

## **PHILIPPINE HOME ASSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND EASTERN SHIPPING LINES, INC., RESPONDENTS.**

*G.R. No. 106999. June 20, 1996*

Ponente: KAPUNAN, J.

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### **KAPUNAN, J.:**

Eastern Shipping Lines, Inc. (ESLI) loaded on board SS Eastern Explorer in Kobe, Japan, the following shipment for carriage to Manila and Cebu, freight pre-paid and in good order and condition, viz: (a) two (2) boxes internal combustion engine parts, consigned to William Lines, Inc. under Bill of Lading No. 042283; (b) ten (10) metric tons (334 bags) ammonium chloride, consigned to Orca's Company under Bill of Lading No. KCE-12; (c) two hundred (200) bags Glue 300, consigned to Pan Oriental Match Company under Bill of Lading No. KCE-8; and (d) garments, consigned to Ding Velayo under Bills of Lading Nos. KMA-73 and KMA-74.

While the vessel was off Okinawa, Japan, a small flame was detected on the acetylene cylinder located in the accommodation area near the engine room on the main deck level. As the crew was trying to extinguish the fire, the acetylene cylinder suddenly exploded sending a flash of flame throughout the accommodation area, thus causing death and severe injuries to the crew and instantly setting fire to the whole superstructure of the vessel. The incident forced the master and the crew to abandon the ship.

Thereafter, SS Eastern Explorer was found to be a constructive total loss and its voyage was declared abandoned.

Several hours later, a tugboat under the control of Fukuda Salvage Co. arrived near the vessel and commenced to tow the vessel for the port of Naha, Japan.

Fire fighting operations were again conducted at the said port. After the fire was extinguished, the cargoes which were saved were loaded to another vessel for delivery to their original ports of destination. ESLI charged port. After the fire was extinguished, the cargoes which were saved were loaded to another vessel for delivery to their original ports of destination. ESLI charged the consignees several amounts corresponding to additional freight and salvage charges, as follows: (a) for the goods covered by Bill of Lading No. 042283, ESLI charged the consignee the sum of P1,927.65, representing salvage charges assessed against the goods; (b) for the goods covered by Bill of Lading No. KCE-12, ESLI charged the consignee the sum of P2,980.64 for additional freight and P826.14 for salvage charges against the goods; (c) for the goods covered by Bill of Lading No. KCE-8, ESLI charged the consignee the sum of P3,292.26 for additional freight and P4,130.68 for salvage charges against the goods; and (d) for the goods under Bills of Lading Nos. KMA-73 and KMA-74, ESLI charged the consignee the sum of P8,337.06 for salvage charges against the goods.

The charges were all paid by Philippine Home Assurance Corporation (PHAC) under protest for and in behalf of the consignees.

PHAC, as subrogee of the consignees, thereafter filed a complaint before the Regional Trial Court of Manila,

Branch 39, against ESLI to recover the sum paid under protest on the ground that the same were actually damages directly brought about by the fault, negligence, illegal act and/or breach of contract of ESLI.

In its answer, ESLI contended that it exercised the diligence required by law in the handling, custody and carriage of the shipment; that the fire was caused by an unforeseen event; that the additional freight charges are due and demandable pursuant to the Bill of Lading;<sup>[1]</sup> and that salvage charges are properly collectible under Act No. 2616, known as the Salvage Law.

The trial court dismissed PHAC's complaint and ruled in favor of ESLI ratiocinating thus:

The question to be resolved is whether or not the fire on the vessel which was caused by the explosion of an acetylene cylinder loaded on the same was the fault or negligence of the defendant.

Evidence has been presented that the SS "Eastern Explorer" was a seaworthy vessel (Deposition of Jumpei Maeda, October 23, 1980, p. 3) and before the ship loaded the Acetylene Cylinder No. NCW 875, the same has been tested, checked and examined and was certified to have complied with the required safety measures and standards (Deposition of Senjei Hayashi, October 23, 1980, pp. 2-3). When the fire was detected by the crew, fire fighting operations was immediately conducted but due to the explosion of the acetylene cylinder, the crew were unable to contain the fire and had to abandon the ship to save their lives and were saved from drowning by passing vessels in the vicinity. The burning of the vessel rendering it a constructive total loss and incapable of pursuing its voyage to the Philippines was, therefore, not the fault or negligence of defendant but a natural disaster or calamity which nobody would like to happen. The salvage operations conducted by Fukuda Salvage Company (Exhibits "4-A" and "6-A") was perfectly a legal operation and charges made on the goods recovered were legitimate charges.

Act No. 2616, otherwise known as the Salvage Law, is thus applicable to the case at bar. Section 1 of Act No. 2616 states:

"Section 1. When in case of shipwreck, the vessel or its cargo shall be beyond the control of the crew, or shall have been abandoned by them, and picked up and conveyed to a safe place by other persons, the latter shall be entitled to a reward for the salvage.

Those who, not being included in the above paragraph, assist in saving a vessel or its cargo from shipwreck, shall be entitled to like reward."

In relation to the above provision, the Supreme Court has ruled in *Erlanger & Galinger v. Swedish East Asiatic Co., Ltd.*, 34 Phil. 178, that three elements are necessary to a valid salvage claim, namely (a) a marine peril (b) service voluntarily rendered when not required as an existing duty or from a special contract and (c) success in whole or in part, or that the service rendered contributed to such success.

The above elements are all present in the instant case. Salvage charges may thus be assessed on the cargoes saved from the vessel. As provided for in Section 13 of the Salvage Law, "The expenses of salvage, as well as the reward for salvage or assistance, shall be a charge on the things salvaged or their value." In *Manila Railroad Co. v. Macondray Co.*, 37 Phil. 583, it was also held that "when a ship and its cargo are saved together, the salvage allowance should be charged against the ship and cargo in the proportion of their respective values, the same as in a case of general average . . ." Thus, the "compensation to be paid by the owner of the cargo is in proportion to the value of the vessel and the value of the cargo saved." (*Atlantic Gulf and Pacific Co. v. Uchida Kisen Kaisha*, 42 Phil. 321). (Memorandum for Defendant, Records, pp. 212-213).

With respect to the additional freight charged by defendant from the consignees of the goods, the same are also validly demandable.

As provided by the Civil Code:

"Article 1174. Except in cases expressly specified by law, or when it is otherwise declared by stipulation, or when the nature of the obligation require the assumption or risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable."

"Article 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor."

The burning of "EASTERN EXPLORER" while off Okinawa rendered it physically impossible for defendant to comply with its obligation of delivering the goods to their port of destination pursuant to the contract of carriage. Under Article 1266 of the Civil Code, the physical impossibility of the prestation extinguished defendant's obligation.

It is but legal and equitable for the defendant therefore, to demand additional freight from the consignees for forwarding the goods from Naha, Japan to Manila and Cebu City on board another vessel, the "EASTERN MARS." This finds support under Article 844 of the Code of Commerce which provides as follows:

"Article 844. A captain who may have taken on board the goods saved from the wreck shall continue his course to the port of destination; and on arrival should deposit the same, with judicial intervention at the disposal of their legitimate owners. x x x

The owners of the cargo shall defray all the expenses of this arrival as well as the payment of the freight which, after taking into consideration the circumstances of the case, may be fixed by agreement or by a judicial decision."

Furthermore, the terms and conditions of the Bill of Lading authorize the imposition of additional freight charges in case of forced interruption or abandonment of the voyage. At the dorsal portion of the Bills of Lading issued to the consignees is this stipulation:

"12. All storage, transshipment, forwarding or other disposition of cargo at or from a port of distress or other place where there has been a forced interruption or abandonment of the voyage shall be at the expense of the owner, shipper, consignee of the goods or the holder of this bill of lading who shall be jointly and severally liable for all freight charges and expenses of every kind whatsoever, whether payable in advance or not that may be incurred by the cargo in addition to the ordinary freight, whether the service be performed by the named carrying vessel or by carrier's other vessels or by strangers. All such expenses and charges shall be due and payable day by day immediately when they are incurred."

The bill of lading is a contract and the parties are bound by its terms (Govt. of the Philippine Islands vs. Ynchausti and Co., 40 Phil. 219). The provision quoted is binding upon the consignee.

Defendant therefore, can validly require payment of additional freight from the consignee. Plaintiff can not thus recover the additional freight paid by the consignee to defendant. (Memorandum for Defendant, Record, pp. 215-216).[2]

On appeal to the Court of Appeals, respondent court affirmed the trial court's findings and conclusions,[3] hence, the present petition for review before this Court on the following errors:

I. THE RESPONDENT COURT ERRONEOUSLY ADOPTED WITH APPROVAL THE TRIAL COURT'S FINDINGS THAT THE BURNING OF THE SS "EASTERN EXPLORER," RENDERING IT A CONSTRUCTIVE TOTAL LOSS, IS A NATURAL DISASTER OR CALAMITY WHICH NOBODY WOULD LIKE TO HAPPEN, DESPITE EXISTING JURISPRUDENCE TO THE CONTRARY.

II. THE RESPONDENT COURT ARBITRARILY RULED THAT THE BURNING OF THE SS "EASTERN EXPLORER" WAS NOT THE FAULT AND NEGLIGENCE OF RESPONDENT EASTERN SHIPPING

LINES.

III. THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT DEFENDANT HAD EXERCISED THE EXTRAORDINARY DILIGENCE IN THE VIGILANCE OVER THE GOODS AS REQUIRED BY LAW.

IV. THE RESPONDENT COURT ARBITRARILY RULED THAT THE MARINE NOTE OF PROTEST AND STATEMENT OF FACTS ISSUED BY THE VESSEL'S MASTER ARE NOT HEARSAY DESPITE THE FACT THAT THE VESSEL'S MASTER, CAPT. LICAYLICAY WAS NOT PRESENTED IN COURT, WITHOUT EXPLANATION WHATSOEVER FOR HIS NON-PRESENTATION, THUS, PETITIONER WAS DEPRIVED OF ITS RIGHT TO CROSS-EXAMINE THE AUTHOR THEREOF.

V. THE RESPONDENT COURT ERRONEOUSLY ADOPTED WITH APPROVAL THE TRIAL COURT'S CONCLUSION THAT THE EXPENSES OR AVERAGES INCURRED IN SAVING THE CARGO CONSTITUTE GENERAL AVERAGE.

VI. THE RESPONDENT COURT ERRONEOUSLY ADOPTED THE TRIAL COURT'S RULING THAT PETITIONER WAS LIABLE TO RESPONDENT CARRIER FOR ADDITIONAL FREIGHT AND SALVAGE CHARGES.[4]

It is quite evident that the foregoing assignment of errors challenges the findings of fact and the appreciation of evidence made by the trial court and later affirmed by respondent court. While it is a well-settled rule that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court, it is equally well-settled that the same admits of the following exceptions, namely: (a) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) where there is a grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (g) when the findings of the Court of Appeals are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (j) when the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[5] Thus, if there is a showing, as in the instant case, that the findings complained of are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion, the same may be properly reviewed and evaluated by this Court.

It is worthy to note at the outset that the goods subject of the present controversy were neither lost nor damaged in transit by the fire that razed the carrier. In fact, the said goods were all delivered to the consignees, even if the transshipment took longer than necessary. What is at issue therefore is not whether or not the carrier is liable for the loss, damage, or deterioration of the goods transported by them but who, among the carrier, consignee or insurer of the goods, is liable for the additional charges or expenses incurred by the owner of the ship in the salvage operations and in the transshipment of the goods via a different carrier.

In absolving respondent carrier of any liability, respondent Court of Appeals sustained the trial court's finding that the fire that gutted the ship was a natural disaster or calamity. Petitioner takes exception to this conclusion and we agree.

In our jurisprudence, fire may not be considered a natural disaster or calamity since it almost always arises from some act of man or by human means. It cannot be an act of God unless caused by lightning or a natural disaster or casualty not attributable to human agency.[6]

In the case at bar, it is not disputed that a small flame was detected on the acetylene cylinder and that by reason thereof, the same exploded despite efforts to extinguish the fire. Neither is there any doubt that the acetylene cylinder, obviously fully loaded, was stored in the accommodation area near the engine room and not in a storage area considerably far, and in a safe distance, from the engine room. Moreover, there was no showing, and none was alleged by the parties, that the fire was caused by a natural disaster or calamity not attributable to human agency. On the contrary, there is strong evidence indicating that the acetylene cylinder caught fire because of the fault and negligence of respondent ESLI, its captain and its crew.

First, the acetylene cylinder which was fully loaded should not have been stored in the accommodation area near the engine room where the heat generated therefrom could cause the acetylene cylinder to explode by reason of spontaneous combustion. Respondent ESLI should have easily foreseen that the acetylene cylinder, containing highly inflammable material, was in a real danger of exploding because it was stored in close proximity to the engine room.

Second, respondent ESLI should have known that by storing the acetylene cylinder in the accommodation area supposed to be reserved for passengers, it unnecessarily exposed its passengers to grave danger and injury. Curious passengers, ignorant of the danger the tank might have on humans and property, could have handled the same or could have lighted and smoke cigarettes while repairing in the accommodation area.

Third, the fact that the acetylene cylinder was checked, tested and examined and subsequently certified as having complied with the safety measures and standards by qualified experts[7] before it was loaded in the vessel only shows to a great extent that negligence was present in the handling of the acetylene cylinder after it was loaded and while it was on board the ship. Indeed, had the respondent and its agents not been negligent in storing the acetylene cylinder near the engine room, then that same would not have leaked and exploded during the voyage.

Verily, there is no merit in the finding of the trial court to which respondent court erroneously agreed that the fire was not fault or negligence of respondent but a natural disaster or calamity. The records are simply wanting in this regard.

Anent petitioner's objection to the admissibility of Exhibits "4" and "5", the Statement of Facts and the Marine Note of Protest issued by Captain Tiburcio A. Licaylicay, we find the same impressed with merit because said documents are hearsay evidence. Capt. Licaylicay, Master of S.S. Eastern Explorer who issued the said documents, was not presented in court to testify to the truth of the facts he stated therein; instead, respondent ESLI presented Junpei Maeda, its Branch Manager in Tokyo and Yokohama, Japan, who evidently had no personal knowledge of the facts stated in the documents at issue. It is clear from Section 36, Rule 130 of the Rules of Court that any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.[8] It is excluded because the party against whom it is presented is deprived of his right and opportunity to cross-examine the persons to whom the statements or writings are attributed.

On the issue of whether or not respondent court committed an error in concluding that the expenses incurred in saving the cargo are considered general average, we rule in the affirmative. As a rule, general or gross averages include all damages and expenses which are deliberately caused in order to save the vessel, its cargo, or both at the same time, from a real and known risk.[9] While the instant case may technically fall within the purview of the said provision, the formalities prescribed under Article 813[10] and 814[11] of the Code of Commerce in order to incur the expenses and cause the damage corresponding to gross average were not complied with.

Consequently, respondent ESLI's claim for contribution from the consignees of the cargo at the time of the occurrence of the average turns to naught.

Prescinding from the foregoing premises, it indubitably follows that the cargo consignees cannot be made liable to respondent carrier for additional freight and salvage charges. Consequently, respondent carrier must refund to herein petitioner the amount it paid under protest for additional freight and salvage charges in behalf of the consignee.

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE. Respondent Eastern Shipping Lines, Inc. is ORDERED to return to petitioner Philippine Home Assurance Corporation the amount it paid under protest in behalf of the consignees herein.

**SO ORDERED.**

Padilla (Chairman), Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Section 12. All storage, transshipment, forwarding or other disposition of cargo at or from port of distress or other place where there has been a forced interruption or abandonment of the voyage shall be at the expense of the owner, shipper, consignee of the goods or the holder of this bill of lading who shall be jointly and severally liable for all freight charges and expenses of every kind whatsoever, whether payable in advance or not that may be incurred by the cargo in addition to the ordinary freight, whether the service be performed by the named carrying vessel or by carrier's other vessels or by strangers. All such expenses and charges shall be due and payable day by day immediately when they are incurred.

[2] Original Records, pp. 240-243.

[3] Rollo, pp. 29-39.

[4] Id., at 12-13.

[5] Geronimo v. Court of Appeals, 224 SCRA 494, 498-499 [1993]; BPI Credit Corporation v. Court of Appeals, 204 SCRA 601, 608-609 [1991]; Medina v. Asistio, Jr., 191 SCRA 218, 223-224 [1990].

[6] Eastern Shipping Lines, Inc. v. Intermediate Appellate Court, 150 SCRA 463 [1987]; Africa v. Caltex, 16 SCRA 448 [1966]; See also 4 Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, 1993 Edition, p. 44

[7] Original Records, p. 171.

[8] Baguio v. Court of Appeals, 226 SCRA 366, 370 [1993].

[9] Article 811, Code of Commerce.

[10] ARTICLE 813. In order to incur the expenses and cause the damages corresponding to gross average, there must be a resolution of the captain, adopted after deliberation with the sailing mate and other officers of the vessel, and after hearing the persons interested in the cargo who may be present.

If the latter shall object, and the captain and officers or a majority of them, or the captain, if opposed to the majority, should consider certain measures necessary, they may be executed under his responsibility, without prejudice to the right of the shippers to proceed against the captain before the competent judge or court, if they can prove that he acted with malice, lack of skill, or negligence.

If the persons interested in the cargo, being on board the vessel, have not been heard, they shall not contribute to

the gross average, their share being chargeable against the captain, unless the urgency of the case should be such that the time necessary for previous deliberations was wanting.

[11] ARTICLE 814. The resolution adopted to cause the damages which constitute general average must be necessarily be entered in the log book stating the motives and reasons for the dissent, should there be any, and the irresistible and urgent causes which impelled the captain if he acted of his own accord.

In the first case the minutes shall be signed by all the persons present who could do so before taking action, if possible; and if not, at the first opportunity. In the second case, it shall be signed by the captain and by the officers of the vessel.

In the minutes, and after the resolution, shall be stated in detail all the goods jettisoned, and mention shall be made of the injuries caused to those kept on board. The captain shall be obliged to deliver one copy of these minutes to the maritime judicial authority of the first port he may make, within twenty-four hours after his arrival, and to ratify it immediately under oath.

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