EASTERN SHIPPING LINES, INC., PETITIONER, VS. N.V. THE NETHERLANDS INSURANCE COMPANY, RESPONDENT.

G.R. NO. 146472. July 27, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via Petition for Review are the Decision dated September 7, 2000[1] and Resolution dated December 8, 2000[2] of the Court of Appeals in CA-G.R. CV No. 44784, N.V. The Netherlands Insurance Company v. Eastern Shipping Lines, Inc.

On July 4, 1985, Sunglobe International Corporation shipped five cases containing a total of 5,000 pieces of pre-sensitized printing plates from Yokohama, Japan on board the vessel M/S Eastern Venus, owned and operated by herein petitioner Eastern Shipping Lines, Inc. The shipment, covered by Bill of Lading No. YMA-14,[3] was bound for Manila for delivery to the consignee, Liwayway Publishing, Inc.

The shipment was insured for P398,118 by respondent N.V. Netherlands Insurance Company under Marine Risk Insurance Note No. 21.01940.01P.[4]

The shipment arrived in Manila on July 20, 1985[5] and was unloaded from the vessel to the custody of arrastre operator Metro Port Services, Inc. (Metro Port) from July 21 to July 22, 1985. Three of the five cases, Cases Nos. 1, 2, and 4 were accepted by Metro Port in good order condition on account of which two Good Order Cargo Receipts were accomplished and signed by the representative of the vessel and that of Metroport.

As Cases Nos. 3 and 5 were found to be in bad order, Bad Order Cargo Receipt No. 10226 dated July 21, 1985[6] covering Case No. 3 and Bad Order Cargo Receipt No. 10227 dated July 22, 1985[7] covering Case No. 5 were accomplished and duly signed also by the representative of the vessel and that of Metro Port.

On July 23, 1985, Metro Port issued two "Turn Over Survey of Bad Order Cargoes"[8] which were signed by a representative of the vessel and a representative of Metro Port covering Cases Nos. 3 and 5.

Before Cases Nos. 3 and 5 were formally turned over from the vessel to Metro Port or on July 23, 1985, a surveyor engaged by petitioner, R & R Industrial Surveyors, Co., Inc. (R & R Surveyors), inspected the cargoes covering said cases, following which it issued on even date two documents denominated as "BAD ORDER CARGO INSPECTED ON BOARD PRIOR TO DISCHARGE/AFTER LEAVING SHIP'S TACKLE" which were signed by its representative and that of Metro Port. In the first document covering Case No. 3, R & R Surveyors found its wooden case to be "broken on sides," albeit the packages inside were "ok," while in the second document covering Case No. 5, it found its wooden case to be "badly broken," but the packages inside were "ok."

After the entire shipment was withdrawn from the pier and delivered to the consignee's warehouse[9] on July 26, 1985, the consignee engaged the services of another surveyor, Audemus Adjustment Corporation, to inspect the shipment. The consignee was later to claim, by letter of August 30, 1985 addressed to petitioner, damages "for

total loss" in the amount of P41,065.88 sustained by Case No. 4.[10] The letter read:

> x x x x
>
> Please be informed that as per survey report of Audemus Adjustment Corporation, two (2) wooden cases out of the subject shipment arrived in bad order condition. [H]owever, from damaged case No. 4, Fourteen (14) packages were torn on sides, contents partly exposed. The entire 15 packages each containing 30 pieces printing plates are not usable for the purpose intended, hence we are declaring our claim for total loss.
>
> Per commercial invoice, packing list, certificate of weight and measurement, marine risk note, B.O. turnover Nos. 58744 and 58755 [sic][11] and Bad Order Survey No. 31166 and B/L No. YMA-14:
>
> _____
>
> 14 cartons each of 30 pieces = 420 pcs. "ALMAX"
> Nega, AAN 621x915x.30mm @ US$3.62 = US$ 1,520.40
> @ exchange rate P18.68= P28,401.07
>
> Add: Proportionate share on:
>
> Customs duty P89,007.00
> Compensating tax 44,679.00
> Import fee 250.00
> Insurance Premium 4,522.98
> Brokerage 3,078.73
> Doc. Stamp 487.50
>
> P142,025.21
> $1,520.40 x P142,025 =
> $17,050.00 12,664.81
>
> Our Claim - - - - - - - - - - - - - - - - - P41,065.88
>
> x x x x (Emphasis and underscoring supplied)

Petitioner denied the consignee's claim by letter of September 30, 1985[12] as the cargo claimed to have been damaged was, per its records of discharge, intact and in good condition.

Meanwhile, respondent issued a check in favor of the consignee in the amount of P35,501.38 representing "full and final settlement of the marine cargo claim" covered by the Marine Risk Insurance Note.[13] The consignee thus issued to respondent a Letter of Subrogation ceding its right to the refund of P35,501.38.[14] Respondent failed to get petitioner to settle the said amount, however, hence, it filed on July 11, 1986 a Complaint for sum of money[15] before the RTC of Makati, docketed as Civil Case No. 14309.

Resolving in the negative the issues of 1) whether Case No. 4 sustained damage while under the custody and control of petitioner, and 2) whether petitioner is liable for the payment of the amount of P31,501.38 claimed by respondent,[16] the trial court, by Judgment dated October 15, 1993,[17] dismissed respondent's complaint.

On appeal by respondent, the appellate court, by the assailed Decision of September 7, 2000,[18] reversed the trial court's decision in light of the following observations:

> In this case, there is no proof adduced to show that the carrier had indeed exercised the foresight required by law. Instead, defendant Eastern sought to escape liability on the defense that the damages attending the shipment occurred, or were discovered, when the same were already discharged from the vessel and were already in the custody of the consignee.

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> A review of the evidence presented shows, however, that contrary to the defendant's[-herein petitioner's] claim, the two (2) cases of pre-sensitized plates were damaged while they were under the responsibility of the carrier, and were reported in bad order at the time they were discharged.
>
> Upon leaving the vessel's tackle, prior to discharging the consignee's property, two cases containing the imported plates were reported to be in bad order by R and R Industrial Surveyors Inc., the cargo surveyors employed by defendant Eastern. (Exhibits "9" and "10") One of the cases were reported as "broken at one side" while the other was "badly broken." It must be remarked that the cargo inside the broken cases consisted of pre-sensitized plates used for printing purposes. They are light sensitive, such that any unwanted exposure to light will render them unsuitable for further use. The slightest damage to their cases would necessarily result in their damage.
>
> Apart from this, the arrastre operator Metroport Services, Inc. reported that two cases of the subject shipment "were discharged in bad order from the vessel and loss or damage arising therefrom is the vessel's responsibility." (Exhibit "F")[19] (Underscoring supplied)

Accordingly, the appellate court disposed as follows:

> WHEREFORE, premises considered, the instant appeal from the Judgment of the Regional Trial Court is hereby GRANTED. The defendant-appellee Eastern Shipping Lines is hereby ORDERED to pay the plaintiff N.V. The Netherlands Insurance Company; (a) the sum of P35,501.38 with legal interest at the rate of 6% per year counted from the date of entry of the Court's judgment; and (b) the sum equivalent of 25% of the principal award abovesaid as attorney's fees.[20] (Underscoring supplied)

By Resolution of December 8, 2000,[21] the appellate court denied petitioner's Motion for Reconsideration, hence, the present petition which posits that:

> I
>
> THE TRIAL COURT'S DECISION HAS SOUND FACTUAL AND LEGAL BASES.
>
> II
>
> THE COURT OF APPEALS INCORRECTLY APPLIED THE STATUTORY PRESUMPTION OF NEGLIGENCE TO THE PRESENT CASE.[22]

While in a petition for review before this Court, only questions of law may be raised, there are instances when factual findings of the Court of Appeals may be reviewed. Thus in Insular Life Assurance Company, Ltd v. Court of Appeals, this Court stressed:

> It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the C[ourt of] A[ppeals] are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. x x x[23] (Emphasis supplied; italics in the

original.)

Petitioner draws attention to the consignee's demand letter to it which was earlier quoted, it pointing out that the documents therein mentioned referred to Cases Nos. 3 and 5, not to Case No. 4[24] the damage to which is the subject of the present claim.

Further, petitioner points out that the survey conducted by the consignee's designated surveyor Audemus Adjustment Corporation, which found the contents of Case No. 4 to be damaged, was done only on July 26, 1985 and at the consignee's warehouse.[25]

In its Comment,[26] respondent alleges that the reports of petitioner's surveyor, R & R Surveyors, show that the damage was found while the shipment was "on board prior to discharge/after leaving ship's tackle,"[27]

To enlighten this Court whether the fault lies on petitioner, a consideration of the cargo receipts issued by petitioner, the turnover of survey of bad cargoes issued by arrastre operator Metro Port, and bad order cargo inspection report of petitioner-engaged R & R Surveyors, as reflected in the following tabulation, is in order:

Case Number Issued by Eastern Shipping Lines Issued by Metro Port Issued by R & R Surveyors

Case No. 1 Good Order Cargo Receipt No. 152795 dated July 21, 1985 (Exh. "5")

Case No. 2 Good Order Cargo Receipt No. 152795 dated July 21, 1985 (Exh. "5")[28]

Case No. 3 Bad Order Cargo Receipt No. 10226 dated July 21, 1985 (Exh. "7") Turnover of Survey of Bad Cargoes Receipt No. 58744 dated July 23, 1985 (Exh. "4") Bad Order Cargo Inspected on Board Prior to Discharge/ After Leaving Ship's Tackle dated July 23, 1985 (Exh. "9")

Case No. 4 Good Order Cargo Receipt No. 152999 dated July 22, 1985 (Exh. "6")

Case No. 5 Bad Order Cargo Receipt No. 10227 dated July 22, 1985 (Exh. "8") Turnover of Survey of Bad Cargoes Receipt No. 58745 dated July 23, 1985 (Exh. "3") Bad Order Cargo Inspected on Board Prior to Discharge/ After Leaving Ship's Tackle dated July 23, 1985 (Exh. "10")

From the above tabulation, Case No. 4 was found by petitioner to be in good order.

Respondent would want this Court to believe, however, that all the Cases, including Case No. 4, were inspected on board prior to discharge/ after leaving the ship's tackle. In support of respondent's position, it cites Exhibits "9" and "10"[29] issued by R & R Surveyors whose services, it bears repeating, were engaged by petitioner. From the above tabulation, however, it appears that Exhs. "9" and "10" refer to the inspection made by the said surveyor firm on Case Nos. 3 and 5. Obviously, there was no need to re-examine or resurvey Cases Nos. 1, 2 and 4, they appearing to have been unqualifiedly accepted by arrastre operator Metro Port, hence, the absence of any comment/information thereon, as the above tabulation reflects.

If Case No. 4 was also inspected and found to be in bad order, would not R & R Surveyors have made a written memorandum thereof? And if R & R Surveyors failed to put in writing any such findings, would not the representative of Metro Port have demanded from it the issuance of a Bad Order Cargo Inspected on Board Prior to Discharge/After Leaving Ship's Tackle similar to Exhibits "9" and "10"?

Respondent demurs to the applicability to the case at bar of this Court's ruling in Summa Insurance Corporation v. CA[30] and in Hartford Fire Insurance Co. v. E. Razon, Inc.[31] cited by petitioner.

In Summa Insurance, the shipment was discharged from the ship to the custody of the arrastre operator Metro Port. Three good order cargo receipts were issued by the ship owner which were signed by its checker and the

representative of the arrastre operator. When the shipment arrived and was inspected at the warehouse of the consignee, a bundle-part of the shipment was missing. The arrastre operator thereupon issued a shortlanded certificate stating that the bundle was already missing when it received the shipment from the ship.

Relying more on the good order cargo receipts issued by the ship owner than on the short-landed certificate issued by the arrastre operator, the trial court, still in Summa Insurance, held:

> As between the aforementioned two documentary exhibits, the Court is more inclined to give credence to the cargo receipts. Said cargo receipts were signed by a checker of defendant NGSC and a representative of Metro Port. It is safe to presume that the cargo receipts accurately describe the quantity and condition of the shipment when it was discharged from the vessel. Metro Port's representative would not have signed the cargo receipts if only four (4) packages were discharged from the vessel and given to the possession and custody of the arrastre operator. Having been signed by its representative, the Metro Port is bound by the contents of the cargo receipts.
>
> On the other hand, the Metro Port's shortlanded certificate could not be given weight considering that, as correctly argued by counsel for defendant NGSC, it was issued by Metro Port alone and was not countersigned by the representatives of the shipping company and the consignee. Besides, the certificate was prepared by Atty. Servillano V. Dolina, Second Deputy General Manager of Metro Port, and there is no proof on record that he was present at the time the subject shipment was unloaded from the vessel and received by the arrastre operator. Moreover, the shortlanded certificate bears the date of March 15, 1982, more than three months after the discharge of the cargo from the carrying vessel.[32] (Underscoring supplied)

The trial court's above-quoted findings were cited with approval by this Court.

As in the case of Summa Insurance, petitioner-vessel owner issued Good Order Cargo Receipt No. 152999[33] dated July 22, 1985 covering Case No. 4 which was signed by its representative and countersigned by arrastre operator Metro Port.

The signature of the representative of Metro Port appears under the statement: "Above described goods checked and received as to quantity, quality and description upon discharge."[34]

As posited by petitioner, Metro Port's representative would certainly have refused to sign Good Order Cargo Receipt No. 152999 if Case No. 4 and/or its contents were indeed damaged.[35]

In Hartford Fire Insurance,[36] this Court, in determining the issue of where the damage to the contents of three drums of brake fluid occurred, took into account the information appearing in the Request for Bad Order Survey which did not reflect any such damage.

> x x x x
>
> Of crucial significance is the condition of the cargo as described in defendant[-arrastre operator]'s Request for Bad Order Survey prepared before the release of the goods to the consignee's broker as follows:
>
> "3 drums brake fluid, in apparent good order, contents complete except each dented at rims."
>
> The said Certificate was signed not only by defendant's inspector but also by the consignee's representative. It shows that while the rims of the drums were dented the contents thereof were complete. If, as the marine survey showed, "it was evident that the contents had leaked as shown by stain marks on various parts of the containers," then, those stain marks should have been evident as well when defendant's Bad Order Certificate was prepared. The consignee's representative would surely have noticed it and would have caused a notation to that effect to have been made in the Bad Order Certificate. The fact that the Certificate was silent on that point but that instead it specifically indicated that the contents, as detected upon survey at the consignee's warehouse,

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> must have occurred after the cargo had left defendant's custody. x x x[37] (Italics in the original; underscoring supplied)

As in Hartford Fire Insurance, in the present case, the July 26, 1985 Request for Bad Order Survey[38] issued by Metro Port which was signed by its representative and that of the consignee did not cover or refer to Case No. 4.

The form Report dated October 31, 1985 of Metro Port[39] wherein the blanks therein were, in so far as they are pertinent, filled up as follows:

> xxx 2. The two (2) cases covered by our B.O. Examination Report(s) No. (s) 31166 was/were discharged in bad order from the vessel and loss or damage arising therefrom is the vessel's responsibility,

cannot be given weight since above-cited B.O. Examination Report No. 31166 refers to Turnover of Survey of Bad Cargoes Receipt Nos. 58744 and 58745 covering Cases Nos. 3 and 5, respectively, as the above tabulation clearly shows.

Nor can the Report of Audemus Adjustment Corporation[40] be given weight, since it conducted the inspection only on July 26, 1985, at the consignee's warehouse, and in the absence of any representative of the shipping company.[41]

In fine, Case No. 4 was not in a damaged state when petitioner discharged it to arrastre operator Metro Port. Petitioner cannot thus be held liable for any damages on Case No. 4 that may have been discovered after its delivery to the consignee.

WHEREFORE, the petition is GRANTED. The assailed Decision dated September 7, 2000 and Resolution dated December 8, 2000 of the Court of Appeals are REVERSED and SET ASIDE. The Decision dated October 15, 1993 of the Regional Trial Court (RTC) Branch 64, Makati is, in light of the foregoing discussions, REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr. JJ., concur.

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[1] CA rollo, pp. 166-170. Penned by Justice Rodrigo V. Cosico with the concurrence of Justices Godardo A. Jacinto and Bienvenido L. Reyes.

[2] Rollo, pp. 35-36. In CA rollo, p. 184, a resolution of another case (CA-GR SP No. 57085) was inadvertently attached.

[3] Exh. "I," RTC records, p. 147.

[4] Exh. "A," id. at 137.

[5] In the Complaint, RTC records, p. 2, respondent (plaintiff therein) alleged that the shipment's arrival in Manila was July 5, 1985.

[6] Exh. "7," RTC records, p. 237.

[7] Exh. "8," ibid.

[8] Receipt No. 58744, Exh. "3" and submarkings, RTC records, p. 234; Receipt No. 58745, Exh. "4" and submarkings, RTC records, p. 235.

[9] Delivery Receipt No. 2598 dated July 26, 1985 issued by Straight Commercial Cargo Forwarders, Exh. "J," and "J-1," p.148.

[10]Demand Letter dated August 30, 1985, Exh. "K," RTC records, pp. 149-150.

[11]Should be 58745.

[12] Exh. "L", RTC records, p. 151.

[13] Exh. "C," id. at 141.

[14]Exh. "D," id. at 142.

[15] Id. at 1-4.

[16] Judgment, id. at 283-284.

[17] RTC records, pp. 281-289.

[18]Vide note 1.

[19] CA rollo, p. 168.

[20]CA rollo, p. 170.

[21] Vide note 2.

[22]Rollo, p. 13.

[23] G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[24]Rollo, p. 19.

[25] Ibid.

[26]Id. at 133-140.

[27] Id. at 136.

[28] Only one receipt was issued for cases 1 and 2.

[29]Respondent's Memorandum, rollo, p. 222.

[30]323 Phil. 214 (1996).

[31] G. R. No. L-43748, February 28, 1979, 88 SCRA 759.

[32]323 Phil. 214, 220-221(1996).

[33] Exhibit No. "6," RTC records, p. 236.

[34] Ibid.

[35] Petition, rollo, p. 21.

[36] Supra note 31.

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[37] 88 SCRA 759, 763.

[38]Exh. "E," RTC records, p. 143.

[39] Exh. "F," id. at 144.

[40]Exh. "B," id. at 138-140.

[41] TSN, November 13, 1987, pp. 107-108. On cross-examination, Mr. Augusto Sahagun (also spelled Sajagon and Sahagun) of Liwayway Publishing, Inc., testified:

> Q [Atty. Namit] : When this shipment was inspected, aside from you, who were present?
> A: The representative from Audemus Adjuster and our technicians from Liwayway Publishing, Inc.
> Q: No more?
> A: Yes, Sir.
> x x x x
> Q: Did you also inform Eastern Shipping Lines?
> A: No, Sir.
> Q: So, the inspection was made without any representative from Eastern Shipping Lines?
> A: Yes, Sir.
> Q: And as a matter of fact, you did not even notify that an inspection shall be conducted on the shipment?
> A: No, Sir.

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