

MITSUMI O.S.K. LINES LTD., REPRESENTED BY MAGSAYSAY AGENCIES, INC., PETITIONER, VS. COURT OF APPEALS AND LAVINE LOUNGEWEAR MFG. CORP., RESPONDENTS.*G.R. No. 119571. March 11, 1998*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the January 25, 1995 decision of the Court of Appeals^[1] and its resolution of March 22, 1995 denying petitioner's motion for reconsideration. The appellate court upheld orders of Branch 68 (Pasig) of the Regional Trial Court, National Capital Judicial Region, denying petitioner's motion to dismiss in the original action filed against petitioner by private respondent.

The facts are not in dispute.^[2]

Petitioner Mitsui O.S.K. Lines Ltd. is a foreign corporation represented in the Philippines by its agent, Magsaysay Agencies. It entered into a contract of carriage through Meister Transport, Inc., an international freight forwarder, with private respondent Lavine Loungewear Manufacturing Corporation to transport goods of the latter from Manila to Le Havre, France. Petitioner undertook to deliver the goods to France 28 days from initial loading. On July 24, 1991, petitioner's vessel loaded private respondent's container van for carriage at the said port of origin.

However, in Kaoshiung, Taiwan the goods were not transhipped immediately, with the result that the shipment arrived in Le Havre only on November 14, 1991. The consignee allegedly paid only half the value of the said goods on the ground that they did not arrive in France until the "off season" in that country. The remaining half was allegedly charged to the account of private respondent which in turn demanded payment from petitioner through its agent.

As petitioner denied private respondent's claim, the latter filed a case in the Regional Trial Court on April 14, 1992. In the original complaint, private respondent impleaded as defendants Meister Transport, Inc. and Magsaysay Agencies, Inc., the latter as agent of petitioner Mitsui O.S.K. Lines Ltd. On May 20, 1993, it amended its complaint by impleading petitioner as defendant in lieu of its agent. The parties to the case thus became private respondent as plaintiff, on one side, and Meister Transport Inc. and petitioner Mitsui O.S.K. Lines Ltd. as represented by Magsaysay Agencies, Inc., as defendants on the other.

Petitioner filed a motion to dismiss alleging that the claim against it had prescribed under the Carriage of Goods by Sea Act.

The Regional Trial Court, as aforesaid, denied petitioner's motion as well as its subsequent motion for reconsideration. On petition for certiorari, the Court of Appeals sustained the trial court's orders. Hence this petition containing one assignment of error:

THE RESPONDENT COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN RULING THAT PRIVATE RESPONDENT'S AMENDED COMPLAINT IS (sic) NOT PRESCRIBED PURSUANT

TO SECTION 3(6) OF THE CARRIAGE OF GOODS BY SEA ACT.

The issue raised by the instant petition is whether private respondent's action is for "loss or damage" to goods shipped, within the meaning of §3(6) of the Carriage of Goods by Sea Act (COGSA).

Section 3 provides:

(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

In *Ang v. American Steamship Agencies, Inc.*, the question was whether an action for the value of goods which had been delivered to a party other than the consignee is for "loss or damage" within the meaning of §3(6) of the COGSA. It was held that there was no loss because the goods had simply been misdelivered. "Loss" refers to the deterioration or disappearance of goods.[3]

As defined in the Civil Code and as applied to Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, "loss" contemplates merely a situation where no delivery at all was made by the shipper of the goods because the same had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or they cannot be recovered.[4]

Conformably with this concept of what constitutes "loss" or "damage," this Court held in another case[5] that the deterioration of goods due to delay in their transportation constitutes "loss" or "damage" within the meaning of §3(6), so that as suit was not brought within one year the action was barred:

Whatever damage or injury is suffered by the goods while in transit would result in loss or damage to either the shipper or the consignee. As long as it is claimed, therefore, as it is done here, that the losses or damages suffered by the shipper or consignee were due to the arrival of the goods in damaged or deteriorated condition, the action is still basically one for damage to the goods, and must be filed within the period of one year from delivery or receipt, under the above-quoted provision of the Carriage of Goods by Sea Act.[6]

But the Court allowed that —

There would be some merit in appellant's insistence that the damages suffered by him as a result of the delay in the shipment of his cargo are not covered by the prescriptive provision of the Carriage of Goods by Sea Act above referred to, if such damages were due, not to the deterioration and decay of the goods while in transit, but to other causes independent of the condition of the cargo upon arrival, like a drop in their market value. . .

.[7]

The rationale behind limiting the said definitions to such parameters is not hard to find or fathom. As this Court held in *Ang*:

Said one-year period of limitation is designed to meet the exigencies of maritime hazards. In a case where the goods shipped were neither lost nor damaged in transit but were, on the contrary, delivered in port to someone who claimed to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain.[8]

In the case at bar, there is neither deterioration nor disappearance nor destruction of goods caused by the carrier's breach of contract. Whatever reduction there may have been in the value of the goods is not due to their deterioration or disappearance because they had been damaged in transit.

Petitioner contends:

Although we agree that there are places in the section (Article III) in which the phrase need have no broader meaning than loss or physical damage to the goods, we disagree with the conclusion that it must so be limited wherever it is used. We take it that the phrase has a uniform meaning, not merely in Section 3, but throughout the Act; and there are a number of places in which the restricted interpretation suggested would be inappropriate. For example Section 4(2) [Article IV(2) (sic) exempts (sic) the carrier, the ship (sic), from liability "loss or damage" (sic) resulting from certain courses beyond their control.[9]

Indeed, what is in issue in this petition is not the liability of petitioner for its handling of goods as provided by §3(6) of the COGSA, but its liability under its contract of carriage with private respondent as covered by laws of more general application.

Precisely, the question before the trial court is not the particular sense of "damages" as it refers to the physical loss or damage of a shipper's goods as specifically covered by §3(6) of COGSA but petitioner's potential liability for the damages it has caused in the general sense and, as such, the matter is governed by the Civil Code, the Code of Commerce and COGSA, for the breach of its contract of carriage with private respondent.

We conclude by holding that as the suit below is not for "loss or damage" to goods contemplated in §3(6), the question of prescription of action is governed not by the COGSA but by Art. 1144 of the Civil Code which provides for a prescriptive period of ten years.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Regalado (Chairman), Melo, Puno and Martinez, JJ., concur.

[1] Per Justice Emeterio C. Cui and concurred in by Justices Consuelo Yñares-Santiago and Conchita Carpio-Morales.

[2] *Rollo*, pp. 20-24, 106 and 117

[3] 19 SCRA 123 (1967). *Accord Ang v. American Steamship Agencies, Inc.*, 19 SCRA 631 (1967).

[4] *Id.* at 127.

[5] *Tan Liao v. American President Lines, Ltd.*, 98 Phil. 203 (1956).

[6] Id. at 208.

[7] Id. at 210.

[8] Supra note 3 at 129.

[9] Rollo, p. 37, citing *Ganada & Kindred, Marine Cargo Delays* 21-22 (1990) (emphasis added).

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