

**SCHMITZ TRANSPORT & BROKERAGE CORPORATION,
PETITIONER, VS. TRANSPORT VENTURE, INC., INDUSTRIAL
INSURANCE COMPANY, LTD., AND BLACK SEA SHIPPING AND
DODWELL NOW INCHCAPE SHIPPING ...**

G.R. NO. 150255. April 22, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

On petition for review is the June 27, 2001 Decision[1] of the Court of Appeals, as well as its Resolution[2] dated September 28, 2001 denying the motion for reconsideration, which affirmed that of Branch 21 of the Regional Trial Court (RTC) of Manila in Civil Case No. 92-63132[3] holding petitioner Schmitz Transport Brokerage Corporation (Schmitz Transport), together with Black Sea Shipping Corporation (Black Sea), represented by its ship agent Inchcape Shipping Inc. (Inchcape), and Transport Venture (TVI), solidarily liable for the loss of 37 hot rolled steel sheets in coil that were washed overboard a barge.

On September 25, 1991, SYTCO Pte Ltd. Singapore shipped from the port of Ilyichevsk, Russia on board M/V “Alexander Saveliev” (a vessel of Russian registry and owned by Black Sea) 545 hot rolled steel sheets in coil weighing 6,992,450 metric tons.

The cargoes, which were to be discharged at the port of Manila in favor of the consignee, Little Giant Steel Pipe Corporation (Little Giant),[4] were insured against all risks with Industrial Insurance Company Ltd. (Industrial Insurance) under Marine Policy No. M-91-3747-TIS.[5]

The vessel arrived at the port of Manila on October 24, 1991 and the Philippine Ports Authority (PPA) assigned it a place of berth at the outside breakwater at the Manila South Harbor.[6]

Schmitz Transport, whose services the consignee engaged to secure the requisite clearances, to receive the cargoes from the shipside, and to deliver them to its (the consignee’s) warehouse at Cainta, Rizal,[7] in turn engaged the services of TVI to send a barge and tugboat at shipside.

On October 26, 1991, around 4:30 p.m., TVI’s tugboat “Lailani” towed the barge “Erika V” to shipside.[8]

By 7:00 p.m. also of October 26, 1991, the tugboat, after positioning the barge alongside the vessel, left and returned to the port terminal.[9] At 9:00 p.m., arrastre operator Ocean Terminal Services Inc. commenced to unload 37 of the 545 coils from the vessel unto the barge.

By 12:30 a.m. of October 27, 1991 during which the weather condition had become inclement due to an approaching storm, the unloading unto the barge of the 37 coils was accomplished.[10] No tugboat pulled the barge back to the pier, however.

At around 5:30 a.m. of October 27, 1991, due to strong waves,[11] the crew of the barge abandoned it and transferred to the vessel. The barge pitched and rolled with the waves and eventually capsized, washing the 37

coils into the sea.[12] At 7:00 a.m., a tugboat finally arrived to pull the already empty and damaged barge back to the pier.[13]

Earnest efforts on the part of both the consignee Little Giant and Industrial Insurance to recover the lost cargoes proved futile.[14]

Little Giant thus filed a formal claim against Industrial Insurance which paid it the amount of P5,246,113.11. Little Giant thereupon executed a subrogation receipt[15] in favor of Industrial Insurance.

Industrial Insurance later filed a complaint against Schmitz Transport, TVI, and Black Sea through its representative Inchcape (the defendants) before the RTC of Manila, for the recovery of the amount it paid to Little Giant plus adjustment fees, attorney's fees, and litigation expenses.[16]

Industrial Insurance faulted the defendants for undertaking the unloading of the cargoes while typhoon signal No. 1 was raised in Metro Manila.[17]

By Decision of November 24, 1997, Branch 21 of the RTC held all the defendants negligent for unloading the cargoes outside of the breakwater notwithstanding the storm signal.[18] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court renders judgment in favor of the plaintiff, ordering the defendants to pay plaintiff jointly and severally the sum of P5,246,113.11 with interest from the date the complaint was filed until fully satisfied, as well as the sum of P5,000.00 representing the adjustment fee plus the sum of 20% of the amount recoverable from the defendants as attorney's fees plus the costs of suit. The counterclaims and cross claims of defendants are hereby DISMISSED for lack of [m]erit.[19]

To the trial court's decision, the defendants Schmitz Transport and TVI filed a joint motion for reconsideration assailing the finding that they are common carriers and the award of excessive attorney's fees of more than P1,000,000. And they argued that they were not motivated by gross or evident bad faith and that the incident was caused by a fortuitous event. [20]

By resolution of February 4, 1998, the trial court denied the motion for reconsideration. [21]

All the defendants appealed to the Court of Appeals which, by decision of June 27, 2001, affirmed in toto the decision of the trial court, [22] it finding that all the defendants were common carriers — Black Sea and TVI for engaging in the transport of goods and cargoes over the seas as a regular business and not as an isolated transaction,[23] and Schmitz Transport for entering into a contract with Little Giant to transport the cargoes from ship to port for a fee.[24]

In holding all the defendants solidarily liable, the appellate court ruled that “each one was essential such that without each other's contributory negligence the incident would not have happened and so much so that the person principally liable cannot be distinguished with sufficient accuracy.”[25]

In discrediting the defense of fortuitous event, the appellate court held that “although defendants obviously had nothing to do with the force of nature, they however had control of where to anchor the vessel, where discharge will take place and even when the discharging will commence.”[26]

The defendants' respective motions for reconsideration having been denied by Resolution[27] of September 28, 2001, Schmitz Transport (hereinafter referred to as petitioner) filed the present petition against TVI, Industrial Insurance and Black Sea.

Petitioner asserts that in chartering the barge and tugboat of TVI, it was acting for its principal, consignee Little

Giant, hence, the transportation contract was by and between Little Giant and TVI.[28]

By Resolution of January 23, 2002, herein respondents Industrial Insurance, Black Sea, and TVI were required to file their respective Comments.[29]

By its Comment, Black Sea argued that the cargoes were received by the consignee through petitioner in good order, hence, it cannot be faulted, it having had no control and supervision thereover.[30]

For its part, TVI maintained that it acted as a passive party as it merely received the cargoes and transferred them unto the barge upon the instruction of petitioner.[31]

In issue then are:

(1) Whether the loss of the cargoes was due to a fortuitous event, independent of any act of negligence on the part of petitioner Black Sea and TVI, and

(2) If there was negligence, whether liability for the loss may attach to Black Sea, petitioner and TVI.

When a fortuitous event occurs, Article 1174 of the Civil Code absolves any party from any and all liability arising therefrom:

ART. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

In order, to be considered a fortuitous event, however, (1) the cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligation, must be independent of human will; (2) it must be impossible to foresee the event which constitute the *caso fortuito*, or if it can be foreseen it must be impossible to avoid; (3) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in any manner; and (4) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.[32]

[T]he principle embodied in the act of God doctrine strictly requires that the act must be occasioned solely by the violence of nature. Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God.[33]

The appellate court, in affirming the finding of the trial court that human intervention in the form of contributory negligence by all the defendants resulted to the loss of the cargoes,[34] held that unloading outside the breakwater, instead of inside the breakwater, while a storm signal was up constitutes negligence.[35] It thus concluded that the proximate cause of the loss was Black Sea's negligence in deciding to unload the cargoes at an unsafe place and while a typhoon was approaching.[36]

From a review of the records of the case, there is no indication that there was greater risk in loading the cargoes outside the breakwater. As the defendants proffered, the weather on October 26, 1991 remained normal with moderate sea condition such that port operations continued and proceeded normally.[37]

The weather data report,[38] furnished and verified by the Chief of the Climate Data Section of PAG-ASA and marked as a common exhibit of the parties, states that while typhoon signal No. 1 was hoisted over Metro Manila on October 23-31, 1991, the sea condition at the port of Manila at 5:00 p.m. - 11:00 p.m. of October 26, 1991 was moderate. It cannot, therefore, be said that the defendants were negligent in not unloading the cargoes upon the barge on October 26, 1991 inside the breakwater.

That no tugboat towed back the barge to the pier after the cargoes were completely loaded by 12:30 in the morning[39] is, however, a material fact which the appellate court failed to properly consider and appreciate[40] — the proximate cause of the loss of the cargoes. Had the barge been towed back promptly to the pier, the deteriorating sea conditions notwithstanding, the loss could have been avoided. But the barge was left floating in open sea until big waves set in at 5:30 a.m., causing it to sink along with the cargoes.[41] The loss thus falls outside the “act of God doctrine.”

The proximate cause of the loss having been determined, who among the parties is/are responsible therefor?

Contrary to petitioner’s insistence, this Court, as did the appellate court, finds that petitioner is a common carrier. For it undertook to transport the cargoes from the shipside of “M/V Alexander Saveliev” to the consignee’s warehouse at Cainta, Rizal. As the appellate court put it, “as long as a person or corporation holds [itself] to the public for the purpose of transporting goods as [a] business, [it] is already considered a common carrier regardless if [it] owns the vehicle to be used or has to hire one.”[42] That petitioner is a common carrier, the testimony of its own Vice-President and General Manager Noel Aro that part of the services it offers to its clients as a brokerage firm includes the transportation of cargoes reflects so.

Atty. Jubay: Will you please tell us what [are you] functions x x x as Executive Vice-President and General Manager of said Company?

Mr. Aro: Well, I oversee the entire operation of the brokerage and transport business of the company. I also handle the various division heads of the company for operation matters, and all other related functions that the President may assign to me from time to time, Sir.

Q: Now, in connection [with] your duties and functions as you mentioned, will you please tell the Honorable Court if you came to know the company by the name Little Giant Steel Pipe Corporation?

A: Yes, Sir. Actually, we are the brokerage firm of that Company.

Q: And since when have you been the brokerage firm of that company, if you can recall?

A: Since 1990, Sir.

Q: Now, you said that you are the brokerage firm of this Company. What work or duty did you perform in behalf of this company?

A: We handled the releases (sic) of their cargo[es] from the Bureau of Customs. We [are] also in-charged of the delivery of the goods to their warehouses. We also handled the clearances of their shipment at the Bureau of Customs, Sir.

x x x

Q: Now, what precisely [was] your agreement with this Little Giant Steel Pipe Corporation with regards to this shipment? What work did you do with this shipment?

A: We handled the unloading of the cargo[es] from vessel to lighter and then the delivery of [the] cargo[es] from lighter to BASECO then to the truck and to the warehouse, Sir.

Q: Now, in connection with this work which you are doing, Mr. Witness, you are supposed to perform, what equipment do (sic) you require or did you use in order to effect this unloading, transfer and delivery to the warehouse?

A: Actually, we used the barges for the ship side operations, this unloading [from] vessel to lighter, and on this we hired or we sub-contracted with [T]ransport Ventures, Inc. which [was] in-charged (sic) of the barges. Also, in BASECO compound we are leasing cranes to have the cargo unloaded from the barge to trucks, [and] then we used trucks to deliver [the cargoes] to the consignee’s warehouse, Sir.

Q: And whose trucks do you use from BASECO compound to the consignee’s warehouse?

A: We utilized of (sic) our own trucks and we have some other contracted trucks, Sir.

x x x

ATTY. JUBAY: Will you please explain to us, to the Honorable Court why is it you have to contract for the barges of Transport Ventures Incorporated in this particular operation?

A: Firstly, we don't own any barges. That is why we hired the services of another firm whom we know [al]ready for quite sometime, which is Transport Ventures, Inc. (Emphasis supplied)[43]

It is settled that under a given set of facts, a customs broker may be regarded as a common carrier. Thus, this Court, in *A.F. Sanchez Brokerage, Inc. v. The Honorable Court of Appeals*,^[44] held:

The appellate court did not err in finding petitioner, a customs broker, to be also a common carrier, as defined under Article 1732 of the Civil Code, to wit,

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

x x x

Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity. The contention, therefore, of petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration.^[45]

And in *Calvo v. UCPB General Insurance Co. Inc.*,^[46] this Court held that as the transportation of goods is an integral part of a customs broker, the customs broker is also a common carrier. For to declare otherwise "would be to deprive those with whom [it] contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for [its] customers, is part and parcel of petitioner's business."^[47]

As for petitioner's argument that being the agent of Little Giant, any negligence it committed was deemed the negligence of its principal, it does not persuade.

True, petitioner was the broker-agent of Little Giant in securing the release of the cargoes. In effecting the transportation of the cargoes from the shipside and into Little Giant's warehouse, however, petitioner was discharging its own personal obligation under a contract of carriage.

Petitioner, which did not have any barge or tugboat, engaged the services of TVI as handler^[48] to provide the barge and the tugboat. In their Service Contract,^[49] while Little Giant was named as the consignee, petitioner did not disclose that it was acting on commission and was chartering the vessel for Little Giant.^[50] Little Giant did not thus automatically become a party to the Service Contract and was not, therefore, bound by the terms and conditions therein.

Not being a party to the service contract, Little Giant cannot directly sue TVI based thereon but it can maintain a cause of action for negligence.^[51]

In the case of TVI, while it acted as a private carrier for which it was under no duty to observe extraordinary diligence, it was still required to observe ordinary diligence to ensure the proper and careful handling, care and discharge of the carried goods.

Thus, Articles 1170 and 1173 of the Civil Code provide:

ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

ART. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2202, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Was the reasonable care and caution which an ordinarily prudent person would have used in the same situation exercised by TVI?[52]

This Court holds not.

TVI's failure to promptly provide a tugboat did not only increase the risk that might have been reasonably anticipated during the shipside operation, but was the proximate cause of the loss. A man of ordinary prudence would not leave a heavily loaded barge floating for a considerable number of hours, at such a precarious time, and in the open sea, knowing that the barge does not have any power of its own and is totally defenseless from the ravages of the sea. That it was nighttime and, therefore, the members of the crew of a tugboat would be charging overtime pay did not excuse TVI from calling for one such tugboat.

As for petitioner, for it to be relieved of liability, it should, following Article 1739[53] of the Civil Code, prove that it exercised due diligence to prevent or minimize the loss, before, during and after the occurrence of the storm in order that it may be exempted from liability for the loss of the goods.

While petitioner sent checkers[54] and a supervisor[55] on board the vessel to counter-check the operations of TVI, it failed to take all available and reasonable precautions to avoid the loss. After noting that TVI failed to arrange for the prompt towage of the barge despite the deteriorating sea conditions, it should have summoned the same or another tugboat to extend help, but it did not.

This Court holds then that petitioner and TVI are solidarily liable[56] for the loss of the cargoes. The following pronouncement of the Supreme Court is instructive:

The foundation of LRTA's liability is the contract of carriage and its obligation to indemnify the victim arises from the breach of that contract by reason of its failure to exercise the high diligence required of the common carrier. In the discharge of its commitment to ensure the safety of passengers, a carrier may choose to hire its own employees or avail itself of the services of an outsider or an independent firm to undertake the task. In either case, the common carrier is not relieved of its responsibilities under the contract of carriage.

Should Prudent be made likewise liable? If at all, that liability could only be for tort under the provisions of Article 2176 and related provisions, in conjunction with Article 2180 of the Civil Code. x x x [O]ne might ask further, how then must the liability of the common carrier, on one hand, and an independent contractor, on the other hand, be described? It would be solidary. A contractual obligation can be breached by tort and when the same act or omission causes the injury, one resulting in culpa contractual and the other in culpa aquiliana, Article 2194 of the Civil Code can well apply. In fine, a liability for tort may arise even under a contract, where tort is that which breaches the contract. Stated differently, when an act which constitutes a breach of contract would have itself constituted the source of a quasi-delictual liability had no contract existed between the parties, the contract can be said to have been breached by tort, thereby allowing the rules on tort to apply.[57]

As for Black Sea, its duty as a common carrier extended only from the time the goods were surrendered or unconditionally placed in its possession and received for transportation until they were delivered actually or

constructively to consignee Little Giant.[58]

Parties to a contract of carriage may, however, agree upon a definition of delivery that extends the services rendered by the carrier. In the case at bar, Bill of Lading No. 2 covering the shipment provides that delivery be made “to the port of discharge or so near thereto as she may safely get, always afloat.”[59] The delivery of the goods to the consignee was not from “pier to pier” but from the shipside of “M/V Alexander Saveliev” and into barges, for which reason the consignee contracted the services of petitioner. Since Black Sea had constructively delivered the cargoes to Little Giant, through petitioner, it had discharged its duty.[60]

In fine, no liability may thus attach to Black Sea.

Respecting the award of attorney’s fees in an amount over P1,000,000.00 to Industrial Insurance, for lack of factual and legal basis, this Court sets it aside. While Industrial Insurance was compelled to litigate its rights, such fact by itself does not justify the award of attorney’s fees under Article 2208 of the Civil Code. For no sufficient showing of bad faith would be reflected in a party’s persistence in a case other than an erroneous conviction of the righteousness of his cause.[61] To award attorney’s fees to a party just because the judgment is rendered in its favor would be tantamount to imposing a premium on one’s right to litigate or seek judicial redress of legitimate grievances.[62]

On the award of adjustment fees: The adjustment fees and expense of divers were incurred by Industrial Insurance in its voluntary but unsuccessful efforts to locate and retrieve the lost cargo. They do not constitute actual damages.[63]

As for the court a quo’s award of interest on the amount claimed, the same calls for modification following the ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[64] that when the demand cannot be reasonably established at the time the demand is made, the interest shall begin to run not from the time the claim is made judicially or extrajudicially but from the date the judgment of the court is made (at which the time the quantification of damages may be deemed to have been reasonably ascertained).[65]

WHEREFORE, judgment is hereby rendered ordering petitioner Schmitz Transport & Brokerage Corporation, and Transport Venture Incorporation jointly and severally liable for the amount of P5,246,113.11 with the MODIFICATION that interest at SIX PERCENT per annum of the amount due should be computed from the promulgation on November 24, 1997 of the decision of the trial court.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 47-85.

[2] Id. at 7-20.

[3] Id. at 171-177.

[4] Records at 301-303,

[5] Id. at 290.

[6] Rollo at 195.

- [7] Id. at 32.
- [8] Records at 472.
- [9] Transcript of Stenographic Notes (TSN), July 18, 1996 at 18.
- [10] Records at 333.
- [11] Id. at 332, 464.
- [12] Rollo at 125.
- [13] TSN, July 18, 1996 at 19.
- [14] Rollo at 125.
- [15] Records at 317.
- [16] Id. at 1-6.
- [17] Id. at 318-321.
- [18] Rollo at 176.
- [19] Id. at 177.
- [20] Records at 520-528.
- [21] Id. at 538.
- [22] Rollo at 69.
- [23] Id. at 53.
- [24] Id. at 63.
- [25] Id. at 69.
- [26] Id. at 55.
- [27] Id. at 7-20.
- [28] Id. at 119.
- [29] Id. at 181.
- [30] Id. at 204.
- [31] Id. at 225-226.
- [32] Yobido v. Court of Appeals, 281 SCRA 1, 9 (1997).
- [33] National Power Corporation v. Court of Appeals, 211 SCRA 162, 167 (1992).
- [34] Rollo at 69.
- [35] Id. at 59, 99.
- [36] Id. at 61.
- [37] Id. at 33, 225; CA Rollo at 33.

[38] Records at 318-321.

[39] TSN, July 18, 1996 at 19.

[40] In *Philippine American General Insurance Company v. PKS Shipping Company*, 401 SCRA 222, 230 (2003), this Court has held that findings of fact of the Court of Appeals are generally conclusive but one of the exceptions is when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion.

[41] Records at 332, 464.

[42] Rollo at 63.

[43] TSN, February 4, 1997 at 5-10.

[44] G.R. No. 147079, December 15, 2004.

[45] *A.F. Sanchez Brokerage Inc. v. The Honorable Court of Appeals*, G.R. No. 147079, December 15, 2004.

[46] 379 SCRA 510 (2002).

[47] *Calvo v. UCPB General Insurance Co., Inc.*, 379 SCRA 510, 517 (2002).

[48] Records at 521.

[49] Rollo at 90.

[50] Article 652 (5) of the Code of Commerce provides that the charter party shall contain the name, surname, and domicile of the charterer; and if he states that he is acting by commission, that of the person for whose account he makes the contract.

[51] T. SCHOENBAUM, ADMIRALTY AND MARITIME LAW 330 (1987).

[52] D. JURADO, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS* 66 (1993).

[53] Art. 1739. In order that the common carrier may be exempted from responsibility, the natural disaster must have been the proximate and only cause of the loss. However, the common carrier must exercise due diligence to prevent or minimize loss before, during and after the occurrence of flood, storm or other natural disaster in order that the common carrier may be exempted from liability for the loss, destruction, or deterioration of the good. x x x

[54] TSN, February 4, 1997 at 14-15.

[55] *Id.* at 22.

[56] CIVIL CODE, Art. 2194. The responsibility of two or more persons who are liable for a quasi-delict is solidary.

[57] *Light Rail Transit Authority v. Navidad*, 397 SCRA 75, 82-83 (2003).

[58] CIVIL CODE, Art. 1736. The extraordinary responsibility of the common carriers lasts from the time the goods are unconditionally laced 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. *Vide Eastern Shipping Lines Inc. v. Hon. Court of Appeals*, 234 SCRA 78 (1994).

[59] Records at 7.

[60] Vide *A/S Dampskibsselskabet Torm v. McDermott, Inc.*, 788 F.2d 1103, 1987 A.M.C. 353 (May 5, 1986). Vide *Proctor and Gamble, Limited v. M/T Stolt Llandaff*, 664 F.2d 1285, 1982 A.M.C. 2517 (January 4, 1982).

[61] *National Steel Corporation v. Court of Appeals*, 283 SCRA 45, 78-79 (1997).

[62] *Id.* at 45, 79.

[63] *Iron Bulk Shipping Philippines, Cp. Ltd., v. Remington Industrial Sales Corporation*, 417 SCRA 229, 240 (2003).

[64] 234 SCRA 78 (1994).

[65] *Eastern Shipping Lines, Inc. v. Court of Appeals*, *supra* at 78, 96-97.

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