

EDGAR COKALIONG SHIPPING LINES, INC., PETITIONER, VS. UCPB GENERAL INSURANCE COMPANY, INC., RESPONDENT.

G.R. No. 146018. June 25, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The liability of a common carrier for the loss of goods may, by stipulation in the bill of lading, be limited to the value declared by the shipper. On the other hand, the liability of the insurer is determined by the actual value covered by the insurance policy and the insurance premiums paid therefor, and not necessarily by the value declared in the bill of lading.

The Case

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the August 31, 2000 Decision[2] and the November 17, 2000 Resolution[3] of the Court of Appeals[4] (CA) in CA-GR SP No. 62751. The dispositive part of the Decision reads:

"IN THE LIGHT OF THE FOREGOING, the appeal is GRANTED. The Decision appealed from is REVERSED. [Petitioner] is hereby condemned to pay to [respondent] the total amount of P148,500.00, with interest thereon, at the rate of 6% per annum, from date of this Decision of the Court. [Respondent's] claim for attorney's fees [is] DISMISSED. [Petitioner's] counterclaims are DISMISSED." [5]

The assailed Resolution denied petitioner's Motion for Reconsideration.

On the other hand, the disposition of the Regional Trial Court's[6] Decision,[7] which was later reversed by the CA, states:

"WHEREFORE, premises considered, the case is hereby DISMISSED for lack of merit.

"No cost." [8]

The Facts

The facts of the case are summarized by the appellate court in this wise:

"Sometime on December 11, 1991, Nestor Angelia delivered to the Edgar Cokaliong Shipping Lines, Inc. (now Cokaliong Shipping Lines), [petitioner] for brevity, cargo consisting of one (1) carton of Christmas décor and two (2) sacks of plastic toys, to be transported on board the M/V Tandag on its Voyage No. T-189 scheduled to depart from Cebu City, on December 12, 1991, for Tandag, Surigao del Sur. [Petitioner] issued Bill of Lading No. 58, freight prepaid, covering the cargo. Nestor Angelia was both the shipper and consignee of the cargo valued, on the face thereof, in the amount of P6,500.00. Zosimo Mercado likewise delivered cargo to [petitioner], consisting of two (2) cartons of plastic toys and Christmas decor, one (1) roll of floor mat and one (1) bundle of various or assorted goods for transportation thereof from Cebu City to Tandag, Surigao del Sur, on board the said vessel, and said voyage. [Petitioner] issued Bill of Lading No. 59 covering the cargo which, on the face thereof, was valued in the amount of P14,000.00. Under the Bill of Lading, Zosimo Mercado was both the shipper and consignee of the cargo.

"On December 12, 1991, Feliciano Legaspi insured the cargo, covered by Bill of Lading No. 59, with the UCPB General Insurance Co., Inc., [respondent] for brevity, for the amount of P100,000.00 'against all risks' under Open Policy No. 002/91/254 for which she was issued, by [respondent], Marine Risk Note No. 18409 on said date. She also insured the cargo covered by Bill of Lading No. 58, with [respondent], for the amount of P50,000.00, under Open Policy No. 002/91/254 on the basis of which [respondent] issued Marine Risk Note No. 18410 on said date.

"When the vessel left port, it had thirty-four (34) passengers and assorted cargo on board, including the goods of Legaspi. After the vessel had passed by the Mandaue-Mactan Bridge, fire ensued in the engine room, and, despite earnest efforts of the officers and crew of the vessel, the fire engulfed and destroyed the entire vessel resulting in the loss of the vessel and the cargoes therein. The Captain filed the required Marine Protest.

"Shortly thereafter, Feliciano Legaspi filed a claim, with [respondent], for the value of the cargo insured under Marine Risk Note No. 18409 and covered by Bill of Lading No. 59. She submitted, in support of her claim, a Receipt, dated December 11, 1991, purportedly signed by Zosimo Mercado, and Order Slips purportedly signed by him for the goods he received from Feliciano Legaspi valued in the amount of P110,056.00. [Respondent] approved the claim of Feliciano Legaspi and drew and issued UCPB Check No. 612939, dated March 9, 1992, in the net amount of P99,000.00, in settlement of her claim after which she executed a Subrogation Receipt/Deed, for said amount, in favor of [respondent]. She also filed a claim for the value of the cargo covered by Bill of Lading No. 58. She submitted to [respondent] a Receipt, dated December 11, 1991 and Order Slips, purportedly signed by Nestor Angelia for the goods he received from Feliciano Legaspi valued at P60,338.00. [Respondent] approved her claim and remitted to Feliciano Legaspi the net amount of P49,500.00, after which she signed a Subrogation Receipt/Deed, dated March 9, 1992, in favor of [respondent].

"On July 14, 1992, [respondent], as subrogee of Feliciano Legaspi, filed a complaint anchored on torts against [petitioner], with the Regional Trial Court of Makati City, for the collection of the total principal amount of P148,500.00, which it paid to Feliciano Legaspi for the loss of the cargo, praying that judgment be rendered in its favor and against the [petitioner] as follows:

`WHEREFORE, it is respectfully prayed of this Honorable Court that after due hearing, judgment be rendered ordering [petitioner] to pay [respondent] the following.

- Actual damages in the amount of P148,500.00 plus interest thereon at the legal rate from the time of filing of this complaint until fully paid;
- Attorney's fees in the amount of P10,000.00; and
- Cost of suit.

`[Respondent] further prays for such other reliefs and remedies as this Honorable Court may deem just and equitable under the premises.'

"[Respondent] alleged, inter alia, in its complaint, that the cargo subject of its complaint was delivered to, and received by, [petitioner] for transportation to Tandag, Surigao del Sur under 'Bill of Ladings,' Annexes 'A' and 'B' of the complaint; that the loss of the cargo was due to the negligence of the [petitioner]; and that Feliciano Legaspi had executed Subrogation Receipts/Deeds in favor of [respondent] after paying to her the value of the cargo on account of the Marine Risk Notes it issued in her favor covering the cargo.

"In its Answer to the complaint, [petitioner] alleged that: (a) [petitioner] was cleared by the Board of Marine Inquiry of any negligence in the burning of the vessel; (b) the complaint stated no cause of action against [petitioner]; and (c) the shippers/consignee had already been paid the value of the goods as stated in the Bill of Lading and, hence, [petitioner] cannot be held liable for the loss of the cargo beyond the value thereof declared in the Bill of Lading.

"After [respondent] rested its case, [petitioner] prayed for and was allowed, by the Court a quo, to take the depositions of Chester Cokaliong, the Vice-President and Chief Operating Officer of [petitioner], and a resident of Cebu City, and of Noel Tanyu, an officer of the Equitable Banking Corporation, in Cebu City, and a resident of Cebu City, to be given before the Presiding Judge of Branch 106 of the Regional Trial Court of Cebu City. Chester Cokaliong and Noel Tanyu did testify, by way of deposition, before the Court and declared inter alia, that: [petitioner] is a family corporation like the Chester Marketing, Inc.; Nestor Angelia had been doing business with [petitioner] and Chester Marketing, Inc., for years, and incurred an account with Chester Marketing, Inc. for his purchases from said corporation; [petitioner] did issue Bills of Lading Nos. 58 and 59 for the cargo described therein with Zosimo Mercado and Nestor Angelia as shippers/consignees, respectively; the engine room of the M/V Tandag caught fire after it passed the Mandaue/Mactan Bridge resulting in the total loss of the vessel and its cargo; an investigation was conducted by the Board of Marine Inquiry of the Philippine Coast Guard which rendered a Report, dated February 13, 1992 absolving [petitioner] of any responsibility on account of the fire, which Report of the Board was approved by the District Commander of the Philippine Coast Guard; a few days after the sinking of the vessel, a representative of the Legaspi Marketing filed claims for the values of the goods under Bills of Lading Nos. 58 and 59 in behalf of the shippers/consignees, Nestor Angelia and Zosimo Mercado; [petitioner] was able to ascertain, from the shippers/consignees and the representative of the Legaspi Marketing that the cargo covered by Bill of Lading No. 59 was owned by Legaspi Marketing and consigned to Zosimo Mercado while that covered by Bill of Lading No. 58 was purchased by Nestor Angelia from the Legaspi Marketing; that [petitioner] approved the claim of Legaspi Marketing for the value of the cargo under Bill of Lading No. 59 and remitted to Legaspi Marketing the said amount under Equitable Banking Corporation Check No. 20230486 dated August 12, 1992, in the amount of P14,000.00 for which the representative of the Legaspi Marketing signed Voucher No. 4379, dated August 12, 1992, for the said amount of P14,000.00 in full payment of claims under Bill of Lading No. 59; that [petitioner] approved the claim of Nestor Angelia in the amount of P6,500.00 but that since the latter owed Chester Marketing, Inc., for some purchases, [petitioner] merely set off the amount due to Nestor Angelia under Bill of Lading No. 58 against his account with Chester Marketing, Inc.; [petitioner] lost/[misplaced] the original of the check after it was received by Legaspi Marketing, hence, the production of the microfilm copy by Noel Tanyu of the Equitable Banking Corporation; [petitioner] never knew, before settling with Legaspi Marketing and Nestor Angelia that the cargo under both Bills of Lading were insured with [respondent], or that Feliciano Legaspi filed claims for the value of the cargo with [respondent] and that the latter approved the claims of Feliciano Legaspi and paid the total amount of P148,500.00 to her; [petitioner] came to know, for the first time, of the payments by [respondent] of the claims of Feliciano Legaspi when it was served with the summons and complaint, on October 8, 1992; after settling his claim, Nestor Angelia x x x executed the Release and Quitclaim, dated July 2, 1993, and Affidavit, dated July 2, 1993 in favor of [respondent]; hence, [petitioner] was absolved of any liability for the loss of the cargo covered by Bills of Lading Nos. 58 and 59; and even if it was, its liability should not exceed the value of the cargo as stated in the Bills of Lading.

"[Petitioner] did not anymore present any other witnesses on its evidence-in-chief. x x x"[9] (Citations omitted)

Ruling of the Court of Appeals

The CA held that petitioner had failed "to prove that the fire which consumed the vessel and its cargo was caused by something other than its negligence in the upkeep, maintenance and operation of the vessel." [10]

Petitioner had paid P14,000 to Legaspi Marketing for the cargo covered by Bill of Lading No. 59. The CA, however, held that the payment did not extinguish petitioner's obligation to respondent, because there was no evidence that Feliciano Legaspi (the insured) was the owner/proprietor of Legaspi Marketing. The CA also pointed out the impropriety of treating the claim under Bill of Lading No. 58 — covering cargo valued therein at P6,500 — as a setoff against Nestor Angelia's account with Chester Enterprises, Inc.

Finally, it ruled that respondent "is not bound by the valuation of the cargo under the Bills of Lading, x x x nor is the value of the cargo under said Bills of Lading conclusive on the [respondent]. This is so because, in the first place, the goods were insured with the [respondent] for the total amount of P150,000.00, which amount may be considered as the face value of the goods." [11]

Hence this Petition. [12]

Issues

Petitioner raises for our consideration the following alleged errors of the CA:

"I

"The Honorable Court of Appeals erred, granting *arguendo* that petitioner is liable, in holding that petitioner's liability should be based on the 'actual insured value' of the goods and not from actual valuation declared by the shipper/consignee in the bill of lading.

"II

"The Court of Appeals erred in not affirming the findings of the Philippine Coast Guard, as sustained by the trial court *a quo*, holding that the cause of loss of the aforesaid cargoes under Bill of Lading Nos. 58 and 59 was due to force majeure and due diligence was [exercised] by petitioner prior to, during and immediately after the fire on [petitioner's] vessel.

"III

"The Court of Appeals erred in not holding that respondent UCPB General Insurance has no cause of action against the petitioner." [13]

In sum, the issues are: (1) Is petitioner liable for the loss of the goods? (2) If it is liable, what is the extent of its liability?

This Court's Ruling

The Petition is partly meritorious.

First Issue: Liability for Loss

Petitioner argues that the cause of the loss of the goods, subject of this case, was force majeure. It adds that its exercise of due diligence was adequately proven by the findings of the Philippine Coast Guard.

We are not convinced. The uncontroverted findings of the Philippine Coast Guard show that the M/V Tandag sank due to a fire, which resulted from a crack in the auxiliary engine fuel oil service tank. Fuel spurted out of the crack and dripped to the heating exhaust manifold, causing the ship to burst into flames. The crack was located on the side of the fuel oil tank, which had a mere two-inch gap from the engine room walling, thus precluding constant inspection and care by the crew.

Having originated from an unchecked crack in the fuel oil service tank, the fire could not have been caused by force majeure. Broadly speaking, force majeure generally applies to a natural accident, such as that caused by a lightning, an earthquake, a tempest or a public enemy. [14] Hence, fire is not considered a natural disaster or calamity. In *Eastern Shipping Lines, Inc. v. Intermediate Appellate Court*, [15] we explained:

"x x x. This must be so as it arises almost invariably from some act of man or by human means. It does not fall within the category of an act of God unless caused by lightning or by other natural disaster or calamity. It may even be caused by the actual fault or privity of the carrier.

"Article 1680 of the Civil Code, which considers fire as an extraordinary fortuitous event refers to leases or rural lands where a reduction of the rent is allowed when more than one-half of the fruits have been lost due to such event, considering that the law adopts a protective policy towards agriculture.

"As the peril of fire is not comprehended within the exceptions in Article 1734, supra, Article 1735 of the Civil Code provides that in all cases other than those mentioned in Article 1734, the common carrier shall be presumed to have been at fault or to have acted negligently, unless it proves that it has observed the extraordinary diligence required by law."

Where loss of cargo results from the failure of the officers of a vessel to inspect their ship frequently so as to discover the existence of cracked parts, that loss cannot be attributed to force majeure, but to the negligence of those officials.[16]

The law provides that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. Ensuring the seaworthiness of the vessel is the first step in exercising the required vigilance. Petitioner did not present sufficient evidence showing what measures or acts it had undertaken to ensure the seaworthiness of the vessel. It failed to show when the last inspection and care of the auxiliary engine fuel oil service tank was made, what the normal practice was for its maintenance, or some other evidence to establish that it had exercised extraordinary diligence. It merely stated that constant inspection and care were not possible, and that the last time the vessel was dry-docked was in November 1990. Necessarily, in accordance with Article 1735[17] of the Civil Code, we hold petitioner responsible for the loss of the goods covered by Bills of Lading Nos. 58 and 59.

Second Issue: Extent of Liability

Respondent contends that petitioner's liability should be based on the actual insured value of the goods, subject of this case. On the other hand, petitioner claims that its liability should be limited to the value declared by the shipper/consignee in the Bill of Lading.

The records[18] show that the Bills of Lading covering the lost goods contain the stipulation that in case of claim for loss or for damage to the shipped merchandise or property, "[t]he liability of the common carrier x x x shall not exceed the value of the goods as appearing in the bill of lading." [19] The attempt by respondent to make light of this stipulation is unconvincing. As it had the consignees' copies of the Bills of Lading, [20] it could have easily produced those copies, instead of relying on mere allegations and suppositions. However, it presented mere photocopies thereof to disprove petitioner's evidence showing the existence of the above stipulation.

A stipulation that limits liability is valid [21] as long as it is not against public policy. In *Everett Steamship Corporation v. Court of Appeals*, [22] the Court stated:

"A stipulation in the bill of lading limiting the common carrier's liability for loss or destruction of a cargo to a certain sum, unless the shipper or owner declares a greater value, is sanctioned by law, particularly Articles 1749 and 1750 of the Civil Code which provides:

`Art. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.'

`Art. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been freely and fairly agreed upon.'

"Such limited-liability clause has also been consistently upheld by this Court in a number of cases. Thus, in *Sea-Land Service, Inc. vs. Intermediate Appellate Court*, we ruled:

`It seems clear that even if said section 4 (5) of the Carriage of Goods by Sea Act did not exist, the validity and binding effect of the liability limitation clause in the bill of lading here are nevertheless fully sustainable on the basis alone of the cited Civil Code Provisions. That said stipulation is just and reasonable is arguable from the fact that it echoes Art. 1750 itself in providing a limit to liability only if a greater value is not declared for the

shipment in the bill of lading. To hold otherwise would amount to questioning the justness and fairness of the law itself, and this the private respondent does not pretend to do. But over and above that consideration, the just and reasonable character of such stipulation is implicit in it giving the shipper or owner the option of avoiding accrual of liability limitation by the simple and surely far from onerous expedient of declaring the nature and value of the shipment in the bill of lading.'

"Pursuant to the afore-quoted provisions of law, it is required that the stipulation limiting the common carrier's liability for loss must be `reasonable and just under the circumstances, and has been freely and fairly agreed upon.

"The bill of lading subject of the present controversy specifically provides, among others:

'18. All claims for which the carrier may be liable shall be adjusted and settled on the basis of the shipper's net invoice cost plus freight and insurance premiums, if paid, and in no event shall the carrier be liable for any loss of possible profits or any consequential loss.

'The carrier shall not be liable for any loss of or any damage to or in any connection with, goods in an amount exceeding One Hundred Thousand Yen in Japanese Currency (¥100,000.00) or its equivalent in any other currency per package or customary freight unit (whichever is least) unless the value of the goods higher than this amount is declared in writing by the shipper before receipt of the goods by the carrier and inserted in the Bill of Lading and extra freight is paid as required.'

"The above stipulations are, to our mind, reasonable and just. In the bill of lading, the carrier made it clear that its liability would only be up to One Hundred Thousand (Y100,000.00) Yen. However, the shipper, Maruman Trading, had the option to declare a higher valuation if the value of its cargo was higher than the limited liability of the carrier. Considering that the shipper did not declare a higher valuation, it had itself to blame for not complying with the stipulations." (Italics supplied)

In the present case, the stipulation limiting petitioner's liability is not contrary to public policy. In fact, its just and reasonable character is evident. The shippers/consignees may recover the full value of the goods by the simple expedient of declaring the true value of the shipment in the Bill of Lading. Other than the payment of a higher freight, there was nothing to stop them from placing the actual value of the goods therein. In fact, they committed fraud against the common carrier by deliberately undervaluing the goods in their Bill of Lading, thus depriving the carrier of its proper and just transport fare.

Concededly, the purpose of the limiting stipulation in the Bill of Lading is to protect the common carrier. Such stipulation obliges the shipper/consignee to notify the common carrier of the amount that the latter may be liable for in case of loss of the goods. The common carrier can then take appropriate measures — getting insurance, if needed, to cover or protect itself. This precaution on the part of the carrier is reasonable and prudent. Hence, a shipper/consignee that undervalues the real worth of the goods it seeks to transport does not only violate a valid contractual stipulation, but commits a fraudulent act when it seeks to make the common carrier liable for more than the amount it declared in the bill of lading.

Indeed, Zosimo Mercado and Nestor Angelia misled petitioner by undervaluing the goods in their respective Bills of Lading. Hence, petitioner was exposed to a risk that was deliberately hidden from it, and from which it could not protect itself.

It is well to point out that, for assuming a higher risk (the alleged actual value of the goods) the insurance company was paid the correct higher premium by Feliciano Legaspi; while petitioner was paid a fee lower than what it was entitled to for transporting the goods that had been deliberately undervalued by the shippers in the Bill of Lading. Between the two of them, the insurer should bear the loss in excess of the value declared in the Bills of Lading. This is the just and equitable solution.

In *Aboitiz Shipping Corporation v. Court of Appeals*,^[23] the description of the nature and the value of the goods shipped were declared and reflected in the bill of lading, like in the present case. The Court therein considered this declaration as the basis of the carrier's liability and ordered payment based on such amount. Following this ruling, petitioner should not be held liable for more than what was declared by the shippers/consignees as the value of the goods in the bills of lading.

We find no cogent reason to disturb the CA's finding that Feliciano Legaspi was the owner of the goods covered by Bills of Lading Nos. 58 and 59. Undoubtedly, the goods were merely consigned to Nestor Angelia and Zosimo Mercado, respectively; thus, Feliciano Legaspi or her subrogee (respondent) was entitled to the goods or, in case of loss, to compensation therefor. There is no evidence showing that petitioner paid her for the loss of those goods. It does not even claim to have paid her.

On the other hand, Legaspi Marketing filed with petitioner a claim for the lost goods under Bill of Lading No. 59, for which the latter subsequently paid P14,000. But nothing in the records convincingly shows that the former was the owner of the goods. Respondent was, however, able to prove that it was Feliciano Legaspi who owned those goods, and who was thus entitled to payment for their loss. Hence, the claim for the goods under Bill of Lading No. 59 cannot be deemed to have been extinguished, because payment was made to a person who was not entitled thereto.

With regard to the claim for the goods that were covered by Bill of Lading No. 58 and valued at P6,500, the parties have not convinced us to disturb the findings of the CA that compensation could not validly take place. Thus, we uphold the appellate court's ruling on this point.

WHEREFORE, the Petition is hereby **PARTIALLY GRANTED**. The assailed Decision is **MODIFIED** in the sense that petitioner is **ORDERED** to pay respondent the sums of P14,000 and P6,500, which represent the value of the goods stated in Bills of Lading Nos. 59 and 58, respectively. No costs.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 10-34.

[2] *Id.*, pp. 36-60.

[3] *Id.*, p. 62.

[4] First Division. Penned by Justice Romeo J. Callejo Sr. (now a member of this Court) and concurred in by Justices Salome A. Montoya (Division chair) and Martin S. Villarama (member).

[5] Assailed Decision, p. 7; rollo, p. 36.

[6] Branch 146, Makati City.

[7] Penned by Judge Salvador S. Tensuan.

[8] RTC Decision, p. 4; rollo, p. 66.

[9] Assailed Decision, pp. 1-5; rollo, pp. 36-40; emphases in original.

[10] *Id.*, pp. 12 & 47.

[11] *Id.*, pp. 23 & 58.

[12] The case was deemed submitted for decision on September 24, 2001, upon receipt by this Court of respondent's Memorandum, which was signed by Atty. Bernard D. Sy. Petitioner's Memorandum, signed by Atty. Melvyn S. Florencio, was received by this Court on August 31, 2001.

[13] Petitioner's Memorandum, pp. 12-13; rollo, pp. 134-135. Original in upper case.

[14] *Pons y Compañia v. La Compañia Maritima*, 9 Phil. 125, October 26, 1907.

[15] *Eastern Shipping Lines, Inc. v. Intermediate Appellate Court*, 150 SCRA 463, May 29, 1987, per Melencio-Herrera, J.

[16] *Ibid.*

[17] "Art. 1735. 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."

[18] See the Deposition dated September 30, 1996 of Chester C. Cokaliong, petitioner's vice president and chief operating officer. Deposition, p. 16; records, p. 276.

[19] Exhibit 7-A-2; *id.*, p. 233.

[20] TSN, August 8, 1996, p. 4.

[21] Article 1749 of the Civil Code. See also *St. Paul Fire & Marine Insurance Co. v. Macondray & Co., Inc.*, 70 SCRA 122, March 25, 1976.

[22] 358 SCRA 129, 135-136, October 8, 1998, per Martinez, J.

[23] 188 SCRA 387, August 6, 1990.

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