

TABACALERA INSURANCE CO., PRUDENTIAL GUARANTEE & ASSURANCE, INC., AND NEW ZEALAND INSURANCE CO., LTD., PETITIONERS, VS. NORTH FRONT SHIPPING SERVICES, INC., AND COURT OF APPEALS...

G.R. No. 119197. May 16, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

TABACALERA INSURANCE CO., Prudential Guarantee & Assurance, Inc., and New Zealand Insurance Co., Ltd., in this petition for review on certiorari, assails the 22 December 1994 decision of the Court of Appeals and its Resolution of 16 February 1995 which affirmed the 1 June 1993 decision of the Regional Trial Court dismissing their complaint for damages against North Front Shipping Services, Inc.

On 2 August 1990, 20,234 sacks of corn grains valued at P3,500,640.00 were shipped on board North Front 777, a vessel owned by North Front Shipping Services, Inc. The cargo was consigned to Republic Flour Mills Corporation in Manila under Bill of Lading No. 001[1] and insured with the herein mentioned insurance companies. The vessel was inspected prior to actual loading by representatives of the shipper and was found fit to carry the merchandise. The cargo was covered with tarpaulins and wooden boards. The hatches were sealed and could only be opened by representatives of Republic Flour Mills Corporation.

The vessel left Cagayan de Oro City on 2 August 1990 and arrived Manila on 16 August 1990. Republic Flour Mills Corporation was advised of its arrival but it did not immediately commence the unloading operations. There were days when unloading had to be stopped due to variable weather conditions and sometimes for no apparent reason at all. When the cargo was eventually unloaded there was a shortage of 26.333 metric tons. The remaining merchandise was already moldy, rancid and deteriorating. The unloading operations were completed on 5 September 1990 or twenty (20) days after the arrival of the barge at the wharf of Republic Flour Mills Corporation in Pasig City.

Precision Analytical Services, Inc., was hired to examine the corn grains and determine the cause of deterioration. A Certificate of Analysis was issued indicating that the corn grains had 18.56% moisture content and the wetting was due to contact with salt water. The mold growth was only incipient and not sufficient to make the corn grains toxic and unfit for consumption. In fact the mold growth could still be arrested by drying.

Republic Flour Mills Corporation rejected the entire cargo and formally demanded from North Front Shipping Services, Inc., payment for the damages suffered by it. The demands however were unheeded. The insurance companies were perforce obliged to pay Republic Flour Mills Corporation P2,189,433.40.

By virtue of the payment made by the insurance companies they were subrogated to the rights of Republic Flour Mills Corporation. Thusly, they lodged a complaint for damages against North Front Shipping Services, Inc., claiming that the loss was exclusively attributable to the fault and negligence of the carrier. The Marine Cargo

Adjusters hired by the insurance companies conducted a survey and found cracks in the bodega of the barge and heavy concentration of molds on the tarpaulins and wooden boards. They did not notice any seals in the hatches. The tarpaulins were not brand new as there were patches on them, contrary to the claim of North Front Shipping Services, Inc., thus making it possible for water to seep in. They also discovered that the bulkhead of the barge was rusty.

North Front Shipping Services, Inc., averred in refutation that it could not be made culpable for the loss and deterioration of the cargo as it was never negligent. Captain Solomon Villanueva, master of the vessel, reiterated that the barge was inspected prior to the actual loading and was found adequate and seaworthy. In addition, they were issued a permit to sail by the Coast Guard. The tarpaulins were doubled and brand new and the hatches were properly sealed. They did not encounter big waves hence it was not possible for water to seep in. He further averred that the corn grains were farm wet and not properly dried when loaded.

The court below dismissed the complaint and ruled that the contract entered into between North Front Shipping Services, Inc., and Republic Flour Mills Corporation was a charter-party agreement. As such, only ordinary diligence in the care of goods was required of North Front Shipping Services, Inc. The inspection of the barge by the shipper and the representatives of the shipping company before actual loading, coupled with the Permit to Sail issued by the Coast Guard, sufficed to meet the degree of diligence required of the carrier.

On the other hand, the Court of Appeals ruled that as a common carrier required to observe a higher degree of diligence North Front 777 satisfactorily complied with all the requirements hence was issued a Permit to Sail after proper inspection. Consequently, the complaint was dismissed and the motion for reconsideration rejected.

The charter-party agreement between North Front Shipping Services, Inc., and Republic Flour Mills Corporation did not in any way convert the common carrier into a private carrier. We have already resolved this issue with finality in *Planters Products, Inc. v. Court of Appeals*[2] thus -

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; 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 x x x 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. 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 ship owner to supply the ship's store, pay for the wages of the master of 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. 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 x x x

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 (underscoring supplied).

North Front Shipping Services, Inc., is a corporation engaged in the business of transporting cargo and offers its services indiscriminately to the public. It is without doubt a common carrier. As such it is required to observe extraordinary diligence in its vigilance over the goods it transports.[3]. When goods placed in its care are lost or damaged, the carrier is presumed to have been at fault or to have acted negligently.[4] North Front Shipping Services, Inc., therefore has the burden of proving that it observed extraordinary diligence in order to avoid responsibility for the lost cargo.

North Front Shipping Services, Inc., proved that the vessel was inspected prior to actual loading by representatives of the shipper and was found fit to take a load of corn grains. They were also issued Permit to Sail by the Coast Guard. The master of the vessel testified that the corn grains were farm wet when loaded. However, this testimony was disproved by the clean bill of lading issued by North Front Shipping Services, Inc., which did not contain a notation that the corn grains were wet and improperly dried. Having been in the service since 1968, the master of the vessel would have known at the outset that corn grains that were farm wet and not properly dried would eventually deteriorate when stored in sealed and hot compartments as in hatches of a ship. Equipped with this knowledge, the master of the vessel and his crew should have undertaken precautionary measures to avoid or lessen the cargo's possible deterioration as they were presumed knowledgeable about the nature of such cargo. But none of such measures was taken.

In *Compania Maritima v. Court of Appeals*[5] we ruled -

x x x Mere proof of delivery of the goods in good order to a common carrier, and of their arrival at the place of destination in bad order, makes out prima facie case against the common carrier, so that if no explanation is given as to how the loss, deterioration or destruction of the goods occurred, the common carrier must be held responsible. Otherwise stated, it is incumbent upon the common carrier to prove that the loss, deterioration or destruction was due to accident or some other circumstances inconsistent with its liability x x x

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for safe carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and 'to use all reasonable means to ascertain the nature and characteristics of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires' (underscoring supplied).

In fine, we find that the carrier failed to observe the required extraordinary diligence in the vigilance over the goods placed in its care. The proofs presented by North Front Shipping Services, Inc., were insufficient to rebut the prima facie presumption of private respondent's negligence, more so if we consider the evidence adduced by petitioners.

It is not denied by the insurance companies that the vessel was indeed inspected before actual loading and that North Front 777 was issued a Permit to Sail. They proved the fact of shipment and its consequent loss or damage while in the actual possession of the carrier. Notably, the carrier failed to volunteer any explanation why there was spoilage and how it occurred. On the other hand, it was shown during the trial that the vessel had rusty bulkheads and the wooden boards and tarpaulins bore heavy concentration of molds. The tarpaulins used were not new, contrary to the claim of North Front Shipping Services, Inc., as there were already several patches on them, hence, making it highly probable for water to enter.

Laboratory analysis revealed that the corn grains were contaminated with salt water. North Front Shipping Services, Inc., failed to rebut all these arguments. It did not even endeavor to establish that the loss, destruction or deterioration of the goods was due to the following: (a) flood, storm, earthquake, lightning, or other natural disaster or calamity; (b) act of the public enemy in war, whether international or civil; (c) act or omission of the shipper or owner of the goods; (d) the character of the goods or defects in the packing or in the containers; (e) order or act of competent public authority.[6] This is a closed list. If the cause of destruction, loss or deterioration is other than the enumerated circumstances, then the carrier is rightly liable therefor.

However, we cannot attribute the destruction, loss or deterioration of the cargo solely to the carrier. We find the consignee Republic Flour Mills Corporation guilty of contributory negligence. It was seasonably notified of the arrival of the barge but did not immediately start the unloading operations. No explanation was proffered by the

consignee as to why there was a delay of six (6) days. Had the unloading been commenced immediately the loss could have been completely avoided or at least minimized. As testified to by the chemist who analyzed the corn samples, the mold growth was only at its incipient stage and could still be arrested by drying. The corn grains were not yet toxic or unfit for consumption. For its contributory negligence, Republic Flour Mills Corporation should share at least 40% of the loss.[7]

WHEREFORE, the Decision of the Court of Appeals of 22 December 1994 and its Resolution of 16 February 1995 are REVERSED and SET ASIDE. Respondent North Front Shipping Services, Inc., is ordered to pay petitioners Tabacalera Insurance Co., Prudential Guarantee & Assurance, Inc., and New Zealand Insurance Co. Ltd., P1,313,660.00 which is 60% of the amount paid by the insurance companies to Republic Flour Mills Corporation, plus interest at the rate of 12% per annum from the time this judgment becomes final until full payment.

SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.
Padilla, J., (Chairman), on leave.

[1] Annex "A," Original Records, p. 6.

[2] G.R. No. 101503, 15 September 1993, 226 SCRA 476, 483-484, 486.

[3] 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 articles 1734, 1735 and 1745, Nos. 5, 6 and 7 while extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756

[4] 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.

[5] No. L-31379, 29 August 1988, 164 SCRA 685, 691-692.

[6] Art. 1734, New Civil Code.

[7] See Food Terminal, Inc., v. Court of Appeals and Tao Development, Inc., G.R. No. 120097, 23 September 1996.

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