

## COASTWISE LIGHTERAGE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND THE PHILIPPINE GENERAL INSURANCE COMPANY, RESPONDENTS.

*G.R. No. 114167. July 12, 1995*

Ponente: FRANCISCO, R., J.

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### FRANCISCO, R., J.:

This is a petition for review of a Decision rendered by the Court of Appeals, dated December 17, 1993, affirming Branch 35 of the Regional Trial Court, Manila in holding that herein petitioner is liable to pay herein private respondent the amount of P700,000.00, plus legal interest thereon, another sum of P100,000.00 as attorney's fees and the cost of the suit.

The factual background of this case is as follows:

Pag-asa Sales, Inc. entered into a contract to transport molasses from the province of Negros to Manila with Coastwise Lighterage Corporation (Coastwise for brevity), using the latter's dumb barges. The barges were towed in tandem by the tugboat MT Marica, which is likewise owned by Coastwise.

Upon reaching Manila Bay, while approaching Pier 18, one of the barges, "Coastwise 9", struck an unknown sunken object. The forward buoyancy compartment was damaged, and water gushed in through a hole "two inches wide and twenty-two inches long".<sup>[1]</sup> As a consequence, the molasses at the cargo tanks were contaminated and rendered unfit for the use it was intended. This prompted the consignee, Pag-asa Sales, Inc. to reject the shipment of molasses as a total loss. Thereafter, Pag-asa Sales, Inc. filed a formal claim with the insurer of its lost cargo, herein private respondent, Philippine General Insurance Company (PhilGen, for short) and against the carrier, herein petitioner, Coastwise Lighterage. Coastwise Lighterage denied the claim and it was PhilGen which paid the consignee, Pag-asa Sales, Inc., the amount of P700,000.00, representing the value of the damaged cargo of molasses.

In turn, PhilGen then filed an action against Coastwise Lighterage before the Regional Trial Court of Manila, seeking to recover the amount of P700,000.00 which it paid to Pag-asa Sales, Inc. for the latter's lost cargo. PhilGen now claims to be subrogated to all the contractual rights and claims which the consignee may have against the carrier, which is presumed to have violated the contract of carriage.

The RTC awarded the amount prayed for by PhilGen. On Coastwise Lighterage's appeal to the Court of Appeals, the award was affirmed.

Hence, this petition.

There are two main issues to be resolved herein. First, whether or not petitioner Coastwise Lighterage was transformed into a private carrier, by virtue of the contract of affreightment which it entered into with the consignee, Pag-asa Sales, Inc. Corollarily, if it were in fact transformed into a private carrier, did it exercise the ordinary diligence to which a private carrier is in turn bound? Second, whether or not the insurer was subrogated

into the rights of the consignee against the carrier, upon payment by the insurer of the value of the consignee's goods lost while on board one of the carrier's vessels.

On the first issue, petitioner contends that the RTC and the Court of Appeals erred in finding that it was a common carrier. It stresses the fact that it contracted with Pag-asa Sales, Inc. to transport the shipment of molasses from Negros Oriental to Manila and refers to this contract as a "charter agreement". It then proceeds to cite the case of *Home Insurance Company vs. American Steamship Agencies, Inc.*[2] wherein this Court held: "x x x a common carrier undertaking to carry a special cargo or chartered to a special person only becomes a private carrier."

Petitioner's reliance on the aforementioned case is misplaced. In its entirety, the conclusions of the court are as follows:

"Accordingly, the charter party contract is one of affreightment 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."[3]

The distinction between the two kinds of charter parties (i. e. bareboat or demise and contract of affreightment) is more clearly set out in the case of *Puromines, Inc. vs. Court of Appeals*,[4] wherein we ruled:

"Under the demise or bareboat charter of the vessel, the charterer will generally be regarded as the owner for the voyage or service stipulated. The charterer mans the vessel with his own people and becomes the owner pro hac vice, subject to liability to others for damages caused by negligence. To create a demise, the owner of a vessel must completely and exclusively relinquish possession, command and navigation thereof to the charterer, anything short of such a complete transfer is a contract of affreightment (time or voyage charter party) or not a charter party at all.

On the other hand a contract of affreightment is one in which the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for special service to be rendered by the owner of the vessel and under such contract the general owner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire. x x x.

x x x. An owner who retains possession of the ship though the hold is the property of the charterer, remains liable as carrier and must answer for any breach of duty as to the care, loading and unloading of the cargo. x x x"

Although a charter party may transform a common carrier into a private one, the same however is not true in a contract of affreightment on account of the aforementioned distinctions between the two.

Petitioner admits that the contract it entered into with the consignee was one of affreightment.[5] We agree. Pag-asa Sales, Inc. only leased three of petitioner's vessels, in order to carry cargo from one point to another, but the possession, command and navigation of the vessels remained with petitioner Coastwise Lighterage.

Pursuant therefore to the ruling in the aforecited *Puromines* case, Coastwise Lighterage, by the contract of affreightment, was not converted into a private carrier, but remained a common carrier and was still liable as such.

The law and jurisprudence on common carriers both hold that the mere proof of delivery of goods in good order to a carrier and the subsequent arrival of the same goods at the place of destination in bad order makes for a prima facie case against the carrier.

It follows then that the presumption of negligence that attaches to common carriers, once the goods it transports are lost, destroyed or deteriorated, applies to the petitioner. This presumption, which is overcome only by proof of

the exercise of extraordinary diligence, remained un rebutted in this case.

The records show that the damage to the barge which carried the cargo of molasses was caused by its hitting an unknown sunken object as it was heading for Pier 18. The object turned out to be a submerged derelict vessel. Petitioner contends that this navigational hazard was the efficient cause of the accident. Further, it asserts that the fact that the Philippine Coastguard "has not exerted any effort to prepare a chart to indicate the location of sunken derelicts within Manila North Harbor to avoid navigational accidents"[6] effectively contributed to the happening of this mishap. Thus, being unaware of the hidden danger that lies in its path, it became impossible for the petitioner to avoid the same. Nothing could have prevented the event, making it beyond the pale of even the exercise of extraordinary diligence.

However, petitioner's assertion is belied by the evidence on record where it appeared that far from having rendered service with the greatest skill and utmost foresight, and being free from fault, the carrier was culpably remiss in the observance of its duties.

Jesus R. Constantino, the patron of the vessel "Coastwise 9" admitted that he was not licensed. The Code of Commerce, which subsidiarily governs common carriers (which are primarily governed by the provisions of the Civil Code) provides:

"Article 609. - Captains, masters, or patrons of vessels must be Filipinos, have legal capacity to contract in accordance with this code, and prove the skill capacity and qualifications necessary to command and direct the vessel, as established by marine and navigation laws, ordinances or regulations, and must not be disqualified according to the same for the discharge of the duties of the position. x x x"

Clearly, petitioner Coastwise Lighterage's embarking on a voyage with an unlicensed patron violates this rule. It cannot safely claim to have exercised extraordinary diligence, by placing a person whose navigational skills are questionable, at the helm of the vessel which eventually met the fateful accident. It may also logically, follow that a person without license to navigate, lacks not just the skill to do so, but also the utmost familiarity with the usual and safe routes taken by seasoned and legally authorized ones. Had the patron been licensed, he could be presumed to have both the skill and the knowledge that would have prevented the vessel's hitting the sunken derelict ship that lay on their way to Pier 18.

As a common carrier, petitioner is liable for breach of the contract of carriage, having failed to overcome the presumption of negligence with the loss and destruction of goods it transported, by proof of its exercise of extraordinary diligence.

On the issue of subrogation, which petitioner contends as inapplicable in this case, we once more rule against the petitioner. We have already found petitioner liable for breach of the contract of carriage it entered into with Pag-asa Sales, Inc. However, for the damage sustained by the loss of the cargo which petitioner-carrier was transporting, it was not the carrier which paid the value thereof to Pag-asa Sales, Inc. but the latter's insurer, herein private respondent PhilGen.

Article 2207 of the Civil Code is explicit on this point:

"Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who violated the contract. x x x"

This legal provision containing the equitable principle of subrogation has been applied in a long line of cases including *Compania Maritima v. Insurance Company of North America*;<sup>[7]</sup> *Fireman's Fund Insurance Company*

v. Jamilla & Company, Inc.,[8] and Pan Malayan Insurance Corporation v. Court of Appeals,[9] wherein this Court explained:

"Article 2207 of the Civil Code is founded on the well-settled principle of subrogation. If the insured property is destroyed or damaged through the fault or negligence of a party other than the assured, then the insurer, upon payment to the assured will be subrogated to the rights of the assured to recover from the wrongdoer to the extent that the insurer has been obligated to pay. Payment by the insurer to the assured operated as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer."

Undoubtedly, upon payment by respondent insurer PhilGen of the amount of P700,000.00 to Pag-asa Sales, Inc., the consignee of the cargo of molasses totally damaged while being transported by petitioner Coastwise Lighterage, the former was subrogated into all the rights which Pag-asa Sales, Inc. may have had against the carrier, herein petitioner Coastwise Lighterage.

WHEREFORE, premises considered, this petition is DENIED and the appealed decision affirming the order of Branch 35 of the Regional Trial Court of Manila for petitioner Coastwise Lighterage to pay respondent Philippine General Insurance Company the "principal amount of P700,000.00 plus interest thereon at the legal rate computed from March 29, 1989, the date the complaint was filed until fully paid and another sum of P100,000.00 as attorney's fees and costs"[10] is likewise hereby AFFIRMED.

**SO ORDERED.**

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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[1] Rollo, p. 25, Decision, Court of Appeals.

**[2] 23 SCRA 24.**

[3] Ibid, p. 27.

**[4] 220 SCRA 281.**

[5] Rollo, p. 11, Petition, p. 5.

[6] Rollo, p. 85.

**[7] 12 SCRA 213.**

**[8] 70 SCRA 323.**

**[9] 184 SCRA 54.**

[10] Rollo, p. 24.

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