

PLANTERS PRODUCTS, INC., PETITIONER, VS. COURT OF APPEALS, SORIAMONT STEAMSHIP AGENCIES AND KYOSEI KISEN KABUSHIKI KAISHA, RESPONDENTS.

G.R. No. 101503. September 15, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Does a charter-party[1] between a shipowner and a charterer transform a common carrier into a private one as to negate the civil law presumption of negligence in case of loss or damage to its cargo?

Planters Products, Inc. (PPI), purchased from Mitsubishi International Corporation (MITSUBISHI) of New York, U.S.A., 9,329.7069 metric tons (M/T) of Urea 46% fertilizer which the latter shipped in bulk on 16 June 1974 aboard the cargo vessel M/V "Sun Plum" owned by private respondent Kyosei Kisen Kabushiki Kaisha (KKKK) from Kenai, Alaska, U.S.A., to Poro Point, San Fernando, La Union, Philippines, as evidenced by Bill of Lading No. KP-1 signed by the master of the vessel and issued on the date of departure.

On 17 May 1974, or prior to its voyage, a time charter-party on the vessel M/V "Sun Plum" pursuant to the Uniform General Charter[2] was entered into between Mitsubishi as shipper/charterer and KKKK as shipowner, in Tokyo, Japan.[3] Riders to the aforesaid charter-party starting from par. 16 to 40 were attached to the pre-printed agreement. Addenda Nos. 1, 2, 3 and 4 to the charter-party were also subsequently entered into on the 18th, 20th, 21st and 27th of May 1974, respectively.

Before loading the fertilizer aboard the vessel, four (4) of her holds[4] were all presumably inspected by the charterer's representative and found fit to take a load of urea in bulk pursuant to par. 16 of the charter-party which reads:

"16. x x x x At loading port, notice of readiness to be accomplished by certificate from National Cargo Bureau inspector or substitute appointed by charterers for his account certifying the vessel's readiness to receive cargo spaces. The vessel's hold to be properly swept, cleaned and dried at the vessel's expenses and the vessel to be presented clean for use in bulk to the satisfaction of the inspector before daytime commences" (underscoring supplied).

After the Urea fertilizer was loaded in bulk by stevedores hired by and under the supervision of the shipper, the steel hatches were closed with heavy iron lids, covered with three (3) layers of tarpaulin, then tied with steel bonds. The hatches remained closed and tightly sealed throughout the entire voyage.[5]

Upon arrival of the vessel at her port of call on 3 July 1974, the steel pontoon hatches were opened with the use of the vessel's boom. Petitioner unloaded the cargo from the holds into its steel-bodied dump trucks which were parked alongside the berth, using metal scoops attached to the ship, pursuant to the terms and conditions of the charter-party (which provided for an F.I.O.S. clause).[6] The hatches remained open throughout the duration of the discharge.[7]

Each time a dump truck was filled up, its load of Urea was covered with tarpaulin before it was transported to the consignee's warehouse located some fifty (50) meters from the wharf. Midway to the warehouse, the trucks were made to pass through a weighing scale where they were individually weighed for the purpose of ascertaining the net weight of the cargo. The port area was windy, certain portions of the route to the warehouse were sandy and the weather was variable, raining occasionally while the discharge was in progress.[8] The petitioner's warehouse was made of corrugated galvanized iron (GI) sheets, with an opening at the front where the dump trucks entered and unloaded the fertilizer on the warehouse floor. Tarpaulins and GI sheets were placed in-between and alongside the trucks to contain spillages of the fertilizer.[9]

It took eleven (11) days for PPI to unload the cargo, from 5 July to 18 July 1974 (except July 12th, 14th and 18th).[10] A private marine and cargo surveyor, Cargo Superintendents Company Inc. (CSCI), was hired by PPI to determine the "outturn" of the cargo shipped, by taking draft readings of the vessel prior to and after discharge.[11] The survey report submitted by CSCI to the consignee (PPI) dated 19 July 1974 revealed a shortage in the cargo of 106.726 M/T and that a portion of the Urea fertilizer approximating 18 M/T was contaminated with dirt. The same results were contained in a Certificate of Shortage/Damaged Cargo dated 18 July 1974 prepared by PPI which showed that the cargo delivered was indeed short of 94.839 M/T and about 23 M/T were rendered unfit for commerce, having been polluted with sand, rust and dirt.[12]

Consequently, PPI sent a claim letter dated 18 December 1974 to Soriament Steamship Agencies (SSA), the resident agent of the carrier, KKKK, for P245,969.31 representing the cost of the alleged shortage in the goods shipped and the diminution in value of that portion said to have been contaminated with dirt.[13]

Respondent SSA explained that they were not able to respond to the consignee's claim for payment because, according to them, what they received was just a request for shortlanded certificate and not a formal claim, and that this "request" was denied by them because they "had nothing to do with the discharge of the shipment.[14] Hence, on 18 July 1975, PPI filed an action for damages with the Court of First Instance of Manila. The defendant carrier argued that the strict public policy governing common carriers does not apply to them because they have become private carriers by reason of the provisions of the charter-party. The court a quo however sustained the claim of the plaintiff against the defendant carrier for the value of the goods lost or damaged when it ruled thus:[15]

"x x x Prescinding from the provision of the law that a common carrier is presumed negligent in case of loss or damage of the goods it contracts to transport, all that a shipper has to do in a suit to recover for loss or damage is to show receipt by the carrier of the goods and delivery by it of less than it received. After that, the burden of proving that the loss or damage was due to any of the causes which exempt him from liability is shifted to the carrier, common or private he may be. Even if the provisions of the charter-party aforequoted are deemed valid, and the defendants considered private carriers, it was still incumbent upon them to prove that the shortage or contamination sustained by the cargo is attributable to the fault or negligence on the part of the shipper or consignee in the loading, stowing, trimming and discharge of the cargo. This they failed to do. By this omission, coupled with their failure to destroy the presumption of negligence against them, the defendants are liable" (underscoring supplied).

On appeal, respondent Court of Appeals reversed the lower court and absolved the carrier from liability for the value of the cargo that was lost or damaged.[16] Relying on the 1968 case of *Home Insurance Co. v. American Steamship Agencies, Inc.*, [17] the appellate court ruled that the cargo vessel M/V "Sun Plum" owned by private respondent KKKK was a private carrier and not a common carrier by reason of the time charter-party. Accordingly, the Civil Code provisions on common carriers which set forth a presumption of negligence do not find application in the case at bar. Thus -

“x x x In the absence of such presumption, it was incumbent upon the plaintiff-appellee to adduce sufficient evidence to prove the negligence of the defendant carrier as alleged in its complaint. It is an old and well settled rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the defendant is under no obligation to prove his exception or defense (Moran, Commentaries on the Rule of Court, Volume 6, p. 2, citing *Belen v. Belen*, 13 Phil. 202).

"But, the record shows that the plaintiff-appellee dismally failed to prove the basis of its cause of action, i.e., the alleged negligence of defendant carrier. It appears that the plaintiff was under the impression that it did not have to establish defendant's negligence. Be that as it may, contrary to the trial court's finding, the record of the instant case discloses ample evidence showing that defendant carrier was not negligent in performing its obligations x x x"[18] (underscoring supplied).

Petitioner PPI appeals to us by way of a petition for review assailing the decision of the Court of Appeals. Petitioner theorizes that the *Home Insurance* case has no bearing on the present controversy because the issue raised therein is the validity of a stipulation in the charter-party delimiting the liability of the shipowner for loss or damage to goods caused by want of due diligence on its part or that of its manager to make the vessel seaworthy in all respects, and not whether the presumption of negligence provided under the Civil Code applies only to common carriers and not to private carriers.[19] Petitioner further argues that since the possession and control of the vessel remain with the shipowner, absent any stipulation to the contrary, such shipowner should be made liable for the negligence of the captain and crew. In fine, PPI faults the appellate court in not applying the presumption of negligence against respondent carrier, and instead shifting the onus probandi on the shipper to show want of due diligence on the part of the carrier, when he was not even at hand to witness what transpired during the entire voyage.

As earlier stated, the primordial issue here is whether a common carrier becomes a private carrier by reason of a charter-party; in the negative, whether the shipowner in the instant case was able to prove that he had exercised that degree of diligence required of him under the law.

It is said that etymology is the basis of reliable judicial decisions in commercial cases. This being so, we find it fitting to first define important terms which are relevant to our discussion.

A "charter-party" is defined as a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use;[20] a contract of affreightment by which the owner of a ship or other vessel lets the whole or a part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight;[21] Charter parties are of two types: (a) contract of affreightment which involves the use of shipping space on vessels leased by the owner in part or as a whole, to carry goods for others; and, (b) charter by demise or bareboat charter, by the terms of which the whole vessel is let to the charterer with a transfer to him of its entire command and possession and consequent control over its navigation, including the master and the crew, who are his servants. Contract of affreightment may either be time charter, wherein the vessel is leased to the charterer for a fixed period of time, or voyage charter, wherein the ship is leased for a single voyage.[22] In both cases, the charter-party provides for the hire of the vessel only, either for a determinate period of time or for a single or consecutive voyage, the shipowner to supply the ship's stores, pay for the wages of the master and the crew, and defray the expenses for the maintenance of the ship.

Upon the other hand, the term "common or public carrier" is defined in Art. 1732 of the Civil Code.[23] The definition extends to carriers either by land, air or water which hold themselves out as ready to engage in carrying goods or transporting passengers or both for compensation as a public employment and not as a casual occupation. The distinction between a "common or public carrier" and a "private or special carrier" lies in the

character of the business, such that if the undertaking is a single transaction, not a part of the general business or occupation, although involving the carriage of goods for a fee, the person or corporation offering such service is a private carrier.[24]

Article 1733 of the New Civil Code mandates that common carriers, by reason of the nature of their business, should observe extraordinary diligence in the vigilance over the goods they carry.[25] In the case of private carriers, however, the exercise of ordinary diligence in the carriage of goods will suffice. Moreover, in case of loss, destruction or deterioration of the goods, common carriers are presumed to have been at fault or to have acted negligently, and the burden of proving otherwise rests on them.[26] On the contrary, no such presumption applies to private carriers, for whosoever alleges damage to or deterioration of the goods carried has the onus of proving that the cause was the negligence of the carrier.

It is not disputed that respondent carrier, in the ordinary course of business, operates as a common carrier, transporting goods indiscriminately for all persons. When petitioner chartered the vessel M/V "Sun Plum", the ship captain, its officers and complement were under the employ of the shipowner and therefore continued to be under its direct supervision and control. Hardly then can we charge the charterer, a stranger to the crew and to the ship, with the duty of caring for his cargo when the charterer did not have any control of the means in doing so. This is evident in the present case considering that the steering of the ship, the manning of the decks, the determination of the course of the voyage and other technical incidents of maritime navigation were all consigned to the officers and crew who were screened, chosen and hired by the shipowner.[27]

It is therefore imperative that a public carrier shall remain as such, notwithstanding the charter of the whole or portion of a vessel by one or more persons, provided the charter is limited to the ship only, as in the case of a time-charter or voyage-charter. It is only when the charter includes both the vessel and its crew, as in a bareboat or demise that a common carrier becomes private, at least insofar as the particular voyage covering the charter-party is concerned. Indubitably, a shipowner in a time or voyage charter retains possession and control of the ship, although her holds may, for the moment, be the property of the charterer.[28]

Respondent carrier's heavy reliance on the case of *Home Insurance Co. v. American Steamship Agencies*, supra, is misplaced for the reason that the meat of the controversy therein was the validity of a stipulation in the charter-party exempting the shipowner from liability for loss due to the negligence of its agent, and not the effects of a special charter on common carriers. At any rate, the rule in the United States that a ship chartered by a single shipper to carry special cargo is not a common carrier,[29] does not find application in our jurisdiction, for we have observed that the growing concern for safety in the transportation of passengers and/or carriage of goods by sea requires a more exacting interpretation of admiralty laws, more particularly, the rules governing common carriers.

We quote with approval the observations of Raoul Colinvaux, the learned barrister-at-law[30] -

"As a matter of principle, it is difficult to find a valid distinction between cases in which a ship is used to convey the goods of one and of several persons. Where the ship herself is let to a charterer, so that he takes over the charge and control of her, the case is different; the shipowner is not then a carrier. But where her services only are let, the same grounds for imposing a strict responsibility exist, whether he is employed by one or many. The master and the crew are in each case his servants, the freighter in each case is usually without any representative on board the ship; the same opportunities for fraud or collusion occur; and the same difficulty in discovering the truth as to what has taken place arises x x x x"

In an action for recovery of damages against a common carrier on the goods shipped, the shipper or consignee should first prove the fact of shipment and its consequent loss or damage while the same was in the possession,

actual or constructive, of the carrier. Thereafter, the burden of proof shifts to respondent to prove that he has exercised extraordinary diligence required by law or that the loss, damage or deterioration of the cargo was due to fortuitous event, or some other circumstances inconsistent with its liability.[31]

To our mind, respondent carrier has sufficiently overcome, by clear and convincing proof, the prima facie presumption of negligence.

The master of the carrying vessel, Captain Lee Tae Bo, in his deposition taken on 19 April 1977 before the Philippine Consul and Legal Attache in the Philippine Embassy in Tokyo, Japan, testified that before the fertilizer was loaded, the four (4) hatches of the vessel were cleaned, dried and fumigated. After completing the loading of the cargo in bulk in the ship's holds, the steel pontoon hatches were closed and sealed with iron lids, then covered with three (3) layers of serviceable tarpaulins which were tied with steel bonds. The hatches remained close and tightly sealed while the ship was in transit as the weight of the steel covers made it impossible for a person to open without the use of the ship's boom.[32]

It was also shown during the trial that the hull of the vessel was in good condition, foreclosing the possibility of spillage of the cargo into the sea or seepage of water inside the hull of the vessel.[33] When M/V "Sun Plum" docked at its berthing place, representatives of the consignee boarded, and in the presence of a representative of the shipowner, the foreman, the stevedores, and a cargo surveyor representing CSCI, opened the hatches and inspected the condition of the hull of the vessel. The stevedores unloaded the cargo under the watchful eyes of the shipmates who were overseeing the whole operation on rotation basis.[34]

Verily, the presumption of negligence on the part of respondent carrier has been efficaciously overcome by the showing of extraordinary zeal and assiduity exercised by the carrier in the care of the cargo. This was confirmed by respondent appellate court thus -

"x x x x Be that as it may, contrary to the trial court's finding, the record of the instant case discloses ample evidence showing that defendant carrier was not negligent in performing its obligations. Particularly, the following testimonies of plaintiff-appellee's own witnesses clearly show absence of negligence by the defendant carrier; that the hull of the vessel at the time of the discharge of the cargo was sealed and nobody could open the same except in the presence of the owner of the cargo and the representatives of the vessel (TSN, 20 July 1977, p. 14); that the cover of the hatches was made of steel and it was overlaid with tarpaulins, three layers of tarpaulins and therefore their contents were protected from the weather (TSN, 5 April 1978, p. 24); and, that to open these hatches, the seals would have to be broken, all the seals were found to be intact (TSN, 20 July 1977, pp. 15-16)" (underscoring Supplied).

The period during which private respondent was to observe the degree of diligence required of it as a public carrier began from the time the cargo was unconditionally placed in its charge after the vessel's holds were duly inspected and passed scrutiny by the shipper, up to and until the vessel reached its destination and its hull was re-examined by the consignee, but prior to unloading. This is clear from the limitation clause agreed upon by the parties in the Addendum to the standard "GENCON" time charter-party which provided for an F.I.O.S., meaning, that the loading, stowing, trimming and discharge of the cargo was to be done by the charterer, free from all risk and expense to the carrier.[35] Moreover, a shipowner is liable for damage to the cargo resulting from improper stowage only when the stowing is done by stevedores employed by him, and therefore under his control and supervision, not when the same is done by the consignee or stevedores under the employ of the latter.[36]

Article 1734 of the New Civil Code provides that common carriers are not responsible for the loss, destruction or deterioration of the goods if caused by the character of the goods or defects in the packaging or in the containers. The Code of Commerce also provides that all losses and deteriorations which the goods may suffer during the transportation by reason of fortuitous event, force majeure, or the inherent defect of the goods, shall be for the

account and risk of the shipper, and that proof of these accidents is incumbent upon the carrier.[37] The carrier, nonetheless, shall be liable for the loss and damage resulting from the preceding causes if it is proved, as against him, that they arose through his negligence or by reason of his having failed to take the precautions which usage has established among careful persons.[38]

Respondent carrier presented a witness who testified on the characteristics of the fertilizer shipped and the expected risks of bulk shipping. Mr. Estanislao Chupungco, a chemical engineer working with Atlas Fertilizer, described Urea as a chemical compound consisting mostly of ammonia and carbon monoxide compounds which are used as fertilizer. Urea also contains 46% nitrogen and is highly soluble in water. However, during storage, nitrogen and ammonia do not normally evaporate even on a long voyage, provided that the temperature inside the hull does not exceed eighty (80) degrees centigrade. Mr. Chupungco further added that in unloading fertilizer in bulk with the use of a clamped shell, losses due to spillage during such operation amounting to one percent (1%) against the bill of lading is deemed "normal" or "tolerable." The primary cause of these spillages is the clamped shell which does not seal very tightly. Also, the wind tends to blow away some of the materials during the unloading process.

The dissipation of quantities of fertilizer, or its deterioration in value, is caused either by an extremely high temperature in its place of storage, or when it comes in contact with water. When Urea is drenched in water, either fresh or saline, some of its particles dissolve. But the salvaged portion which is in liquid form still remains potent and usable although no longer saleable in its original market value.

The probability of the cargo being damaged or getting mixed or contaminated with foreign particles was made greater by the fact that the fertilizer was transported in "bulk," thereby exposing it to the inimical effects of the elements and the grimy condition of the various pieces of equipment used in transporting and hauling it.

The evidence of respondent carrier also showed that it was highly improbable for sea water to seep into the vessel's holds during the voyage since the hull of the vessel was in good condition and her hatches were tightly closed and firmly sealed, making the M/V "Sun Plum" in all respects seaworthy to carry the cargo she was chartered for. If there was loss or contamination of the cargo, it was more likely to have occurred while the same was being transported from the ship to the dump trucks and finally to the consignee's warehouse. This may be gleaned from the testimony of the marine and cargo surveyor of CSCI who supervised the unloading. He explained that the 18 M/T of alleged "bad order cargo" as contained in their report to PPI was just an approximation or estimate made by them after the fertilizer was discharged from the vessel and segregated from the rest of the cargo.

The Court notes that it was in the month of July when the vessel arrived port and unloaded her cargo. It rained from time to time at the harbor area while the cargo was being discharged according to the supply officer of PPI, who also testified that it was windy at the waterfront and along the shoreline where the dump trucks passed enroute to the consignee's warehouse.

Indeed, we agree with respondent carrier that bulk shipment of highly soluble goods like fertilizer carries with it the risk of loss or damage. More so, with a variable weather condition prevalent during its unloading, as was the case at bar. This is a risk the shipper or the owner of the goods has to face. Clearly, respondent carrier has sufficiently proved the inherent character of the goods which makes it highly vulnerable to deterioration; as well as the inadequacy of its packaging which further contributed to the loss. On the other hand, no proof was adduced by the petitioner showing that the carrier was remiss in the exercise of due diligence in order to minimize the loss or damage to the goods it carried.

WHEREFORE, the petition is DISMISSED. The assailed decision of the Court of Appeals, which reversed the

trial court, is AFFIRMED. Consequently, Civil Case No. 98623 of the then Court of the First Instance, now Regional Trial Court, of Manila should be, as it is hereby, DISMISSED.

Costs against petitioner.

SO ORDERED.

Davide, Jr., and Quiason, JJ., concur.

Cruz, J., (Chairman), no part.

Griño-Aquino, J., on official leave.

[1] A charter-party is a contract by which an entire ship or some principal part thereof, is let by the owner to another person for a specified time or use (70 Am Jur 2d, p. 580, citing *Ward v. Thompson*, 63 US 330, 16 L Ed 249; a contract in which the owner of a vessel lets for consideration the whole or part thereof for the conveyance of goods and/or passengers on a particular voyage to one or more places or until the expiration of a specified time and surrenders unto the lessee or charterer the control, by vesting upon the latter the right to appoint the captain, officers and members of the crew, of the vessel leased or chartered during the duration of the contract (R.A. 913).

[2] The Baltic and International Maritime Uniform General Charter (As Revised 1922 and 1976), Including "F.I.O.S." Alternative, etc., Code Name: "GENCON" Adopted by the Documentary Committee of the General Council of British Shipping, London, and the Documentary Committee of the Japan Shipping Exchange, Inc., Tokyo.

[3] Rollo, pp. 105, 128.

[4] Although par. 40 of the Rider (Description of "Sun Plum") states that the vessel has 3 holds/3 hatches, Hatch No. 4 which usually was not used for cargo, was converted for such purpose. The time sheet for 12 July 1974 shows that Hatch No. 4 was first to be discharged of cargo. This was also testified to by the master of the vessel, Captain Lee Tae Bo.

[5] *Id.*, p. 129.

[6] Under the terms and conditions of the charter-party, F.I.O.S. (Free In and Out Shipping/Stevedoring) means that the shipper takes care of the loading, while the unloading is the sole responsibility of the consignee (Rollo, pp. 128, 184).

[7] TSN, 20 July 1977, p. 17.

[8] TSN, 20 July 1977, p. 18.

[9] Rollo, p. 130.

[10] *Id.*, p. 129; ADDENDUM NO. 4 dated 17 May 1974 provides: "The cargo to be discharged at the average rate of 1,000 metric tons per day of 24 hours weather working days, Sundays, Holidays excluded unless used, assuming four (4) sets of vessel's gear simultaneously workable at vessel's bearthing side."

[11] TSN, 5 April 1978, pp. 7-8. "Drop survey" is the drop of the vessel showing certain meters or centimeters of the vessel. In the ship there is a draft from one meter upward. When the vessel arrives, (CSCI) conducted initial draft survey before discharging, together with the ship's representative by getting the draft forward and aft. They divided it by 2 to get the mean draft and the average draft. After getting the mean draft, they got the displacement scale of the vessel to show certain tons of the ship, then deducted the non-cargo weight, like the fuel oil, the fresh

water. Finally, the total load of the ship is taken. After discharging, CSCI went over same procedure to get the weight of the vessel. These figures were then subtracted from the total load of the ships to get the weight of the cargo.

[12] *Id.*, p. 106.

[13] *Id.*, pp. 49, 68.

[14] TSN, 28 Aug. 1979, pp. 9-10.

[15] *Id.*, p. 68; "Planters Products, Inc. v. Soriament Steamship Agencies, et al.," Civil Case No. 98623, CFI of Manila, Br. 27, decision penned by Judge E.L. Peralta, 24 March 1980.

[16] The Court of Appeals (Twelfth Division) rendered its decision on 13 August 1991 in CA-G.R. CV No. 02736 entitled "Planters Products, Inc. vs. Kyosei Kisen Kabushiki Kaisha & Soriament Steamship Agencies." Decision penned by Justice Alfredo L. Benipayo, concurred in by Justices Manuel C. Herrera and Cancio C. Garcia, Rollo, pp. 13-24.

[17] No. L-25599, 4 April 1968, 23 SCRA 24.

[18] Rollo, p. 109.

[19] Rollo, pp. 8 & 9.

[20] Charter Parties; Charters of Demise and Contracts of Affreightment; 70 Am Jur 2d, p. 580; citing *Ward v. Thompson*, 63 US 330, 16 L Ed 249; E.R. Harvey Ivamy, *Carriage of Goods by Sea*, 13th Ed., Chap. 2, pp. 5, 8-10. The term is also defined under R.A. No. 913, known as "An Act Defining 'Lease' or 'Charter' of Vessels" as to mean a "contract in which the owner of a vessel lets for consideration the whole or principal part thereof for the conveyance of goods and/or passengers on a particular voyage to one or more places or until the expiration of a specified time and surrenders unto the lessee or charterer the control, by vesting upon the latter the right to appoint the captain, officers and members of the crew, of the vessel leased or chartered during the duration of the contract."

[21] *Bouvier's Law Dictionary*, Third Rev., Vol. I, p. 470.

[22] *Id.* pp. 581-582.

[23] 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.

[24] See *De Guzman v. Court of Appeals*, No. L-47822, 22 December 1988, 168 SCRA 612; *U.S. v. Quinajon*, No. 8686, 30 July 1915.

[25] Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in Arts. 1734, 1735 and 1745, Nos. 5, 6 and 7, while the extraordinary diligence for the safety of the passengers is further set forth in Arts. 1755 and 1756.

[26] Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4 and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted

negligently, unless they prove that they observed extraordinary diligence as required in article 1733.

[27] E.R. Harvey Ivamy, pp. 8-10.

[28] 70 Am Jur 2nd, p. 608 S 238, citing *Grace v. Palmer*, 21 US 605, 5 L Ed 696, and *Kerry v. Pacific Marine Co.*, 12 CAL 564, 54, p.89.

[29] 30 C.J.S., pp. 269-693.

[30] *British Shipping Laws*, Vol. 2, "Carver's Carriage by Sea," By Raoul Colinvaux, Vol. 1, 12th Ed., Published by Stevens & Sons Limited of London, Printed in Great Britain, 1971.

[31] See *Ynchausti Steamship Co. v. Dexter*, No. 15652, 41 Phil. 289, 14 Dec. 1920; *Mirasol v. Robert Dollar, Co.*, No. 29721, 53 Phil. 124, 27 March 1929.

[32] Deposition of Capt. Lee Tae Bo, Exh. "4", pp. 22-23.

[33] TSN, 20 July 1977, p.14.

[34] TSN, 5 April 1978, pp. 24-25.

[35] See Note 6.

[36] 70 Am Jur 2d, p. 603 S 230, citing *Oxford Paper Co. v. The Nidarholm*, 282 US 681, 75L Ed 614, 51 S Ct 266.

[37] Art. 361, par. 4, Code of Commerce.

[38] Art. 362, par. 1, id.

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