

CEBU SHIPYARD AND ENGINEERING WORKS, INC., PETITIONER, VS. WILLIAM LINES, INC. AND PRUDENTIAL GUARANTEE AND ASSURANCE COMPANY, INC., RESPONDENTS.

G.R. No. 132607. May 05, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking a reversal of the decision of the Court of Appeals[1] which affirmed the decision of the trial court of origin finding the petitioner herein, Cebu Shipyard and Engineering Works, Inc. (CSEW) negligent and liable for damages to the private respondent, William Lines, Inc., and to the insurer, Prudential Guarantee Assurance Company, Inc.

The antecedent facts that matter are as follows:

Cebu Shipyard and Engineering Works, Inc. (CSEW) is a domestic corporation engaged in the business of dry-docking and repairing of marine vessels while the private respondent, Prudential Guarantee and Assurance, Inc. (Prudential), also a domestic corporation is in the non-life insurance business.

William Lines, Inc. (plaintiff below) is in the shipping business. It was the owner of M/V Manila City, a luxury passenger-cargo vessel, which caught fire and sank on February 16, 1991. At the time of the unfortunate occurrence sued upon, subject vessel was insured with Prudential for P45,000,000.00 pesos for hull and machinery. The Hull Policy included an "Additional Perils (INCHMAREE)" Clause covering loss of or damage to the vessel through the negligence of, among others, ship repairmen. The Policy provided as follows:

"Subject to the conditions of this Policy, this insurance also covers loss of or damage to Vessel directly caused by the following:

xxx

Negligence of Charterers and/or Repairers, provided such Charterers and/or Repairers are not an Assured hereunder.

xxx

provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, of any of them. Masters, Officers, Crew or Pilots are not to be considered Owners within the meaning of this Clause should they hold shares in the Vessel."[2]

Petitioner CSEW was also insured by Prudential for third party liability under a Shiprepairer's Legal Liability Insurance Policy. The policy was for P10 million only, under the limited liability clause, to wit:

"7. Limit of Liability

The limit of liability under this insurance, in respect of any one accident or series of accidents, arising out of

one occurrence, shall be [P10 million], including liability for costs and expense which are either:

- (a) incurred with the written consent of the underwriters hereon; or
- (b) awarded against the Assured."^[3]

On February 5, 1991, William Lines, Inc. brought its vessel, M/V Manila City, to the Cebu Shipyard in Lapulapu City for annual dry-docking and repair.

On February 6, 1991, an arrival conference was held between representatives of William Lines, Inc. and CSEW to discuss the work to be undertaken on the M/V Manila City.

The contracts, denominated as Work Orders, were signed thereafter, with the following stipulations:

"10. The Contractor shall replace at its own work and at its own cost any work or material which can be shown to be defective and which is communicated in writing within one (1) month of redelivery of the vessel or if the vessel was not in the Contractor's Possession, the withdrawal of the Contractor's workmen, or at its option to pay a sum equal to the cost of such replacement at its own works. These conditions shall apply to any such replacements.

11. Save as provided in Clause 10, the Contractor shall not be under any liability to the Customer either in contract or for delict or quasi-delict or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, namely:

(a) The total liability of the Contractor to the Customer (over and above the liability to replace under Clause 10) or of any sub-contractor shall be limited in respect of any defect or event (and a series of accidents arising out of the same defect or event shall constitute one defect or event) to the sum of Pesos Philippine Currency One Million only.

(b) In no circumstance whatsoever shall the liability of the Contractor or any Sub-Contractor include any sum in respect of loss of profit or loss of use of the vessel or damages consequential on such loss of use.

x x x

20. The insurance on the vessel should be maintained by the customer and/or owner of the vessel during the period the contract is in effect."^[4]

While the M/V Manila City was undergoing dry-docking and repairs within the premises of CSEW, the master, officers and crew of M/V Manila City stayed in the vessel, using their cabins as living quarters. Other employees hired by William Lines to do repairs and maintenance work on the vessel were also present during the dry-docking.

On February 16, 1991, after subject vessel was transferred to the docking quay, it caught fire and sank, resulting to its eventual total loss.

On February 21, 1991, William Lines, Inc. filed a complaint for damages against CSEW, alleging that the fire which broke out in M/V Manila City was caused by CSEW's negligence and lack of care.

On July 15, 1991 was filed an Amended Complaint impleading Prudential as co-plaintiff, after the latter had paid William Lines, Inc. the value of the hull and machinery insurance on the M/V Manila City. As a result of such payment Prudential was subrogated to the claim of P45 million, representing the value of the said insurance it paid.

On June 10, 1994, the trial court a quo came out with a judgment against CSEW, disposing as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant, ordering the latter:

1. To pay unto plaintiff Prudential Guarantee and Assurance, Inc., the subrogee, the amount of Forty-five Million (P45 million) Pesos, with interest at the legal rate until full payment is made;
2. To pay unto plaintiff, William Lines, Inc., the amount of Fifty-six Million Seven Hundred Fifteen Thousand (P56,715,000.00) Pesos representing loss of income of M/V MANILA CITY, with interest at the legal rate until full payment is made;
3. To pay unto plaintiff, William Lines, Inc. the amount of Eleven Million (P11 million) as payment, in addition to what it received from the insurance company to fully cover the injury or loss, in order to replace the M/V MANILA CITY, with interest at the legal rate until full payment is made;
4. To pay unto plaintiff, William Lines, Inc. the sum of Nine Hundred Twenty-Seven Thousand Thirty-nine (P927,039.00) Pesos for the loss of fuel and lub (sic) oil on board the vessel when she was completely gutted by fire at defendant, Cebu Shipyard's quay, with interest at the legal rate until full payment is made;
5. To pay unto plaintiff, William Lines, Inc. the sum of Three Million Fifty-four Thousand Six Hundred Seventy-seven Pesos and Ninety-five centavos (P3,054,677.95) as payment for the spare parts and materials used in the M/V MANILA CITY during dry-docking with interest at the legal rate until full payment is made;
6. To pay unto plaintiff William Lines, Inc. the sum of Five Hundred Thousand (P500,000.00) Pesos in moral damages;
7. To pay unto plaintiff, William Lines, Inc. the amount of Ten Million (P10,000,000.00) Pesos in attorney's fees; and to pay the costs of this suit."

CSEW (defendant below) appealed the aforesaid decision to the Court of Appeals. During the pendency of the appeal, CSEW and William Lines presented a "Joint Motion for Partial Dismissal" with prejudice, on the basis of the amicable settlement inked between Cebu Shipyard and William Lines only.

On July 31, 1996, the Court of Appeals ordered the partial dismissal of the case insofar as CSEW and William Lines were concerned.

On September 3, 1997, the Court of Appeals affirmed the appealed decision of the trial court, ruling thus:

"WHEREFORE, the judgment of the lower court ordering the defendant, Cebu Shipyard and Engineering Works, Inc. to pay the plaintiff Prudential Guarantee and Assurance, Inc., the subrogee, the sum of P45 Million, with interest at the legal rate until full payment is made, as contained in the decision of Civil Case No. CEB-9935 is hereby AFFIRMED."

With the denial of its motion for reconsideration by the Court of Appeal's Resolution dated February 13, 1998, CSEW found its way to this court via the present petition, contending that:

- THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT CSEW HAD "MANAGEMENT AND SUPERVISORY CONTROL" OF THE M/V MANILA CITY AT THE TIME THE FIRE BROKE OUT.
- THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN APPLYING THE DOCTRINE OF RES IPSA LOQUITUR AGAINST CSEW.
- THE COURT OF APPEALS' RULING HOLDING CSEW NEGLIGENT AND THEREBY LIABLE FOR THE LOSS OF THE M/V MANILA CITY IS BASED ON FINDINGS OF FACT NOT SUPPORTED BY EVIDENCE.

- THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING CSEW'S EXPERT EVIDENCE AS INADMISSIBLE OR OF NO PROBATIVE VALUE.
- THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT PRUDENTIAL HAS THE RIGHT OF SUBROGATION AGAINST ITS OWN INSURED.
- ASSUMING ARGUENDO THAT PRUDENTIAL HAS THE RIGHT OF SUBROGATION AND THAT CSEW WAS NEGLIGENT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THE SHIPREPAIR CONTRACTS, THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE CONTRACTUAL PROVISIONS LIMITING CSEW'S LIABILITY FOR NEGLIGENCE TO A MAXIMUM OF P1 MILLION IS NOT VALID, CONTRARY TO THE APPLICABLE RULINGS OF THIS HONORABLE COURT.

Petitioner's version of the events that led to the fire runs as follows:

On February 13, 1991, the CSEW completed the drydocking of M/V Manila City at its grave dock. It was then transferred to the docking quay of CSEW where the remaining repair to be done was the replating of the top of Water Ballast Tank No. 12 (Tank Top No. 12) which was subcontracted by CSEW to JNB General Services. Tank Top No. 12 was at the rear section of the vessel, on level with the flooring of the crew cabins located on the vessel's second deck.

At around seven o' clock in the morning of February 16, 1991, the JNB workers trimmed and cleaned the tank top framing which involved minor hotworks (welding/cutting works). The said work was completed at about 10:00 a. m. The JNB workers then proceeded to rig the steel plates, after which they had their lunch break. The rigging was resumed at 1:00 p.m.

While in the process of rigging the second steel plate, the JNB workers noticed smoke coming from the passageway along the crew cabins. When one of the workers, Mr. Casas, proceeded to the passageway to ascertain the origin of the smoke, he noticed that smoke was gathering on the ceiling of the passageway but did not see any fire as the crew cabins on either side of the passageway were locked. He immediately sought out the proprietor of JNB, Mr. Buenavista, and the Safety Officer of CSEW, Mr. Aves, who sounded the fire alarm. CSEW's fire brigade immediately responded as well as the other fire fighting units in Metro Cebu. However, there were no WLI representative, officer or crew to guide the firemen inside the vessel.

Despite the combined efforts of the firemen of the Lapulapu City Fire Department, Mandaue Fire Department, Cordova Fire Department, Emergency Rescue Unit Foundation, and fire brigade of CSEW, the fire was not controlled until 2:00 a.m. of the following day, February 17, 1991.

On the early morning of February 17, 1991, gusty winds rekindled the flames on the vessel and fire again broke out. Then the huge amounts of water pumped into the vessel, coupled with the strong current, caused the vessel to tilt until it capsized and sank

When M/V Manila City capsized, steel and angle bars were noticed to have been newly welded along the port side of the hull of the vessel, at the level of the crew cabins. William Lines did not previously apply for a permit to do hotworks on the said portion of the ship as it should have done pursuant to its work order with CSEW.[5]

Respondent Prudential, on the other hand, theorized that the fire broke out in the following manner :

At around eleven o' clock in the morning of February 16, 1991, the Chief Mate of M/V Manila City was inspecting the various works being done by CSEW on the vessel, when he saw that some workers of CSEW were cropping out steel plates on Tank Top No. 12 using acetylene, oxygen and welding torch. He also observed that the rubber insulation wire coming out of the air-conditioning unit was already burning, prompting him to scold the workers.

At 2:45 in the afternoon of the same day, witnesses saw smoke coming from Tank No. 12. The vessel's reeferman reported such occurrence to the Chief Mate who immediately assembled the crew members to put out the fire. When it was too hot for them to stay on board and seeing that the fire cannot be controlled, the vessel's crew were forced to withdraw from CSEW's docking quay.

In the morning of February 17, 1991, M/V Manila City sank. As the vessel was insured with Prudential Guarantee, William Lines filed a claim for constructive total loss, and after a thorough investigation of the surrounding circumstances of the tragedy, Prudential Guarantee found the said insurance claim to be meritorious and issued a check in favor of William Lines in the amount of P45 million pesos representing the total value of M/V Manila City's hull and machinery insurance.[6]

The petition is unmeritorious.

Petitioner CSEW faults the Court of Appeals for adjudging it negligent and liable for damages to the respondents, William Lines, Inc., and Prudential for the loss of M/V Manila City. It is petitioner's submission that the finding of negligence by the Court of Appeals is not supported by the evidence on record, and contrary to what the Court of Appeals found, petitioner did not have management and control over M/V Manila City. Although it was brought to the premises of CSEW for annual repair, William Lines, Inc. retained control over the vessel as the ship captain remained in command and the ship's crew were still present. While it imposed certain rules and regulations on William Lines, it was in the exercise of due diligence and not an indication of CSEW's exclusive control over subject vessel. Thus, CSEW maintains that it did not have exclusive control over the M/V Manila City and the trial court and the Court of Appeals erred in applying the doctrine of *res ipsa loquitur*.

Time and again, this Court had occasion to reiterate the well-established rule that factual findings by the Court of Appeals are conclusive on the parties and are not reviewable by this Court. They are entitled to great weight and respect, even finality, especially when, as in this case, the Court of Appeals affirmed the factual findings arrived at by the trial court.[7] When supported by sufficient evidence, findings of fact by the Court of Appeals affirming those of the trial court, are not to be disturbed on appeal. The rationale behind this doctrine is that review of the findings of fact of the Court of Appeals is not a function that the Supreme Court normally undertakes.[8]

Here, the Court of Appeals and the Cebu Regional Trial Court of origin are agreed that the fire which caused the total loss of subject M/V Manila City was due to the negligence of the employees and workers of CSEW. Both courts found that the M/V Manila City was under the custody and control of petitioner CSEW, when the ill-fated vessel caught fire. The decisions of both the lower court and the Court of Appeals set forth clearly the evidence sustaining their finding of actionable negligence on the part of CSEW. This factual finding is accorded great weight and is conclusive on the parties. The court discerns no basis for disturbing such finding firmly anchored on enough evidence. As held in the case of *Roblett Industrial Construction Corporation vs. Court of Appeals*, "in the absence of any showing that the trial court failed to appreciate facts and circumstances of weight and substance that would have altered its conclusion, no compelling reason exists for the Court to impinge upon matters more appropriately within its province." [9]

Furthermore, in petitions for review on certiorari, only questions of law may be put into issue. Questions of fact cannot be entertained. The finding of negligence by the Court of Appeals is a question which this Court cannot look into as it would entail going into factual matters on which the finding of negligence was based. Such an approach cannot be allowed by this Court in the absence of clear showing that the case falls under any of the exceptions [10] to the well-established principle.

The finding by the trial court and the Court of Appeals that M/V Manila City caught fire and sank by reason of the negligence of the workers of CSEW, when the said vessel was under the exclusive custody and control of CSEW is accordingly upheld. Under the circumstances of the case, the doctrine of *res ipsa loquitur* applies. For the

doctrine of *res ipsa loquitur* to apply to a given situation, the following conditions must concur: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; and (2) that the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence.

The facts and evidence on record reveal the concurrence of said conditions in the case under scrutiny. First, the fire that occurred and consumed M/V Manila City would not have happened in the ordinary course of things if reasonable care and diligence had been exercised. In other words, some negligence must have occurred. Second, the agency charged with negligence, as found by the trial court and the Court of Appeals and as shown by the records, is the herein petitioner, Cebu Shipyard and Engineering Works, Inc., which had control over subject vessel when it was docked for annual repairs. So also, as found by the regional trial court, "other responsible causes, including the conduct of the plaintiff, and third persons, are sufficiently eliminated by the evidence." [11]

What is more, in the present case the trial court found direct evidence to prove that the workers and/or employees of CSEW were remiss in their duty of exercising due diligence in the care of subject vessel. The direct evidence substantiates the conclusion that CSEW was really negligent. Thus, even without applying the doctrine of *res ipsa loquitur*, in light of the direct evidence on record, the ineluctable conclusion is that the petitioner, Cebu Shipyard and Engineering Works, Inc., was negligent and consequently liable for damages to the respondent, William Lines, Inc.

Neither is there tenability in the contention of petitioner that the Court of Appeals erroneously ruled on the inadmissibility of the expert testimonies it (petitioner) introduced on the probable cause and origin of the fire. Petitioner maintains that the Court of Appeals erred in disregarding the testimonies of the fire experts, Messrs. David Grey and Gregory Michael Southeard, who testified on the probable origin of the fire in M/V Manila City. Petitioner avers that since the said fire experts were one in their opinion that the fire did not originate in the area of Tank Top No. 12 where the JNB workers were doing hotworks but on the crew accommodation cabins on the portside No. 2 deck, the trial court and the Court of Appeals should have given weight to such finding based on the testimonies of fire experts; petitioner argues.

But courts are not bound by the testimonies of expert witnesses. Although they may have probative value, reception in evidence of expert testimonies is within the discretion of the court. Section 49, Rule 130 of the Revised Rules of Court, provides:

SEC. 49. Opinion of expert witness. - The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

The word "may" signifies that the use of opinion of an expert witness as evidence is a prerogative of the courts. It is never mandatory for judges to give substantial weight to expert testimonies. If from the facts and evidence on record, a conclusion is readily ascertainable, there is no need for the judge to resort to expert opinion evidence. In the case under consideration, the testimonies of the fire experts were not the only available evidence on the probable cause and origin of the fire. There were witnesses who were actually on board the vessel when the fire occurred. Between the testimonies of the fire experts who merely based their findings and opinions on interviews and the testimonies of those present during the fire, the latter are of more probative value. Verily, the trial court and the Court of Appeals did not err in giving more weight to said testimonies.

On the issue of subrogation, petitioner contends that Prudential is not entitled to be subrogated to the rights of William Lines, Inc., theorizing that (1) the fire which gutted M/V Manila City was an excluded risk and (2) it is a co-assured under the Marine Hull Insurance Policy.

It is petitioner's submission that the loss of M/V Manila City or damage thereto is expressly excluded from the coverage of the insurance because the same resulted from "want of due diligence by the Assured, Owners or

Managers" which is not included in the risks insured against. Again, this theory of petitioner is bereft of any factual or legal basis. It proceeds from a wrong premise that the fire which gutted subject vessel was caused by the negligence of the employees of William Lines, Inc. To repeat, the issue of who between the parties was negligent has already been resolved against Cebu Shipyard and Engineering Works, Inc. Upon proof of payment by Prudential to William Lines, Inc., the former was subrogated to the right of the latter to indemnification from CSEW. As aptly ruled by the Court of Appeals, the law on the matter is succinct and clear, to wit:

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.[12]

Thus, when Prudential, after due verification of the merit and validity of the insurance claim of William Lines, Inc., paid the latter the total amount covered by its insurance policy, it was subrogated to the right of the latter to recover the insured loss from the liable party, CSEW.

Petitioner theorizes further that there can be no right of subrogation as it is deemed a co-assured under the subject insurance policy. To buttress its stance that it is a co-assured, petitioner placed reliance on Clause 20 of the Work Order which states:

20. The insurance on the vessel should be maintained by the customer and/or owner of the vessel during the period the contract is in effect.[13]

According to petitioner, under the aforecited clause, William Lines, Inc., agreed to assume the risk of loss of the vessel while under drydock or repair and to such extent, it is benefited and effectively constituted as a co-assured under the policy.

This theory of petitioner is devoid of sustainable merit. Clause 20 of the Work Order in question is clear in the sense that it requires William Lines to maintain insurance on the vessel during the period of dry-docking or repair. Concededly, such a stipulation works to the benefit of CSEW as the shiprepairer. However, the fact that CSEW benefits from the said stipulation does not automatically make it as a co-assured of William Lines. The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement because the insurance policy denominates the assured and the beneficiaries of the insurance. The hull and machinery insurance procured by William Lines, Inc. from Prudential named only "William Lines, Inc." as the assured. There was no manifestation of any intention of William Lines, Inc. to constitute CSEW as a co-assured under subject policy. It is axiomatic that when the terms of a contract are clear its stipulations control.[14] Thus, when the insurance policy involved named only William Lines, Inc. as the assured thereunder, the claim of CSEW that it is a co-assured is unfounded.

Then too, in the Additional Perils Clause of the same Marine Insurance Policy, it is provided that:

Subject to the conditions of this Policy, this insurance also covers loss of or damage to vessel directly caused by the following:

xxx

Negligence of Charterers and/or Repairers, provided such Charterers and/or Repairers are not an Assured hereunder.[15] (emphasis supplied)

As correctly pointed out by respondent Prudential, if CSEW were deemed a co-assured under the policy, it would nullify any claim of William Lines, Inc. from Prudential for any loss or damage caused by the negligence of

CSEW. Certainly, no shipowner would agree to make a shiprepairer a co-assured under such insurance policy; otherwise, any claim for loss or damage under the policy would be invalidated. Such result could not have been intended by William Lines, Inc.

Finally, CSEW argues that even assuming that it was negligent and therefore liable to William Lines, Inc., by stipulation in the Contract or Work Order its liability is limited to One Million (P1,000,000.00) Pesos only, and Prudential a mere subrogee of William Lines, Inc., should only be entitled to collect the sum stipulated in the said contract.

Although in this jurisdiction, contracts of adhesion have been consistently upheld as valid per se; as binding as an ordinary contract, the Court recognizes instances when reliance on such contracts cannot be favored especially where the facts and circumstances warrant that subject stipulations be disregarded.[16] Thus, in ruling on the validity and applicability of the stipulation limiting the liability of CSEW for negligence to One Million (P1,000,000.00) Pesos only, the facts and circumstances vis-a-vis the nature of the provision sought to be enforced should be considered, bearing in mind the principles of equity and fair play.

It is worthy to note that M/V Manila City was insured with Prudential for Forty Five Million (P45,000,000.00) Pesos. To determine the validity and sustainability of the claim of William Lines, Inc., for a total loss, Prudential conducted its own inquiry. Upon thorough investigation by its hull surveyor, M/V Manila City was found to be beyond economical salvage and repair.[17] The evaluation of the average adjuster also reported a constructive total loss.[18] The said claim of William Lines, Inc., was then found to be valid and compensable such that Prudential paid the latter the total value of its insurance claim. Furthermore, it was ascertained that the replacement cost of the vessel (the price of a vessel similar to M/V Manila City), amounts to Fifty-five Million (P55,000,000.00) Pesos.[19]

Considering the aforesaid circumstances, let alone the fact that negligence on the part of petitioner has been sufficiently proven, it would indeed be unfair and inequitable to limit the liability of petitioner to One Million Pesos only. As aptly held by the trial court, "it is rather unconscionable if not overstrained." To allow CSEW to limit its liability to One Million Pesos notwithstanding the fact that the total loss suffered by the assured and paid for by Prudential amounted to Forty Five Million (P45,000,000.00) Pesos would sanction the exercise of a degree of diligence short of what is ordinarily required because, then, it would not be difficult for petitioner to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss suffered by William Lines, Inc.

WHEREFORE, for want of merit, the petition is hereby DENIED and the decision, dated September 3, 1997, and Resolution, dated February 13, 1998, of the Court of Appeals AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Associate Justice Emeterio Cui and concurred in by Associate Justices Corona Ibay Somera and Oswaldo D. Agcaoili.

[2] Rollo, p.20

[3] Ibid., p.21

[4] Supra, pp. 19-20

[5] Petition, Rollo, pp.25-32

[6] Comment on the Petition, Rollo, pp.147-150

[7] Meneses vs. Court of Appeals, 246 SCRA 162; Tay Chun Suy vs. Court of Appeals, 229 SCRA 151; First Philippine International Bank vs. CA, 252 SCRA 259; Fortune Motors Phils. Corp vs. CA, 267 SCRA 653

[8] Inland Trailways Inc. vs. CA, 255 SCRA 178

[9] 266 SCRA 71

[10] Instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (Misa vs. Court of Appeals, 212 SCRA 217)

[11] Rollo, p.120

[12] Civil Code of the Philippines

[13] Rollo, p.20

[14] Article 1370, Civil Code.

[15] Ibid.

[16] Philippine Airlines, Inc. vs. Court of Appeals, 255 SCRA 48. See also Sweet Lines, Inc. vs. Teves, 83 SCRA 361 and Pan American World Airways, Inc. vs. Rapadas, et al., 209 SCRA 67.

[17] RTC decision, p. 14 (page 214 of Rollo)

[18] Ibid.

[19] Ibid., p.12 (page 212 of Rollo)

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