

HOME INSURANCE CORPORATION, PETITIONER, VS. THE HON. COURT OF APPEALS, FORMER 7TH DIVISION AND MABUHAY BROKERAGE CO., INC., RESPONDENTS.

G.R. No. 109293. August 18, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

Filipro Phil., now known as Nestle Phil., was the consignee of two hydraulic engines shipped on April 25, 1979, by INREDECO from the United States on the M/S Oriental Statesman. The cargo arrived in Manila on May 17, 1979, on board the M/S Pacific Conveyor. It was turned over to E. Razon Arrastre, which retained custody until July 20, 1979. The cargo was later hauled by Mabuhay Brokerage Co. to its warehouse, where it stayed until July 26, 1979. On this date it was delivered to the consignee.

When the skidded plywood cases were opened by the consignee, one of the engines was found to be damaged. Its fan cover was broken and misaligned and its cap deformed. The consignee refused to accept the unit.

Nestle subsequently filed a claim against E. Razon, Mabuhay, the Port Authority, and its insurer, the Home Insurance Corp., for P49,170.00. When the other companies denied liability, Home Insurance paid the claim and was issued a subrogation receipt for \$6,070.00.[1]

Mabuhay alone was sued by Home Insurance for the recovery of the amount it had paid to Nestle. Mabuhay again denied liability. After trial, the Regional Trial Court of Manila rendered judgment dismissing the complaint.[2] Judge Lorenzo B. Veneracion declared that the plaintiff failed to establish the legal and factual bases for its claim.

The decision noted that the insurance contract between the corporation and the consignee was not presented and that the other supporting documents were all only photo-copies. No explanation was given for the failure of the plaintiffs to submit the originals. The trial court also observed that the crates of the shipment did not comply with the accepted international standards, taking into consideration the length of the voyage and the transshipment of the cargo. Its conclusion was that whatever damage was sustained by the engine must have occurred while it was at sea, for which Mabuhay could not be held liable.

The judgment was affirmed on appeal.[3] In addition, the respondent court held that the appellant had failed to establish a valid subrogation, which could not be presumed,[4] and to prove the amount Home had paid to Nestle. There was no evidence either of what happened to the damaged engine, which still retained a residual value despite its defects.

The Court of Appeals stressed that the petitioner could be excused from presenting the original of the insurance contract only if there was proof that this had been lost. The un rebutted claim, however, is that the original was in its possession all the time.[5] The respondent court added that even if a valid subrogation could be established, Mabuhay was nevertheless not an absolute insurer against all risks of the transport of the goods. In any case, it appeared that Mabuhay had exercised extraordinary diligence for the safe delivery of the cargo.

The challenged decision, however, deleted the award of P8,000.00 for litigation expenses for lack of legal or equitable justification.

In the present petition, it is argued that: (1) the subrogation receipt proves the existence of the insurance contract between Nestle and Home Insurance and the amount paid by the latter to the former; and (2) the law or presumption of negligence operates against the carrier.

The petition has no merit.

Home's action against Mabuhay supposedly arose from its contract of insurance with Nestle. Having paid the consignee the damages it sustained during the shipment, Home now claims it is rightfully subrogated under such contract to the rights of the consignee. But the problem is - what rights? And against whom?

The insurance contract has not been presented. It may be assumed for the sake of argument that the subrogation receipt may nevertheless be used to establish the relationship between the petitioner and the consignee and the amount paid to settle the claim. But that is all the document can do. By itself alone, the subrogation receipt is not sufficient to prove the petitioner's claim holding the respondent liable for the damage to the engine.

The shipment of the cargo passed through several stages: first, from the shipper to the port of departure; second, from the port of departure to the M/S Oriental Statesman; third, from the M/S Oriental Statesman to the M/S Pacific Conveyor; fourth, from the M/S Pacific Conveyor to the port of arrival; fifth, from the port of arrival to the arrastre operator; sixth, from the arrastre operator to the hauler; and lastly, from the hauler to the consignee.

In the absence of proof of stipulations to the contrary, the hauler can be liable only for any damage that occurred from the time it received the cargo until it finally delivered it to the consignee. It cannot be held responsible for the handling of the cargo before it actually received it, particularly since there was no indication from the external appearance of the crates, which Mabuhay did not open, that the engine was damaged.

As a mere subrogee of Nestle, Home can exercise only such rights against the parties handling the cargo as were granted to Nestle under the insurance contract. The insurance contract would have clearly indicated the scope of the coverage but there is no evidence of this. It cannot simply be supposed that the hauling was included in the coverage; it is possible that the coverage ended with the arrastre. In other words, the rights transferred to Home by Nestle - still assuming there was a valid subrogation - might not include the right to sue Mabuhay.

The petitioner cites Article 1735 of the Civil Code reading as follows:

Article 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.

This presumption is applicable only if the shipper or consignee has, to begin with, a right of action against the carrier. It has not been shown in the case at bar that Home, as the supposed subrogee of Nestle, has acquired such a right against Mabuhay.

The insurance contract might have proved that it covered the hauling portion of the shipment and was not limited to the transport of the cargo while at sea, if that were really the case. It could have shown that the agreement was not only a marine transportation insurance but covered all phases of the cargo's shipment, from the time the cargo was loaded on the vessel in the United States until it was delivered to the consignee in the Philippines. But there is no acceptable evidence of these stipulations because the original contract of insurance has not been presented.

Rule 130, Section 3 of the Rules of Court is quite clear:

Sec. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

It is curious that the petitioner disregarded this rule, knowing that the best evidence of the insurance contract was its original copy, which was presumably in the possession of Home itself. Failure to present this original (or even a copy of it), for reasons the Court cannot comprehend, must prove fatal to this petition.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Griño-Aquino, Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Exhibit E, Exhibits of the Plaintiff.

[2] Annex A, Rollo, pp. 29-30.

[3] Rollo, pp. 73-81.

[4] Ibid., p. 76.

[5] Rollo, p. 77.

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