July 1991, rendered in CA-G.R. CV No. 21252, is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Nocon, JJ., concur.

* Penned by Mme. Justice Salome A. Montoya with the concurrence of Justices Eduardo R. Bengzon and Celso L. Magsino

[1] Rollo, p. 4

[2] Ibid, pp. 49-51

[3] ART. 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.

[4] Ibid, p. 53

[5] Rollo, pp. 53-54

[6] Republic vs. Intermediate Appellate Court, G.R. No. 70594, 10 October 1986 144 SCRA 705

[7] Rollo, p. 142

[8] Delfin vs. Inciong, G.R. No. 50661, 10 December 1990, 192 SCRA 151

[9] Vasquez vs. Court of Appeals, G.R. No. 42926, September 13, 1985, 138 SCRA 553

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