

BAYNE ADJUSTERS AND SURVEYORS, INC., PETITIONER, VS. COURT OF APPEALS AND INSURANCE COMPANY OF NORTH AMERICA, RESPONDENTS.

G.R. No. 116332. January 25, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This petition for review on certiorari seeks a re-examination of the conclusions reached both by the trial court and of the appellate court from the evidence on record finding petitioner Bayne Adjusters and Surveyors Inc., liable for damages in the amount of P811,609.53 for the alkyl benzene lost due to spillage while the said liquid cargo was being pumped into the shore storage tanks of the consignee Colgate Palmolive Philippines, Inc., under the supervision of herein petitioner.

In May 1987 Colgate Palmolive Philippine, Inc., imported alkyl benzene from Japan valued at US\$255,802.88. The said liquid cargo was insured with herein private respondent Insurance Company of North America against all risk for its full value. Herein petitioner Bayne Adjusters and Surveyors Inc., was contracted by the consignee to supervise the proper handling and discharge of the cargo from the chemical tanker to a receiving barge until the cargo is pumped into the consignee's shore tank. When the cargo arrived in Manila petitioner's surveyor supervised the transfer of the cargo from the chemical tanker to the receiving barge. Pumping operation from the barge to the consignee's shore tank commenced at 2020 hours of June 27, 1987. Pumping of the liquid cargo from the barge to the consignee's tank was interrupted several times due to mechanical problems with the pump. When the pump broke down once again at about 1300 hours of June 29, 1987, the petitioner's surveyor left the premises without leaving any instruction with the barge foreman what to do in the event that the pump becomes operational again. No other surveyor was left in the premises and the assigned surveyor did not seal the valves leading to the tank to avoid unsupervised pumping of the cargo. Later that day, the consignee asked the petitioner to send a surveyor to conduct tank sounding. Petitioner sent Amado Fontillas, a cargo surveyor, not a liquid bulk surveyor, to the premises and it was agreed that pumping operation would resume the following day at 1030 hours. Fontillas tried to inform both the barge men and the assigned surveyor of the scheduled resumption of pumping operation but he could not find them so he left the premises. When the barge men arrived in the early evening, they found the valves of the tank open and resumed pumping operation in the absence of any instruction from the surveyor to the contrary. The following morning it was found that an undetermined amount of alkyl benzene was lost due to overflow. The consignee filed a claim with the private respondent insurance corporation for the value of the lost liquid cargo. A conference attended by representatives of the petitioner, the consignee and of the Claimsmen Adjustment Corporation, represented by marine surveyor, was held to determine the amount of alkyl benzene lost in the overflow and the net amount payable by the insurance. A compromise quantity of 67.649MT of alkyl benzene was agreed to have been lost in the overflow and respondent insurance corporation agreed to pay the consignee the net amount of P811,609.53. Private respondent instituted this action for collection of sum of money as subrogee of the consignee after failure to extrajudicially settle the matter with Bayne

Adjusters.

Both the trial court and the appellate court found the petitioner's failure to comply with the Standard Operating Procedure for Handling Liquid Bulk Cargo when pumping operation is suspended as the proximate cause of the loss. It is not denied by the petitioner's surveyor that he did not close the valve of the tank when the pumping operations were suspended due to pump break down, as required by standard procedure. This enabled the barge men, in the absence of any instruction to the contrary, to resume pumping operations without supervision and consequently, caused the overflow of the liquid cargo from the tank.

Petitioner denies the finding of negligence. It is contended that negligence in this case cannot be presumed and no sufficient evidence was presented by the plaintiff that the loss suffered by the consignee is due to the negligence of the petitioner. The petitioner argues that it is not bound to guard the cargo at all times and its only duty is to supervise the transfer of the liquid cargo from the chemical tanker to the barge and from the barge to the shore tank of the consignee. The petitioner cites the private respondent's own witness who stated in court that the operator of the barge pump continued pumping into the consignee's shore tank without authorization from the petitioner's surveyor and that the overflow was caused by this unauthorized pumping operation. Petitioner also raised in issue that both the trial and the appellate court gave undue weight to the testimony of the private respondents supposed expert witness who admitted in court that he made a mistake in his affidavit that the petitioner is liable under a protective survey contract when in fact the agreement between the petitioner and the consignee is that of a superintendent survey. The petitioner argues that following the statement of the private respondent's witness that the agreement between the consignee and the petitioner is that of a protective survey agreement, the standard operating procedure for handling liquid bulk cargo should not be the criterion for the evaluation of the alleged negligence of the petitioner.

The private respondent filed comment to the petition stating that the petition is asking this Court to review the findings of facts and findings as to the credibility of witnesses made by both the trial and appellate court which under settled jurisprudence is conclusive upon the Supreme Court and in the absence of a showing that any of the exceptions to this rule is applicable the petition should be dismissed. On the merits, the private respondent prays for the affirmance in toto of the findings of the trial and appellate courts. The testimony of the expert witness presented by the private respondent is not based on hearsay evidence but from his personal investigation of the incident and his conclusion that the petitioner's surveyors are at fault is based on his experience as a marine cargo surveyor for eight years. The expert witness found that the petitioner's surveyors failed to perform what is required of them under the standard operating procedure for marine surveyors[1] when pumping operation is suspended, i.e, to seal all cargo manhole covers including the barge and shore manifolds. Their negligence to do so paved the way for the barge operators to resume pumping operations without expert supervision which should have been provided by the petitioner's surveyors. Further, petitioner's own report admits that it is bound to the consignee under a superintendent contract of survey which includes the supervision in the discharge of cargo to prevent loss.

A Reply was filed by the petitioner stating that it is not seeking a review of the facts in evidence but a review of the conclusions reached by the trial and the appellate court based on the facts in evidence and adopts the arguments raised in the main petition.

Private respondent filed Rejoinder stressing that a re-examination of the factual findings of the lower courts is not in order as none of the exceptions to the rule was shown by the petitioner to be obtaining in this case. The supposed mistake committed by the respondent's expert witness was sufficiently explained in court and that by itself is not sufficient to overthrow the said witness' credibility nor the weight accorded to it by the lower courts.

We find no reversible error committed by the appellate court.

The negligence of the obligor in the performance of the obligation renders him liable for damages for the resulting loss suffered by the obligee. Fault or negligence of the obligor consists in his failure to exercise due care and prudence in the performance of the obligation as the nature of the obligation so demands.[2] The factual findings and conclusions of the trial and appellate court when supported by substantial evidence are entitled to great respect and will not be disturbed on appeal except on very strong and cogent grounds.[3]

Both parties agree that the petitioner is bound to supervise the proper discharge of the liquid cargo from the chemical tanker to the receiving barge and from the latter to the consignee's shore tank. Petitioner does not deny that when pumping operations were suspended due to mechanical problems with the barge pump, that the assigned surveyor left the premises without closing the valves and the manifold, and worse failed to instruct the barge foreman to resume discharge of the cargo only at a specified time when the petitioner's surveyor will again be present. Thus, when the pump became operational again and the tank was left open by the petitioner's surveyors the barge pump operators, without instruction to the contrary, assumed that they may resume discharge of the cargo. It was during the unsupervised discharge of the cargo that the spillage occurred.

Based on the undisputed facts, we find that the lower courts did not err in holding the petitioner liable for the loss incurred by the consignee for its failure to exercise due diligence as required by the circumstances which in this case is governed by the Surveyor's Standard Operating Procedure in Handling Liquid Bulk Survey when pumping operation is suspended. We note that the existence and binding effect of the standard procedure in marine survey of liquid cargo under Exh Q is not denied by the petitioner. Paragraph 2.2 of the Surveyor's Standard Operating Procedure when pumping operation is suspended states:

2.2.1

If consignee desires to temporarily suspend the pumping operation, take final reading of the shore tanks.

2.2.2

Seal all cargo compartment manhole covers and sounding pipe covers of the barge.

2.2.3

Seal the barge manifold and shore manifold.

2.2.4

The surveyor should take sounding of the remaining quantity left on barge prior to closing/sealing of its covers to counter check the quantity partially received by the shore tanks.

It is clear that under the standard procedure the surveyor is required to seal all cargo compartment manhole covers and the barge and manifold covers to avoid unsupervised discharge of the liquid cargo and to avert loss or contamination thereof. Although the cessation of the pumping operations in this case was not voluntarily requested by the consignee, but was due to mechanical problems with the pump, there is greater reason to comply with the above quoted standard procedure. The recurring pump break down should have warned the petitioner's assigned surveyor of the need to exercise extreme caution and closer supervision to safeguard the proper discharge of the cargo as the pump break down hindered normal pumping operations. Instead the petitioner's assigned surveyor disregarded the standard procedure and left the pump site without leaving any instruction or directive with the barge pump operators; this paved the way for the barge pump operator's discharge of the cargo without expert supervision. The petitioner's failure to closely supervise the discharge of the cargo in accordance with accepted guidelines is the proximate cause of the loss. We find no cogent reason to overturn the legal

conclusion reached by the lower courts that the petitioner is negligent in the performance of its duty as a marine superintendent surveyor under the Standard Operating Procedure in handling liquid cargo and held the petitioner liable for damages for the loss of the cargo.

The petitioner relies on the erroneous statement made by the private respondent's claims adjuster in his affidavit^[4] that the parties are bound under a protective survey agreement to evade liability under the standard operating procedure and argues that the said standard procedure is not applicable to contracts of protective survey. We note that the adjuster's error was immediately rectified in court during the witness' testimony wherein he stated that the contract between the parties herein is for superintendent survey and that protective survey applies only to solid cargo, a fact not disputed by the petitioner. The petitioner is estopped from denying the existence of a superintendent survey agreement with the consignee since the final report it submitted to the consignee is entitled "Superintendence of discharge and Landed Weight Certificate" wherein petitioner stated that its surveyors superintended the discharge of the cargo from the tanker until the cargo was pumped into the consignee's shore tank. Moreover, the applicability of the standard procedure required of the petitioner in this case cannot be seriously questioned as it is specifically entitled Standard Operating Procedure in Handling Liquid Bulk Survey and the cargo subject of this litigation is liquid alkyl benzene.

The other arguments raised by the petitioner regarding the credibility of the claims adjuster presented by the private respondent lose potency when examined under the overwhelming pronouncements of this Court that findings of the trial court on the credibility of witnesses is respected on appeal.^[5] The testimony of the claims adjuster whether taken as expert opinion or not was properly given weight and credence by the lower courts as it is undisputed that the claims adjuster investigated the spillage of the liquid cargo with the consent of the petitioner, the private respondent and the consignee.^[6]

WHEREFORE, the petition is dismissed for lack of merit.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Exh. Q, Standard Operating Procedure in Handling Liquid Bulk Survey, pp. 165-169, OR.

[2] Arts. 1170, 1172-1173, Civil Code; Southern College Inc., vs. Court of Appeals, 292 SCRA 422.

[3] Philippine National Bank vs. Court of Appeals and Pujol, G.R. No. 126152, September 28, 1999.

[4] Exh. 1, p. 180 OR.

[5] People vs. Obello, 284 SCRA 79; People vs. Lising, 285 SCRA 595; People vs. Atop, 286 SCRA 157.

[6] Exh. O, p. 161, O.R.

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