DELSAN TRANSPORT LINES, INC., PETITIONER, VS. AMERICAN HOME ASSURANCE CORPORATION, RESPONDENT.

G.R. NO. 149019. August 15, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

By this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Delsan Transport Lines, Inc. (Delsan hereafter) assails and seeks to set aside the Decision,[1] dated July 16, 2001, of the Court of Appeals (CA) in CA-G.R. CV No. 40951 affirming an earlier decision of the Regional Trial Court (RTC) of Manila, Branch IX, in two separate complaints for damages docketed as Civil Case No. 85-29357 and Civil Case No. 85-30559.

The facts:

Delsan is a domestic corporation which owns and operates the vessel MT Larusan. On the other hand, respondent American Home Assurance Corporation (AHAC for brevity) is a foreign insurance company duly licensed to do business in the Philippines through its agent, the American-International Underwriters, Inc. (Phils.). It is engaged, among others, in insuring cargoes for transportation within the Philippines.

On August 5, 1984, Delsan received on board MT Larusan a shipment consisting of 1,986.627 k/l Automotive Diesel Oil (diesel oil) at the Bataan Refinery Corporation for transportation and delivery to the bulk depot in Bacolod City of Caltex Phils., Inc. (Caltex), pursuant to a Contract of Afreightment. The shipment was insured by respondent AHAC against all risks under Inland Floater Policy No. AH-IF64-1011549P and Marine Risk Note No. 34-5093-6.

On August 7, 1984, the shipment arrived in Bacolod City. Immediately thereafter, unloading operations commenced. The discharging of the diesel oil started at about 1:30 PM of the same day. However, at about 10:30 PM, the discharging had to be stopped on account of the discovery that the port bow mooring of the vessel was intentionally cut or stolen by unknown persons. Because there was nothing holding it, the vessel drifted westward, dragged and stretched the flexible rubber hose attached to the riser, broke the elbow into pieces, severed completely the rubber hose connected to the tanker from the main delivery line at sea bed level and ultimately caused the diesel oil to spill into the sea. To avoid further spillage, the vessel's crew tried water flushing to clear the line of the diesel oil but to no avail. In the meantime, the shore tender, who was waiting for the completion of the water flushing, was surprised when the tanker signaled a "red light" which meant stop pumping. Unaware of what happened, the shore tender, thinking that the vessel would, at any time, resume pumping, did not shut the storage tank gate valve. As all the gate valves remained open, the diesel oil that was earlier discharged from the vessel into the shore tank backflowed. Due to non-availability of a pump boat, the vessel could not send somebody ashore to inform the people at the depot about what happened. After almost an hour, a gauger and an assistant surveyor from the Caltex's Bulk Depot Office boarded the vessel. It was only then that they found out what had happened. Thereafter, the duo immediately went ashore to see to it that the shore tank gate valve was

closed. The loss of diesel oil due to spillage was placed at 113.788 k/l while some 435,081 k/l thereof backflowed from the shore tank.

As a result of spillage and backflow of diesel oil, Caltex sought recovery of the loss from Delsan, but the latter refused to pay. As insurer, AHAC paid Caltex the sum of P479,262.57 for spillage, pursuant to Marine Risk Note No. 34-5093-6, and P1,939,575.37 for backflow of the diesel oil pursuant to Inland Floater Policy No. AH-1F64-1011549P.

On February 19, 1985, AHAC, as Caltex's subrogee, instituted Civil Case No. 85-29357 against Delsan before the Manila RTC, Branch 9, for loss caused by the spillage. It likewise prayed that it be indemnified for damages suffered in the amount of P652,432.57 plus legal interest thereon.

Also, on May 5, 1985, in the Manila RTC, Branch 31, AHAC instituted Civil Case No. 85-30559 against Delsan for the loss caused by the backflow. It likewise prayed that it be awarded the amount of P1,939,575.37 for damages and reasonable attorney's fees. As counterclaim in both cases, AHAC prayed for attorney's fees in the amount of P200,000.00 and P500.00 for every court appearance.

Since the cause of action in both cases arose out of the same incident and involved the same issues, the two were consolidated and assigned to Branch 9 of the court.

On August 31, 1989, the trial court rendered its decision[2] in favor of AHAC holding Delsan liable for the loss of the cargo for its negligence in its duty as a common carrier. Dispositively, the decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> A). In Civil Case No. 85-30559:
>
> (1) Ordering the defendant (petitioner Delsan) to pay plaintiff (respondent AHAC) the sum of P1,939,575.37 with interest thereon at the legal rate from November 21, 1984 until fully paid and satisfied; and
>
> (2) Ordering defendant to pay plaintiff the sum of P10,000.00 as and for attorney's fees.
>
> For lack of merit, the counterclaim is hereby dismissed.
>
> B). In Civil Case No. 85-29357:
>
> (1) Ordering defendant to pay plaintiff the sum of P479,262.57 with interest thereon at the legal rate from February 6, 1985 until fully paid and satisfied;
>
> (2) Ordering defendant to pay plaintiff the sum of P5,000.00 as and for attorney's fees.
>
> For lack of merit, the counterclaim is hereby dismissed.
>
> Costs against the defendant.
>
> SO ORDERED.

In time, Delsan appealed to the CA whereat its recourse was docketed as CA-G.R. CV No. 40951.

In the herein challenged decision,[3] the CA affirmed the findings of the trial court. In so ruling, the CA declared that Delsan failed to exercise the extraordinary diligence of a good father of a family in the handling of its cargo. Applying Article 1736[4] of the Civil Code, the CA ruled that since the discharging of the diesel oil into Caltex bulk depot had not been completed at the time the losses occurred, there was no reason to imply that there was actual delivery of the cargo to Caltex, the consignee. We quote the fallo of the CA decision:

> WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court of Manila, Branch 09

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> in Civil Case Nos. 85-29357 and 85-30559 is hereby AFFIRMED with a modification that attorney's fees awarded in Civil Case Nos. 85-29357 and 85-30559 are hereby DELETED.
>
> SO ORDERED.

Delsan is now before the Court raising substantially the same issues proffered before the CA.

Principally, Delsan insists that the CA committed reversible error in ruling that Article 1734 of the Civil Code cannot exculpate it from liability for the loss of the subject cargo and in not applying the rule on contributory negligence against Caltex, the shipper-owner of the cargo, and in not taking into consideration the fact that the loss due to backflow occurred when the diesel oil was already completely delivered to Caltex.

We are not persuaded.

In resolving this appeal, the Court reiterates the oft-stated doctrine that factual findings of the CA, affirmatory of those of the trial court, are binding on the Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[5]

Delsan would have the Court absolve it from liability for the loss of its cargo on two grounds. First, the loss through spillage was partly due to the contributory negligence of Caltex; and Second, the loss through backflow should not be borne by Delsan because it was already delivered to Caltex's shore tank.

Common carriers are bound to observe extraordinary diligence in the vigilance over the goods transported by them. They are presumed to have been at fault or to have acted negligently if the goods are lost, destroyed or deteriorated.[6] To overcome the presumption of negligence in case of loss, destruction or deterioration of the goods, the common carrier must prove that it exercised extraordinary diligence. There are, however, exceptions to this rule. Article 1734 of the Civil Code enumerates the instances when the presumption of negligence does not attach:

> Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:
>
> 1) Flood storm, earthquake, lightning, or other natural disaster or calamity;
>
> 2) Act of the public enemy in war, whether international or civil;
>
> 3) Act or omission of the shipper or owner of the goods;
>
> 4) The character of the goods or defects in the packing or in the containers;
>
> 5) Order or act of competent public authority.

Both the trial court and the CA uniformly ruled that Delsan failed to prove its claim that there was a contributory negligence on the part of the owner of the goods – Caltex. We see no reason to depart therefrom. As aptly pointed out by the CA, it had been established that the proximate cause of the spillage and backflow of the diesel oil was due to the severance of the port bow mooring line of the vessel and the failure of the shore tender to close the storage tank gate valve even as a check on the drain cock showed that there was still a product on the pipeline. To the two courts below, the actuation of the gauger and the escort surveyor, both personnel from the Caltex Bulk Depot, negates the allegation that Caltex was remiss in its duties. As we see it, the crew of the vessel should have promptly informed the shore tender that the port mooring line was cut off. However, Delsan did not do so on the lame excuse that there was no available banca. As it is, Delsan's personnel signaled a "red light" which was not a sufficient warning because such signal only meant that the pumping of diesel oil had been finished. Neither did the blowing of whistle suffice considering the distance of more than 2 kilometers between the vessel and the

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Caltex Bulk Depot, aside from the fact that it was not the agreed signal. Had the gauger and the escort surveyor from Caltex Bulk Depot not gone aboard the vessel to make inquiries, the shore tender would have not known what really happened. The crew of the vessel should have exerted utmost effort to immediately inform the shore tender that the port bow mooring line was severed.

To be sure, Delsan, as the owner of the vessel, was obliged to prove that the loss was caused by one of the excepted causes if it were to seek exemption from responsibility.[7] Unfortunately, it miserably failed to discharge this burden by the required quantum of proof.

Delsan's argument that it should not be held liable for the loss of diesel oil due to backflow because the same had already been actually and legally delivered to Caltex at the time it entered the shore tank holds no water. It had been settled that the subject cargo was still in the custody of Delsan because the discharging thereof has not yet been finished when the backflow occurred. Since the discharging of the cargo into the depot has not yet been completed at the time of the spillage when the backflow occurred, there is no reason to imply that there was actual delivery of the cargo to the consignee. Delsan is straining the issue by insisting that when the diesel oil entered into the tank of Caltex on shore, there was legally, at that moment, a complete delivery thereof to Caltex. To be sure, the extraordinary responsibility of common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by, the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to a person who has the right to receive them.[8] The discharging of oil products to Caltex Bulk Depot has not yet been finished, Delsan still has the duty to guard and to preserve the cargo. The carrier still has in it the responsibility to guard and preserve the goods, a duty incident to its having the goods transported.

To recapitulate, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.[9] The mere proof of delivery of goods in good order to the carrier, and their arrival in the place of destination in bad order, make out a prima facie case against the carrier, so that if no explanation is given as to how the injury occurred, the carrier must be held responsible. It is incumbent upon the carrier to prove that the loss was due to accident or some other circumstances inconsistent with its liability.[10]

All told, Delsan, being a common carrier, should have exercised extraordinary diligence in the performance of its duties. Consequently, it is obliged to prove that the damage to its cargo was caused by one of the excepted causes if it were to seek exemption from responsibility.[11] Having failed to do so, Delsan must bear the consequences.

WHEREFORE, petition is DENIED and the assailed decision of the CA is AFFIRMED in toto.

Cost against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Eubulo G. Verzola and Marina L. Buzon, concurring; Rollo, pp. 51-66.

[2] Rollo, pp. 103-107.

[3] Supra note 1.

[4] Art. 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of Article 1738.

[5] Maximino Fuentes v. The Hon. Court of Appeals, Thirteenth Division, and Virgilio Uy, Brigido Saguindang, Leoncio Caligang, et al., G.R. No. 109849, February 26, 1997, 268 SCRA 703.

[6] Asia Lighterage and Shipping, Inc. v. Court of Appeals and Prudential Guarantee And Assurance, Inc., G.R. No. 147246, August 19, 2003, 403 SCRA 340.

[7] Martini Limited v. Macondray and Co., 39 Phil. 934 (1919).

[8] Article 1736, Civil Code.

[9] Article 1733, Civil Code.

[10] Ynchausti Steamship v. Dexter & Unson, 41 Phil. 289 (1920).

[11] Supra note 6.

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