

BELGIAN OVERSEAS CHARTERING AND SHIPPING N.V. AND JARDINE DAVIES TRANSPORT SERVICES, INC., PETITIONERS, VS. PHILIPPINE FIRST INSURANCE CO., INC., RESPONDENT.

G.R. No. 143133. June 05, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Proof of the delivery of goods in good order to a common carrier and of their arrival in bad order at their destination constitutes prima facie fault or negligence on the part of the carrier. If no adequate explanation is given as to how the loss, the destruction or the deterioration of the goods happened, the carrier shall be held liable therefor.

Statement of the Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the July 15, 1998 Decision[1] and the May 2, 2000 Resolution[2] of the Court of Appeals[3] (CA) in CA-GR CV No. 53571. The decretal portion of the Decision reads as follows:

“WHEREFORE, in the light of the foregoing disquisition, the decision appealed from is hereby REVERSED and SET ASIDE. Defendants-appellees are ORDERED to jointly and severally pay plaintiffs-appellants the following:

‘1) FOUR Hundred Fifty One Thousand Twenty-Seven Pesos and 32/100 (P451,027.32) as actual damages, representing the value of the damaged cargo, plus interest at the legal rate from the time of filing of the complaint on July 25, 1991, until fully paid;

‘2) Attorney’s fees amounting to 20% of the claim; and

‘3) Costs of suit.’”[4]

The assailed Resolution denied petitioner’s Motion for Reconsideration.

The CA reversed the Decision of the Regional Trial Court (RTC) of Makati City (Branch 134), which had disposed as follows:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered, dismissing the complaint, as well as defendant’s counterclaim.”[5]

The Facts

The factual antecedents of the case are summarized by the Court of Appeals in this wise:

“On June 13, 1990, CMC Trading A.G. shipped on board the MN ‘Anangel Sky’ at Hamburg, Germany 242 coils of various Prime Cold Rolled Steel sheets for transportation to Manila consigned to the Philippine Steel Trading Corporation. On July 28, 1990, MN Anangel Sky arrived at the port of Manila and, within the subsequent days, discharged the subject cargo. Four (4) coils were found to be in bad order B.O. Tally sheet

No. 154974. Finding the four (4) coils in their damaged state to be unfit for the intended purpose, the consignee Philippine Steel Trading Corporation declared the same as total loss.

“Despite receipt of a formal demand, defendants-appellees refused to submit to the consignee’s claim. Consequently, plaintiff-appellant paid the consignee five hundred six thousand eighty six & 50/100 pesos (P506,086.50), and was subrogated to the latter’s rights and causes of action against defendants-appellees. Subsequently, plaintiff-appellant instituted this complaint for recovery of the amount paid by them, to the consignee as insured.

“Impugning the propriety of the suit against them, defendants-appellees imputed that the damage and/or loss was due to pre-shipment damage, to the inherent nature, vice or defect of the goods, or to perils, danger and accidents of the sea, or to insufficiency of packing thereof, or to the act or omission of the shipper of the goods or their representatives. In addition thereto, defendants-appellees argued that their liability, if there be any, should not exceed the limitations of liability provided for in the bill of lading and other pertinent laws. Finally, defendants-appellees averred that, in any event, they exercised due diligence and foresight required by law to prevent any damage/loss to said shipment.”[6]

Ruling of the Trial Court

The RTC dismissed the Complaint because respondent had failed to prove its claims with the quantum of proof required by law.[7]

It likewise debunked petitioners’ counterclaim, because respondent’s suit was not manifestly frivolous or primarily intended to harass them.[8]

Ruling of the Court of Appeals

In reversing the trial court, the CA ruled that petitioners were liable for the loss or the damage of the goods shipped, because they had failed to overcome the presumption of negligence imposed on common carriers.

The CA further held as inadequately proven petitioners’ claim that the loss or the deterioration of the goods was due to pre-shipment damage.[9] It likewise opined that the notation “metal envelopes rust stained and slightly dented” placed on the Bill of Lading had not been the proximate cause of the damage to the four (4) coils.[10]

As to the extent of petitioners’ liability, the CA held that the package limitation under COGSA was not applicable, because the words “L/C No. 90/02447” indicated that a higher valuation of the cargo had been declared by the shipper. The CA, however, affirmed the award of attorney’s fees.

Hence, this Petition.[11]

Issues

In their Memorandum, petitioners raise the following issues for the Court’s consideration:

I

“Whether or not plaintiff by presenting only one witness who has never seen the subject shipment and whose testimony is purely hearsay is sufficient to pave the way for the applicability of Article 1735 of the Civil Code;

II

“Whether or not the consignee/plaintiff filed the required notice of loss within the time required by law;

III

“Whether or not a notation in the bill of lading at the time of loading is sufficient to show pre-shipment

damage and to exempt herein defendants from liability;

IV

“Whether or not the “PACKAGE LIMITATION” of liability under Section 4 (5) of COGSA is applicable to the case at bar.”[12]

In sum, the issues boil down to three:

- Whether petitioners have overcome the presumption of negligence of a common carrier
- Whether the notice of loss was timely filed
- Whether the package limitation of liability is applicable

This Court’s Ruling

The Petition is partly meritorious.

First Issue:

Proof of Negligence

Petitioners contend that the presumption of fault imposed on common carriers should not be applied on the basis of the lone testimony offered by private respondent. The contention is untenable.

Well-settled is the rule that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence and vigilance with respect to the safety of the goods and the passengers they transport.[13] Thus, common carriers are required to render service with the greatest skill and foresight and “to use all reason[a]ble means to ascertain the nature and characteristics of the goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires.”[14] The extraordinary responsibility lasts from the time the goods are unconditionally placed in the possession of and received for transportation by the carrier until they are delivered, actually or constructively, to the consignee or to the person who has a right to receive them.[15]

This strict requirement is justified by the fact that, without a hand or a voice in the preparation of such contract, the riding public enters into a contract of transportation with common carriers.[16] Even if it wants to, it cannot submit its own stipulations for their approval.[17] Hence, it merely adheres to the agreement prepared by them.

Owing to this high degree of diligence required of them, common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed.[18] That is, unless they prove that they exercised extraordinary diligence in transporting the goods.[19] In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such diligence.[20]

However, the presumption of fault or negligence will not arise[21] if the loss is due to any of the following causes: (1) flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) an act of the public enemy in war, whether international or civil; (3) an act or omission of the shipper or owner of the goods; (4) the character of the goods or defects in the packing or the container; or (5) an order or act of competent public authority.[22] This is a closed list. If the cause of destruction, loss or deterioration is other than the enumerated circumstances, then the carrier is liable therefor.[23]

Corollary to the foregoing, mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a prima facie case of fault or negligence against the carrier. If

no adequate explanation is given as to how the deterioration, the loss or the destruction of the goods happened, the transporter shall be held responsible.[24]

That petitioners failed to rebut the prima facie presumption of negligence is revealed in the case at bar by a review of the records and more so by the evidence adduced by respondent.[25]

First, as stated in the Bill of Lading, petitioners received the subject shipment in good order and condition in Hamburg, Germany.[26]

Second, prior to the unloading of the cargo, an Inspection Report[27] prepared and signed by representatives of both parties showed the steel bands broken, the metal envelopes rust-stained and heavily buckled, and the contents thereof exposed and rusty.

Third, Bad Order Tally Sheet No. 154979[28] issued by Jardine Davies Transport Services, Inc., stated that the four coils were in bad order and condition. Normally, a request for a bad order survey is made in case there is an apparent or a presumed loss or damage.[29]

Fourth, the Certificate of Analysis[30] stated that, based on the sample submitted and tested, the steel sheets found in bad order were wet with fresh water.

Fifth, petitioners -- in a letter[31] addressed to the Philippine Steel Coating Corporation and dated October 12, 1990 -- admitted that they were aware of the condition of the four coils found in bad order and condition.

These facts were confirmed by Ruperto Esmerio, head checker of BM Santos Checkers Agency. Pertinent portions of his testimony are reproduce hereunder:

“Q.

Mr. Esmerio, you mentioned that you are a Head Checker. Will you inform the Honorable Court with what company you are connected?

A.

BM Santos Checkers Agency, sir.

Q.

How is BM Santos Checkers Agency related or connected with defendant Jardine Davies Transport Services?

A.

It is the company who contracts the checkers, sir.

Q.

You mentioned that you are a Head Checker, will you inform this Honorable Court your duties and responsibilities?

A.

I am the representative of BM Santos on board the vessel, sir, to supervise the discharge of cargoes.

x x x x x x x x

Q.

On or about August 1, 1990, were you still connected or employed with BM Santos as a Head Checker?

A.

Yes, sir.

Q.

And, on or about that date, do you recall having attended the discharging and inspection of cold steel sheets in coil on board the MV/AN ANGEL SKY?

A.

Yes, sir, I was there.

x x x x x x x x

Q.

Based on your inspection since you were also present at that time, will you inform this Honorable Court the condition or the appearance of the bad order cargoes that were unloaded from the MV/ANANGEL SKY?

ATTY. MACAMAY:

Objection, Your Honor, I think the document itself reflects the condition of the cold steel sheets and the best evidence is the document itself, Your Honor that shows the condition of the steel sheets.

COURT:

Let the witness answer.

A.

The scrap of the cargoes is broken already and the rope is loosen and the cargoes are dent on the sides.”[32]

All these conclusively prove the fact of shipment in good order and condition and the consequent damage to the four coils while in the possession of petitioner,[33] who notably failed to explain why.[34]

Further, petitioners failed to prove that they observed the extraordinary diligence and precaution which the law requires a common carrier to know and to follow, to avoid damage to or destruction of the goods entrusted to it for safe carriage and delivery.[35]

True, the words “metal envelopes rust stained and slightly dented” were noted on the Bill of Lading; however, there is no showing that petitioners exercised due diligence to forestall or lessen the loss.[36] Having been in the service for several years, the master of the vessel should have known at the outset that metal envelopes in the said state would eventually deteriorate when not properly stored while in transit.[37] Equipped with the proper knowledge of the nature of steel sheets in coils and of the proper way of transporting them, the master of the vessel and his crew should have undertaken precautionary measures to avoid possible deterioration of the cargo. But none of these measures was taken.[38] Having failed to discharge the burden of proving that they have exercised the extraordinary diligence required by law, petitioners cannot escape liability for the damage to the four coils.[39]

In their attempt to escape liability, petitioners further contend that they are exempted from liability under Article 1734(4) of the Civil Code. They cite the notation “metal envelopes rust stained and slightly dented” printed on the Bill of Lading as evidence that the character of the goods or defect in the packing or the containers was the proximate cause of the damage. We are not convinced.

From the evidence on record, it cannot be reasonably concluded that the damage to the four coils was due to the condition noted on the Bill of Lading.[40] The aforecited exception refers to cases when goods are lost or damaged while in transit as a result of the natural decay of perishable goods or the fermentation or evaporation of substances liable therefor, the necessary and natural wear of goods in transport, defects in packages in which they are shipped, or the natural propensities of animals.[41] None of these is present in the instant case.

Further, even if the fact of improper packing was known to the carrier or its crew or was apparent upon ordinary observation, it is not relieved of liability for loss or injury resulting therefrom, once it accepts the goods notwithstanding such condition.[42] Thus, petitioners have not successfully proven the application of any of the aforecited exceptions in the present case.[43]

Second Issue:

Notice of Loss

Petitioners claim that pursuant to Section 3, paragraph 6 of the Carriage of Goods by Sea Act[44] (COGSA), respondent should have filed its Notice of Loss within three days from delivery. They assert that the cargo was discharged on July 31, 1990, but that respondent filed its Notice of Claim only on September 18, 1990.[45]

We are not persuaded. First, the above-cited provision of COGSA provides that the notice of claim need not be given if the state of the goods, at the time of their receipt, has been the subject of a joint inspection or survey. As stated earlier, prior to unloading the cargo, an Inspection Report[46] as to the condition of the goods was prepared and signed by representatives of both parties.[47]

Second, as stated in the same provision, a failure to file a notice of claim within three days will not bar recovery if it is nonetheless filed within one year.[48] This one-year prescriptive period also applies to the shipper, the consignee, the insurer of the goods or any legal holder of the bill of lading.[49]

In *Loadstar Shipping Co., Inc. v. Court of Appeals*,^[50] we ruled that a claim is not barred by prescription as long as the one-year period has not lapsed. Thus, in the words of the ponente, Chief Justice Hilario G. Davide Jr.:

“Inasmuch as the 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.”

In the present case, the cargo was discharged on July 31, 1990, while the Complaint^[51] was filed by respondent on July 25, 1991, within the one-year prescriptive period.

Third Issue:

Package Limitation

Assuming *arguendo* they are liable for respondent’s claims, petitioners contend that their liability should be limited to US\$500 per package as provided in the Bill of Lading and by Section 4(5)^[52] of COGSA.^[53]

On the other hand, respondent argues that Section 4(5) of COGSA is inapplicable, because the value of the subject shipment was declared by petitioners beforehand, as evidenced by the reference to and the insertion of the Letter of Credit or “L/C No. 90/02447” in the said Bill of Lading.^[54]

A bill of lading serves two functions. First, it is a receipt for the goods shipped.^[55] Second, it is a contract by which three parties -- namely, the shipper, the carrier, and the consignee -- undertake specific responsibilities and assume stipulated obligations.^[56] In a nutshell, the acceptance of the bill of lading by the shipper and the consignee, with full knowledge of its contents, gives rise to the presumption that it constituted a perfected and binding contract.^[57]

Further, a stipulation in the bill of lading limiting to a certain sum the common carrier’s liability for loss or destruction of a cargo -- unless the shipper or owner declares a greater value^[58] -- is sanctioned by law.^[59] There are, however, two conditions to be satisfied: (1) the contract is reasonable and just under the circumstances, and (2) it has been fairly and freely agreed upon by the parties.^[60] The rationale for, this rule is to bind the shippers by their agreement to the value (maximum valuation) of their goods.^[61]

It is to be noted, however, that the Civil Code does not limit the liability of the common carrier to a fixed amount per package.^[62] In all matters not regulated by the Civil Code, the right and the obligations of common carriers shall be governed by the Code of Commerce and special laws.^[63] Thus, the COGSA, which is suppletory to the provisions of the Civil Code, supplements the latter by establishing a statutory provision limiting the carrier’s liability in the absence of a shipper’s declaration of a higher value in the bill of lading.^[64] The provisions on limited liability are as much a part of the bill of lading as though physically in it and as though placed there by agreement of the parties.^[65]

In the case before us, there was no stipulation in the Bill of Lading^[66] limiting the carrier’s liability. Neither did the shipper declare a higher valuation of the goods to be shipped. This fact notwithstanding, the insertion of the words “L/C No. 90/02447 cannot be the basis for petitioners’ liability.

First, a notation in the Bill of Lading which indicated the amount of the Letter of Credit obtained by the shipper for the importation of steel sheets did not effect a declaration of the value of the goods as required by the bill.^[67] That notation was made only for the convenience of the shipper and the bank processing the Letter of Credit.^[68]

Second, in *Keng Hua Paper Products v. Court of Appeals*,^[69] we held that a bill of lading was separate from the Other Letter of Credit arrangements. We ruled thus:

“(T)he contract of carriage, as stipulated in the bill of lading in the present case, must be treated independently of the contract of sale between the seller and the buyer, and the contract of issuance of a letter of credit between the amount of goods described in the commercial invoice in the contract of sale and the amount allowed in the letter of credit will not affect the validity and enforceability of the contract of carriage as embodied in the bill of lading. As the bank cannot be expected to look beyond the documents presented to it by the seller pursuant to the letter of credit, neither can the carrier be expected to go beyond the representations of the shipper in the bill of lading and to verify their accuracy vis-à-vis the commercial invoice and the letter of credit. Thus, the discrepancy between the amount of goods indicated in the invoice and the amount in the bill of lading cannot negate petitioner’s obligation to private respondent arising from the contract of transportation.”[70]

In the light of the foregoing, petitioners’ liability should be computed based on US\$500 per package and not on the per metric ton price declared in the Letter of Credit.[71] In *Eastern Shipping Lines, Inc. v. Intermediate Appellate Court*[72] we explained the meaning of package:

“When what would ordinarily be considered packages are shipped in a container supplied by the carrier and the number of such units is disclosed in the shipping documents, each of those units and not the container constitutes the ‘package’ referred to in the liability limitation provision of Carriage of Goods by Sea Act.”

Considering, therefore, the ruling in *Eastern Shipping Lines* and the fact that the Bill of Lading clearly disclosed the contents of the containers, the number of units, as well as the nature of the steel sheets, the four damaged coils should be considered as the shipping unit subject to the US\$500 limitation.

WHEREFORE, the Petition is partly granted and the assailed Decision MODIFIED. Petitioners’ liability is reduced to US\$2,000 plus interest at the legal rate of six percent from the time of the filing of the Complaint on July 25, 1991 until the finality of this Decision, and 12 percent thereafter until fully paid. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, J., (Chairman), abroad, on official leave.

[1] Rollo, pp. 48-55.

[2] *Ibid.*, p. 57.

[3] Written by Justice Jinal D. Rasul (Division Chairman); concurred in by Justices Delilah Vidallon-Magtolis and Rodrigo V. Cosico (members).

[4] CA Decision, pp. 7-8; rollo, pp. 54-55.

[5] RTC Decision, p. 4; rollo, p. 108; penned by Acting Presiding Judge Paul T. Arcangel.

[6] CA Decision, pp. 1-3; rollo, pp. 48-50.

[7] RTC Decision, p. 3; rollo, p. 107.

[8] *Ibid.*, pp. 4 & 108.

[9] CA Decision; p. 5; rollo, p. 52.

[10] *Ibid.*, pp. 6 & 53.

- [11] The case was deemed submitted for decision on March 29, 2001, upon the Court's receipt of respondent's Memorandum signed by Atty. Baltazar Y. Repol. Petitioners' Memorandum, filed on February 9, 2001, was signed by Atty. Lancelot S. Limqueco.
- [12] Pages 5-6; rollo, pp. 172-173.
- [13] Art. 1733, Civil Code.
- [14] *Compania Maritima v. Court of Appeals*, 164 SCRA 685, 692, August 29, 1988, per Fernan, CJ.
- [15] Art. 1736, Civil Code.
- [16] *Valenzuela Hardwood and Industrial Supply, Inc. v. Court of Appeals*, 274 SCRA 642, June 30, 1997.
- [17] *Ibid.*
- [18] *Philippine American General Insurance Co, Inc. v. MGG Marine Services, Inc.* GR No. 135645, March 8, 2002.
- [19] Art. 1735 Civil Code. "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."
- [20] *Tabacalera Insurance Co. v North Front Shipping Services, Inc.*, 272 SCRA 527, May 16, 1997.
- [21] *Philippine American General Insurance Co, Inc. v. MGG Marine Services, Inc.*, *supra*.
- [22] Art. 1734, Civil Code.
- [23] *Tabacalera Insurance Co. v. North Front Shipping Services, Inc.*, *supra*.
- [24] *Compania Maritima v. Court of Appeals*, *supra*; *Mirasol v. Robert Dollar Co.*, 53 Phil. 129, March 27, 1929; *Ynchausti Steamship Co. v. Dexter and Unson*, 41 Phil. 289, December 14, 1920.
- [25] *Tabacalera Insurance Co. v. North Front Shipping Services, Inc.*, *supra*.
- [26] See Exhibit "A"; records, p. 31.
- [27] See Exhibit "F"; *ibid.*, p. 39.
- [28] See Annex "C", *id.*, p. 61.
- [29] *International Container Services, Inc. v. Prudential Guarantee & Assurance Co., Inc.*, 320 SCRA 244, December 8, 1999.
- [30] Exhibit "I"; records, p. 47.
- [31] See Exhibit "L"; *ibid.*, p. 51.
- [32] TSN, December 13, 1993, pp. 4-10.
- [33] *Tabacalera Insurance Co. v. North Front Shipping Services, Inc.*, *supra*.
- [34] *Ibid.*
- [35] *Compania Maritima v. Court of Appeals*, *supra*.
- [36] Article 1742, Civil Code. "Even if the loss, destruction or deterioration of the goods should be caused by the

character of the goods, or the faulty nature of the packing or of the containers, common carriers exercised due diligence to forestall or lessen the loss."

[37] Tabacalera Insurance Co. v. North Front Shipping Services, Inc., *supra*.

[38] *Ibid*.

[39] Eastern Shipping Lines, Inc. v. Intermediate Appellate Court, *supra*.

[40] Compania Maritima v. Court of Appeals, *supra*.

[41] Tolentino, Civil Code of the Philippines, Vol. V, 1992 ed., p. 301, citing 9 Am. Jur., pp. 862-863.

[42] Southern Lines v. Court of Appeals, 4 SCRA 258, January 31, 1962; Philippine Airlines v. Court of Appeals, 255 SCRA 48, March 14, 1996; 9 Am. Jur. P. 869.

[43] Vlasons Shipping, Inc. v. Court of Appeals, 283 SCRA 45, December 12, 1997.

[44] Commonwealth Act No. 65. "Section 1. That the provisions of Public Act No. 521 of the 74th Congress of the United States, approved on April 16, 1936, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: Provided, That nothing in this Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force or as limiting its application." Approved on April 22, 1936.

[45] Exhibit "K"; records, p. 50.

[46] Exhibit "F"; *ibid.*, p. 39.

[47] § 3(6) COGSA provides:

"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 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."

[48] Vitug, *Pandect of Commercial Law and Jurisprudence*, 3rd ed., 1997, p. 333.

[49] *Ibid.*, citing *Filipino Merchants Insurance Co., Inc. v. Alejandro*, 145 SCRA 42, October 14, 1986.

[50] 315 SCRA 339, September 28, 1999, per Davide, Jr., CJ.

[51] Records, p. 1.

[52] This section provides:

“(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before the shipment and inserted in bill of lading. This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be conclusive on the carrier.

“By agreement between the carrier, master or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed; Provided, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

“Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.”

[53] Petitioners' Memorandum, p. 14; rollo, p. 181.

[54] Respondent's Memorandum, p. 14; rollo, p. 203.

[55] Keng Hua Paper Products Co., Inc. v. Court of Appeals, 286 SCRA 257, February 12, 1998.

[56] Magellan Mftg. Marketing Corp. v. Court of Appeals, 201 SCRA 102, August 22, 1991.

[57] Saludo Jr. v. Court of Appeals, 207 SCRA 498, March 23, 1992.

[58] Art. 1749, Civil Code.

[59] Everett Steamship Corporation, v. Court of Appeals, 297 SCRA 496, October 8, 1998.

[60] Art. 1750, Civil Code.

[61] Vitug, Compendium of Civil Law and Jurisprudence, 1993 rev. ed., p. 702.

[62] Eastern Shipping Lines, Inc. v. Intermediate Appellate Court, *supra*.

[63] Art. 1766, Civil Code.

[64] Eastern Shipping Lines, Inc. v. Intermediate Appellate Court, *supra*.

[65] Phoenix Assurance Company v. Macondray, 64 SCRA 15, May 13, 1975.

[66] Exhibit "A"; records, p. 31.

[67] Hernandez & Penasales, Philippine Admiralty and Maritime Law, 1st ed., 1987, p. 291, citing *McCarthy v. Barber Steamship Lines*, 45 Phil. 488, December 10, 1923.

[68] *Ibid*.

[69] *Supra*.

[70] *Ibid.*, pp. 269-270, per Panganiban, J.

[71] Assailed Decision, p. 7; rollo, p. 54.

[72] 150 SCRA 463, May 29, 1967, citing Mitsui & Co., Ltd. v. American Export Lines, 636 F 2d 807 (1981).

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