DELSAN TRANSPORT LINES, INC., PETITIONER, VS. THE HON. COURT OF APPEALS AND AMERICAN HOME ASSURANCE CORPORATION, RESPONDENTS.

G.R. No. 127897. November 15, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 39836 promulgated on June 17, 1996, reversing the decision of the Regional Trial Court of Makati City, Branch 137, ordering petitioner to pay private respondent the sum of Five Million Ninety-Six Thousand Six Hundred Thirty-Five Pesos and Fifty-Seven Centavos (P5,096,635.57) and costs and the Resolution[2] dated January 21, 1997 which denied the subsequent motion for reconsideration.

The facts show that Caltex Philippines (Caltex for brevity) entered into a contract of affreightment with the petitioner, Delsan Transport Lines, Inc., for a period of one year whereby the said common carrier agreed to transport Caltex's industrial fuel oil from the Batangas-Bataan Refinery to different parts of the country. Under the contract, petitioner took on board its vessel, MT Maysun, 2,277.314 kiloliters of industrial fuel oil of Caltex to be delivered to the Caltex Oil Terminal in Zamboanga City. The shipment was insured with the private respondent, American Home Assurance Corporation.

On August 14, 1986, MT Maysun set sail from Batangas for Zamboanga City. Unfortunately, the vessel sank in the early morning of August 16, 1986 near Panay Gulf in the Visayas taking with it the entire cargo of fuel oil.

Subsequently, private respondent paid Caltex the sum of Five Million Ninety-Six Thousand Six Hundred Thirty-Five Pesos and Fifty-Seven Centavos (P5,096,635.57) representing the insured value of the lost cargo. Exercising its right of subrogation under Article 2207 of the New Civil Code, the private respondent demanded of the petitioner the same amount it paid to Caltex.

Due to its failure to collect from the petitioner despite prior demand, private respondent filed a complaint with the Regional Trial Court of Makati City, Branch 137, for collection of a sum of money. After the trial and upon analyzing the evidence adduced, the trial court rendered a decision on November 29, 1990 dismissing the complaint against herein petitioner without pronouncement as to cost. The trial court found that the vessel, MT Maysun, was seaworthy to undertake the voyage as determined by the Philippine Coast Guard per Survey Certificate Report No. M5-016-MH upon inspection during its annual dry-docking and that the incident was caused by unexpected inclement weather condition or force majeure, thus exempting the common carrier (herein petitioner) from liability for the loss of its cargo.[3]

The decision of the trial court, however, was reversed, on appeal, by the Court of Appeals. The appellate court gave credence to the weather report issued by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA for brevity) which showed that from 2:00 o'clock to 8:00 o'clock in the morning on August 16, 1986, the wind speed remained at 10 to 20 knots per hour while the waves measured from

.7 to two (2) meters in height only in the vicinity of the Panay Gulf where the subject vessel sank, in contrast to herein petitioner's allegation that the waves were twenty (20) feet high. In the absence of any explanation as to what may have caused the sinking of the vessel coupled with the finding that the same was improperly manned, the appellate court ruled that the petitioner is liable on its obligation as common carrier[4] to herein private respondent insurance company as subrogee of Caltex. The subsequent motion for reconsideration of herein petitioner was denied by the appellate court.

Petitioner raised the following assignments of error in support of the instant petition,[5] to wit:

> I
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> THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT.
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> II
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> THE COURT OF APPEALS ERRED AND WAS NOT JUSTIFIED IN REBUTTING THE LEGAL PRESUMPTION THAT THE VESSEL MT "MAYSUN" WAS SEAWORTHY.
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> III
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> THE COURT OF APPEALS ERRED IN NOT APPLYING THE DOCTRINE OF THE SUPREME COURT IN THE CASE OF HOME INSURANCE CORPORATION V. COURT OF APPEALS.

Petitioner Delsan Transport Lines, Inc. invokes the provision of Section 113 of the Insurance Code of the Philippines, which states that in every marine insurance upon a ship or freight, or freightage, or upon any thing which is the subject of marine insurance there is an implied warranty by the shipper that the ship is seaworthy. Consequently, the insurer will not be liable to the assured for any loss under the policy in case the vessel would later on be found as not seaworthy at the inception of the insurance. It theorized that when private respondent paid Caltex the value of its lost cargo, the act of the private respondent is equivalent to a tacit recognition that the ill-fated vessel was seaworthy; otherwise, private respondent was not legally liable to Caltex due to the latter's breach of implied warranty under the marine insurance policy that the vessel was seaworthy.

The petitioner also alleges that the Court of Appeals erred in ruling that MT Maysun was not seaworthy on the ground that the marine officer who served as the chief mate of the vessel, Francisco Berina, was allegedly not qualified. Under Section 116 of the Insurance Code of the Philippines, the implied warranty of seaworthiness of the vessel, which the private respondent admitted as having been fulfilled by its payment of the insurance proceeds to Caltex of its lost cargo, extends to the vessel's complement. Besides, petitioner avers that although Berina had merely a 2[nd] officer's license, he was qualified to act as the vessel's chief officer under Chapter IV(403), Category III(a)(3)(ii)(aa) of the Philippine Merchant Marine Rules and Regulations. In fact, all the crew and officers of MT Maysun were exonerated in the administrative investigation conducted by the Board of Marine Inquiry after the subject accident.[6]

In any event, petitioner further avers that private respondent failed, for unknown reason, to present in evidence during the trial of the instant case the subject marine cargo insurance policy it entered into with Caltex. By virtue of the doctrine laid down in the case of Home Insurance Corporation vs. CA,[7] the failure of the private respondent to present the insurance policy in evidence is allegedly fatal to its claim inasmuch as there is no way to determine the rights of the parties thereto.

Hence, the legal issues posed before the Court are:

> I

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> Whether or not the payment made by the private respondent to Caltex for the insured value of the lost cargo amounted to an admission that the vessel was seaworthy, thus precluding any action for recovery against the petitioner.
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> II
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> Whether or not the non-presentation of the marine insurance policy bars the complaint for recovery of sum of money for lack of cause of action.

We rule in the negative on both issues.

The payment made by the private respondent for the insured value of the lost cargo operates as waiver of its (private respondent) right to enforce the term of the implied warranty against Caltex under the marine insurance policy. However, the same cannot be validly interpreted as an automatic admission of the vessel's seaworthiness by the private respondent as to foreclose recourse against the petitioner for any liability under its contractual obligation as a common carrier. The fact of payment grants the private respondent subrogatory right which enables it to exercise legal remedies that would otherwise be available to Caltex as owner of the lost cargo against the petitioner common carrier.[8] Article 2207 of the New Civil Code provides that:

> 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 has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

The right of subrogation has its roots in equity. It is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice and good conscience ought to pay.[9] It 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 by the insurance company of the insurance claim.[10] Consequently, the payment made by the private respondent (insurer) to Caltex (assured) operates as an equitable assignment to the former of all the remedies which the latter may have against the petitioner.

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of passengers transported by them, according to all the circumstances of each case.[11] In the event of loss, destruction or deterioration of the insured goods, common carriers shall be responsible unless the same is brought about, among others, by flood, storm, earthquake, lightning or other natural disaster or calamity.[12] In all other cases, 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.[13]

In order to escape liability for the loss of its cargo of industrial fuel oil belonging to Caltex, petitioner attributes the sinking of MT Maysun to fortuitous event or force majeure. From the testimonies of Jaime Jarabe and Francisco Berina, captain and chief mate, respectively of the ill-fated vessel, it appears that a sudden and unexpected change of weather condition occurred in the early morning of August 16, 1986; that at around 3:15 o'clock in the morning a squall ("unos") carrying strong winds with an approximate velocity of 30 knots per hour and big waves averaging eighteen (18) to twenty (20) feet high, repeatedly buffeted MT Maysun causing it to tilt, take in water and eventually sink with its cargo.[14] This tale of strong winds and big waves by the said officers of the petitioner however, was effectively rebutted and belied by the weather report[15] from the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), the independent government agency charged with monitoring weather and sea conditions, showing that from 2:00 o'clock to 8:00 o'clock in the

morning on August 16, 1986, the wind speed remained at ten (10) to twenty (20) knots per hour while the height of the waves ranged from .7 to two (2) meters in the vicinity of Cuyo East Pass and Panay Gulf where the subject vessel sank. Thus, as the appellate court correctly ruled, petitioner's vessel, MT Maysun, sank with its entire cargo for the reason that it was not seaworthy. There was no squall or bad weather or extremely poor sea condition in the vicinity when the said vessel sank.

The appellate court also correctly opined that the petitioner's witnesses, Jaime Jarabe and Francisco Berina, ship captain and chief mate, respectively, of the said vessel, could not be expected to testify against the interest of their employer, the herein petitioner common carrier.

Neither may petitioner escape liability by presenting in evidence certificates[16] that tend to show that at the time of dry-docking and inspection by the Philippine Coast Guard, the vessel MT Maysun, was fit for voyage. These pieces of evidence do not necessarily take into account the actual condition of the vessel at the time of the commencement of the voyage. As correctly observed by the Court of appeals:

> At the time of dry-docking and inspection, the ship may have appeared fit. The certificates issued, however, do not negate the presumption of unseaworthiness triggered by an unexplained sinking. Of certificates issued in this regard, authorities are likewise clear as to their probative value, (thus):
> Seaworthiness relates to a vessel's actual condition. Neither the granting of classification or the issuance of certificates establishes seaworthiness. (2-A Benedict on Admiralty, 7-3, Sec. 62)

And also:

> Authorities are clear that diligence in securing certificates of seaworthiness does not satisfy the vessel owner's obligation. Also securing the approval of the shipper of the cargo, or his surveyor, of the condition of the vessel or her stowage does not establish due diligence if the vessel was in fact unseaworthy, for the cargo owner has no obligation in relation to seaworthiness. (Ibid.)[17]

Additionally, the exoneration of MT Maysun's officers and crew by the Board of Marine Inquiry merely concerns their respective administrative liabilities. It does not in any way operate to absolve the petitioner common carrier from its civil liability arising from its failure to observe extraordinary diligence in the vigilance over the goods it was transporting and for the negligent acts or omissions of its employees, the determination of which properly belongs to the courts.[18] In the case at bar, petitioner is liable for the insured value of the lost cargo of industrial fuel oil belonging to Caltex for its failure to rebut the presumption of fault or negligence as common carrier[19] occasioned by the unexplained sinking of its vessel, MT Maysun, while in transit.

Anent the second issue, it is our view and so hold that the presentation in evidence of the marine insurance policy is not indispensable in this case before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, is sufficient to establish not only the relationship of herein private respondent as insurer and Caltex, as the assured shipper of the lost cargo of industrial fuel oil, but also the amount paid to settle the insurance claim. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.[20]

The presentation of the insurance policy was necessary in the case of Home Insurance Corporation v. CA[21] (a case cited by petitioner) because the shipment therein (hydraulic engines) passed through several stages with different parties involved in each stage. 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, Mabuhay Brokerage Co., Inc. (private respondent therein); and lastly, from the hauler to the consignee. We emphasized in that case that 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. Ordinarily, it cannot be held responsible for the handling of the cargo before it actually received it. The insurance contract, which was not presented in evidence in that case would have indicated the scope of the insurer's liability, if any, since no evidence was adduced indicating at what stage in the handling process the damage to the cargo was sustained.

Hence, our ruling on the presentation of the insurance policy in the said case of Home Insurance Corporation is not applicable to the case at bar. In contrast, there is no doubt that the cargo of industrial fuel oil belonging to Caltex, in the case at bar, was lost while on board petitioner's vessel, MT Maysun, which sank while in transit in the vicinity of Panay Gulf and Cuyo East Pass in the early morning of August 16, 1986.

WHEREFORE, the instant petition is DENIED. The Decision dated June 17, 1996 of the Court of Appeals in CA-G.R. CV No. 39836 is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Penned by Associate Justice Hilarion L. Aquino and concurred in by Associate Justices Jainal D. Rasul and Hector L. Hofileña. Annex "A". Rollo, pp. 43-49.

[2] Rollo, pp. 55-59.

[3] Annex "F". Rollo, pp. 64-79.

[4] See Note No. 1.

[5] Rollo, pp. 18-41.

[6] Exhibits "11"- "11-J" inclusive.

[7] 225 SCRA 411 (1993).

[8] Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc., 306 SCRA 762, 778 (1999).

[9] Philippine American General Insurance Co., Inc. v. Court of Appeals, 273 SCRA 262, 275 (1997) citing Boney, Insurance Commissioner v. Central Mutual Ins. Co. of Chicago, 197 S. E. 122.

[10] Pan Malayan Insurance Corporation v. Court of Appeals, 184 SCRA 54, 58 (1990) citing Compania Maritima v. Insurance Company of North America, G.R. No. L-18965, October 30, 1964; Fireman's Fund Insurance Company v. Jamilla and Co., Inc., G.R. No. L-27427, April 7, 1976.

[11] Article 1733, New Civil Code.

[12] Article 1734, New Civil Code.

[13] Article 1735, New Civil Code; Benedicto v. Intermediate Appellate Court, 187 SCRA 547, 554 (1990).

[14] T.S.N. dated April 25, 1988, p. 19; T.S.N. dated May 9, 1988, pp. 21-24; T.S.N. dated August 1, 1988, p. 32; T. S. N. dated August 15, 1988, pp. 16-17.

[15] Exhibit "Y".

[16] Exhibits "1"; "2"; "3"; "5" with submarkings.

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[17] Annex "A". Rollo, pp. 46-47.

[18] Arada v. Court of Appeals, 210 SCRA 624, 633 (1992).

[19] See Note No. 13.

[20] See Note No. 10.

[21] Supra, p. 415.

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