# LOADSTAR SHIPPING CO., INC., PETITIONER, VS. COURT OF APPEALS AND THE MANILA INSURANCE CO., INC., RESPONDENTS.

*G.R. No. 131621. September 28, 1999*

Ponente: DAVIDE, JR., C.J.

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**DAVIDE, JR., C.J.:**

Petitioner Loadstar Shipping Co., Inc. (hereafter LOADSTAR), in this petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, seeks to reverse and set aside the following: (a) the 30 January 1997 decision[1] of the Court of Appeals in CA-G.R. CV No. 36401, which affirmed the decision of 4 October 1991[2] of the Regional Trial Court of Manila, Branch 16, in Civil Case No. 85-29110, ordering LOADSTAR to pay private respondent Manila Insurance Co. (hereafter MIC) the amount of P6,067,178, with legal interest from the filing of the complaint until fully paid, P8,000 as attorney's fees, and the costs of the suit; and (b) its resolution of 19 November 1997,[3] denying LOADSTAR's motion for reconsideration of said decision.

The facts are undisputed.

On 19 November 1984, LOADSTAR received on board its M/V "Cherokee" (hereafter, the vessel) the following goods for shipment:

a) 705 bales of lawanit hardwood;
b) 27 boxes and crates of tilewood assemblies and others; and
c) 49 bundles of mouldings R & W (3) Apitong Bolidenized.

The goods, amounting to P6,067,178, were insured for the same amount with MIC against various risks including "TOTAL LOSS BY TOTAL LOSS OF THE VESSEL." The vessel, in turn, was insured by Prudential Guarantee & Assurance, Inc. (hereafter PGAI) for P4 million. On 20 November 1984, on its way to Manila from the port of Nasipit, Agusan del Norte, the vessel, along with its cargo, sank off Limasawa Island. As a result of the total loss of its shipment, the consignee made a claim with LOADSTAR which, however, ignored the same. As the insurer, MIC paid P6,075,000 to the insured in full settlement of its claim, and the latter executed a subrogation receipt therefor.

On 4 February 1985, MIC filed a complaint against LOADSTAR and PGAI, alleging that the sinking of the vessel was due to the fault and negligence of LOADSTAR and its employees. It also prayed that PGAI be ordered to pay the insurance proceeds from the loss of the vessel directly to MIC, said amount to be deducted from MIC's claim from LOADSTAR.

In its answer, LOADSTAR denied any liability for the loss of the shipper's goods and claimed that the sinking of its vessel was due to force majeure. PGAI, on the other hand, averred that MIC had no cause of action against it, LOADSTAR being the party insured. In any event, PGAI was later dropped as a party defendant after it paid the insurance proceeds to LOADSTAR.

As stated at the outset, the court a quo rendered judgment in favor of MIC, prompting LOADSTAR to elevate the

matter to the Court of Appeals, which, however, agreed with the trial court and affirmed its decision in toto.

In dismissing LOADSTAR's appeal, the appellate court made the following observations:

1)

LOADSTAR cannot be considered a private carrier on the sole ground that there was a single shipper on that fateful voyage. The court noted that the charter of the vessel was limited to the ship, but LOADSTAR retained control over its crew.[4]

2)

As a common carrier, it is the Code of Commerce, not the Civil Code, which should be applied in determining the rights and liabilities of the parties.

3)

The vessel was not seaworthy because it was undermanned on the day of the voyage. If it had been seaworthy, it could have withstood the "natural and inevitable action of the sea" on 20 November 1984, when the condition of the sea was moderate. The vessel sank, not because of force majeure, but because it was not seaworthy. LOADSTAR'S allegation that the sinking was probably due to the "convergence of the winds," as stated by a PAGASA expert, was not duly proven at the trial. The "limited liability" rule, therefore, is not applicable considering that, in this case, there was an actual finding of negligence on the part of the carrier.[5]

4)

Between MIC and LOADSTAR, the provisions of the Bill of Lading do not apply because said provisions bind only the shipper/consignee and the carrier. When MIC paid the shipper for the goods insured, it was subrogated to the latter's rights as against the carrier, LOADSTAR.[6]

5)

There was a clear breach of the contract of carriage when the shipper's goods never reached their destination. LOADSTAR's defense of "diligence of a good father of a family" in the training and selection of its crew is unavailing because this is not a proper or complete defense in culpa contractual.

6)

"Art. 361 (of the Code of Commerce) has been judicially construed to mean that when goods are delivered on board a ship in good order and condition, and the shipowner delivers them to the shipper in bad order and condition, it then devolves upon the shipowner to both allege and prove that the goods were damaged by reason of some fact which legally exempts him from liability." Transportation of the merchandise at the risk and venture of the shipper means that the latter bears the risk of loss or deterioration of his goods arising from fortuitous events, force majeure, or the inherent nature and defects of the goods, but not those caused by the presumed negligence or fault of the carrier, unless otherwise proved.[7]

The errors assigned by LOADSTAR boil down to a determination of the following issues:

(1) Is the M/V "Cherokee" a private or a common carrier?
(2) Did LOADSTAR observe due and/or ordinary diligence in these premises?

Regarding the first issue, LOADSTAR submits that the vessel was a private carrier because it was not issued a certificate of public convenience, it did not have a regular trip or schedule nor a fixed route, and there was only "one shipper, one consignee for a special cargo."


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In refutation, MIC argues that the issue as to the classification of the M/V "Cherokee" was not timely raised below; hence, it is barred by estoppel. While it is true that the vessel had on board only the cargo of wood products for delivery to one consignee, it was also carrying passengers as part of its regular business. Moreover, the bills of lading in this case made no mention of any charter party but only a statement that the vessel was a "general cargo carrier." Neither was there any "special arrangement" between LOADSTAR and the shipper regarding the shipment of the cargo. The singular fact that the vessel was carrying a particular type of cargo for one shipper is not sufficient to convert the vessel into a private carrier.

As regards the second error, LOADSTAR argues that as a private carrier, it cannot be presumed to have been negligent, and the burden of proving otherwise devolved upon MIC.[8]

LOADSTAR also maintains that the vessel was seaworthy. Before the fateful voyage on 19 November 1984, the vessel was allegedly dry docked at Keppel Philippines Shipyard and was duly inspected by the maritime safety engineers of the Philippine Coast Guard, who certified that the ship was fit to undertake a voyage. Its crew at the time was experienced, licensed and unquestionably competent. With all these precautions, there could be no other conclusion except that LOADSTAR exercised the diligence of a good father of a family in ensuring the vessel's seaworthiness.

LOADSTAR further claims that it was not responsible for the loss of the cargo, such loss being due to force majeure. It points out that when the vessel left Nasipit, Agusan del Norte, on 19 November 1984, the weather was fine until the next day when the vessel sank due to strong waves. MIC's witness, Gracelia Tapel, fully established the existence of two typhoons, "WELFRING" and "YOLING," inside the Philippine area of responsibility. In fact, on 20 November 1984, signal no. 1 was declared over Eastern Visayas, which includes Limasawa Island. Tapel also testified that the convergence of winds brought about by these two typhoons strengthened wind velocity in the area, naturally producing strong waves and winds, in turn, causing the vessel to list and eventually sink.

LOADSTAR goes on to argue that, being a private carrier, any agreement limiting its liability, such as what transpired in this case, is valid. Since the cargo was being shipped at "owner's risk," LOADSTAR was not liable for any loss or damage to the same. Therefore, the Court of Appeals erred in holding that the provisions of the bills of lading apply only to the shipper and the carrier, and not to the insurer of the goods, which conclusion runs counter to the Supreme Court's ruling in the case of St. Paul Fire & Marine Insurance Co. v. Macondray & Co., Inc.,[9] and National Union Fire Insurance Company of Pittsburg v. Stolt-Nielsen Phils., Inc.[10]

Finally, LOADSTAR avers that MIC's claim had already prescribed, the case having been instituted beyond the period stated in the bills of lading for instituting the same – suits based upon claims arising from shortage, damage, or non-delivery of shipment shall be instituted within sixty days from the accrual of the right of action. The vessel sank on 20 November 1984; yet, the case for recovery was filed only on 4 February 1985.

MIC, on the other hand, claims that LOADSTAR was liable, notwithstanding that the loss of the cargo was due to force majeure, because the same concurred with LOADSTAR's fault or negligence.

Secondly, LOADSTAR did not raise the issue of prescription in the court below; hence, the same must be deemed waived.

Thirdly, the "limited liability" theory is not applicable in the case at bar because LOADSTAR was at fault or negligent, and because it failed to maintain a seaworthy vessel. Authorizing the voyage notwithstanding its knowledge of a typhoon is tantamount to negligence.

We find no merit in this petition.


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Anent the first assigned error, we hold that LOADSTAR is a common carrier. It is not necessary that the carrier be issued a certificate of public convenience, and this public character is not altered by the fact that the carriage of the goods in question was periodic, occasional, episodic or unscheduled.

In support of its position, LOADSTAR relied on the 1968 case of Home Insurance Co. v. American Steamship Agencies, Inc.,[11] where this Court held that a common carrier transporting special cargo or chartering the vessel to a special person becomes a private carrier that is not subject to the provisions of the Civil Code. Any stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent is void only if the strict policy governing common carriers is upheld. Such policy has no force where the public at large is not involved, as in the case of a ship totally chartered for the use of a single party. LOADSTAR also cited Valenzuela Hardwood and Industrial Supply, Inc. v. Court of Appeals[12] and National Steel Corp. v. Court of Appeals,[13] both of which upheld the Home Insurance doctrine.

These cases invoked by LOADSTAR are not applicable in the case at bar for simple reason that the factual settings are different. The records do not disclose that the M/V "Cherokee," on the date in question, undertook to carry a special cargo or was chartered to a special person only. There was no charter party. The bills of lading failed to show any special arrangement, but only a general provision to the effect that the M/V "Cherokee" was a "general cargo carrier."[14] Further, the bare fact that the vessel was carrying a particular type of cargo for one shipper, which appears to be purely coincidental, is not reason enough to convert the vessel from a common to a private carrier, especially where, as in this case, it was shown that the vessel was also carrying passengers.

Under the facts and circumstances obtaining in this case, LOADSTAR fits the definition of a common carrier under Article 1732 of the Civil Code. In the case of De Guzman v. Court of Appeals,[15] the Court juxtaposed the statutory definition of "common carriers" with the peculiar circumstances of that case, viz.:

> The Civil Code defines "common carriers" in the following terms:
> "Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."

The above article makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as "a sideline"'. Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1733 deliberately refrained from making such distinctions.

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It appears to the Court that private respondent is properly characterized as a common carrier even though he merely "back-hauled" goods for other merchants from Manila to Pangasinan, although such backhauling was done on a periodic or occasional rather than regular or scheduled manner, and even though private respondent's principal occupation was not the carriage of goods for others. There is no dispute that private respondent charged his customers a fee for hauling their goods; that that fee frequently fell below commercial freight rates is not relevant here.

The Court of Appeals referred to the fact that private respondent held no certificate of public convenience, and concluded he was not a common carrier. This is palpable error. A certificate of public convenience is not a requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability

arises the moment a person or firm acts as a common carrier, without regard to whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements. The business of a common carrier impinges directly and intimately upon the safety and well being and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.

Moving on to the second assigned error, we find that the M/V "Cherokee" was not seaworthy when it embarked on its voyage on 19 November 1984. The vessel was not even sufficiently manned at the time. "For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition its vessel involved in a contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code."[16]

Neither do we agree with LOADSTAR's argument that the "limited liability" theory should be applied in this case. The doctrine of limited liability does not apply where there was negligence on the part of the vessel owner or agent.[17] LOADSTAR was at fault or negligent in not maintaining a seaworthy vessel and in having allowed its vessel to sail despite knowledge of an approaching typhoon. In any event, it did not sink because of any storm that may be deemed as force majeure, inasmuch as the wind condition in the area where it sank was determined to be moderate. Since it was remiss in the performance of its duties, LOADSTAR cannot hide behind the "limited liability" doctrine to escape responsibility for the loss of the vessel and its cargo.

LOADSTAR also claims that the Court of Appeals erred in holding it liable for the loss of the goods, in utter disregard of this Court's pronouncements in St. Paul Fire & Marine Ins. Co. v. Macondray & Co., Inc.,[18] and National Union Fire Insurance v. Stolt-Nielsen Phils., Inc.[19] It was ruled in these two cases that after paying the claim of the insured for damages under the insurance policy, the insurer is subrogated merely to the rights of the assured, that is, it can recover only the amount that may, in turn, be recovered by the latter. Since the right of the assured in case of loss or damage to the goods is limited or restricted by the provisions in the bills of lading, a suit by the insurer as subrogee is necessarily subject to the same limitations and restrictions. We do not agree. In the first place, the cases relied on by LOADSTAR involved a limitation on the carrier's liability to an amount fixed in the bill of lading which the parties may enter into, provided that the same was freely and fairly agreed upon (Articles 1749-1750). On the other hand, the stipulation in the case at bar effectively reduces the common carrier's liability for the loss or destruction of the goods to a degree less than extraordinary (Articles 1744 and 1745), that is, the carrier is not liable for any loss or damage to shipments made at "owner's risk." Such stipulation is obviously null and void for being contrary to public policy.[20] It has been said:

> Three kinds of stipulations have often been made in a bill of lading. The first is one exempting the carrier from any and all liability for loss or damage occasioned by its own negligence. The second is one providing for an unqualified limitation of such liability to an agreed valuation. And the third is one limiting the liability of the carrier to an agreed valuation unless the shipper declares a higher value and pays a higher rate of freight. According to an almost uniform weight of authority, the first and second kinds of stipulations are invalid as being contrary to public policy, but the third is valid and enforceable.[21]

Since the stipulation in question is null and void, it follows that when MIC paid the shipper, it was subrogated to all the rights which the latter has against the common carrier, LOADSTAR.


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Neither is there merit to the contention that the claim in this case was barred by prescription. MIC's cause of action had not yet prescribed at the time it was concerned. Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, the Carriage of Goods by Sea Act (COGSA) – which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit – may be applied suppletorily to the case at bar. This one-year prescriptive period also applies to the insurer of the good.[22] In this case, the period for filing the action for recovery has not yet elapsed. Moreover, a stipulation reducing the one-year period is null and void;[23] it must, accordingly, be struck down.

WHEREFORE, the instant petition is DENIED and the challenged decision of 30 January 1997 of the Court of Appeals in CA-G.R. CV No. 36401 is AFFIRMED. Costs against petitioner.

**SO ORDERED.**

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 58.

[2] Ibid., 58-59.

[3] Id., 72.

[4] Citing Planter's Products, Inc. v. Court of Appeals, 226 SCRA 476 [1993].

[5] Citing Aboitiz Shipping Corp. v. General Accident Fire and Life Assurance Corp., Ltd., 217 SCRA 359 [1993].

[6] Citing Fireman's Fund Insurance Co. v. Jamila & Co., Inc., 70 SCRA 323 [1976].

[7] Rollo, 18.

[8] Citing National Steel Corporation v. Court of Appeals, 283 SCRA 45 [1997].

**[9] 70 SCRA 122 [1976].**

**[10] 184 SCRA 682 [1990].**

**[11] 23 SCRA 24 [1968].**

**[12] 274 SCRA 642 [1997].**

[13] Supra note 8.

[14] "A general ship carrying goods for hire, whether employed in internal, in coasting, or in foreign commerce is a common carrier." (Baer, Senior & Co.'s Successors v. La Compania Maritima, 6 Phil. 215, 217-218, quoting Liverpool Steamship Co. v. Phoenix Ins. Co., 129 U.S. 397, 437), cited in 3 TEODORICO C. MARTIN, PHILIPPINE COMMERCIAL LAWS 118 (Rev. Ed. 1989).

**[15] 168 SCRA 612, 617-619 [1988].**

[16] Trans-Asia Shipping Lines, Inc. v. Court of Appeals, 254 SCRA 260, 272-273 [1996], citing Chan Keep v. Chan Gioco, 14 Phil. 5.


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[17] See JOSE C. VITUG, PANDECT OF COMMERCIAL LAW AND JURISPRUDENCE 311-313 (3rd ed. 1997) (hereinafter VITUG). Also, Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd., 217 SCRA 359 [1993]; American Home Assurance, Co. v. CA, 208 SCRA 343 [1992], citing National Development Co. v. Court of Appeals, 164 SCRA 593 [1988]; Heirs of Amparo de los Santos v. Court of Appeals, 186 SCRA 649 [1990].

**[18] 70 SCRA 122 [1976].**

**[19] 184 SCRA 682 [1990].**

[20] The stipulations on the limitations on the common carrier's liability, subject matter of Articles 1749-1750 and Articles 1744-1745 of the New Civil Code are not to be confused with each other. (See VITUG 244)

[21] 3 MARTIN, 96-97, citing H.E. Heacock Co. v. Macondray & Co., Inc., 42 Phil. 205. See Arts. 1744 and 1745 of the New Civil Code.

[22] VITUG, 220-222, 224, 256 and 334, citing Filipino Merchants Insurance Co., Inc. v. Alejandro, 145 SCRA 42 (1986); see also 3 MARTIN 302, 307 and Sec. 3. (6) of the Carriage of Goods by Sea Act, which provides, inter alia.

Sec. 3. (6) xxx.

In any event the carrier and the ship shall be discharged from all liability in respect of the 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...

[23] VITUG, 334, citing Elser, Inc. v. Court of Appeals, 96 Phil. 264.

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