

CENTRAL SHIPPING COMPANY, INC., PETITIONER, VS. INSURANCE COMPANY OF NORTH AMERICA, RESPONDENT.

G.R. No. 150751. September 20, 2004

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-150751/>

PANGANIBAN, J.:

A common carrier is presumed to be at fault or negligent. It shall be liable for the loss, destruction or deterioration of its cargo, unless it can prove that the sole and proximate cause of such event is one of the causes enumerated in Article 1734 of the Civil Code, or that it exercised extraordinary diligence to prevent or minimize the loss. In the present case, the weather condition encountered by petitioner's vessel was not a "storm" or a natural disaster comprehended in the law. Given the known weather condition prevailing during the voyage, the manner of stowage employed by the carrier was insufficient to secure the cargo from the rolling action of the sea. The carrier took a calculated risk in improperly securing the cargo. Having lost that risk, it cannot now disclaim any liability for the loss.

The Case

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the March 23, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 48915. The assailed Decision disposed as follows:

"WHEREFORE, the decision of the Regional Trial Court of Makati City, Branch 148 dated August 4, 1994 is hereby MODIFIED in so far as the award of attorney's fees is DELETED. The decision is AFFIRMED in all other respects."[3]

The CA denied petitioner's Motion for Reconsideration in its November 7, 2001 Resolution.[4]

The Facts

The factual antecedents, summarized by the trial court and adopted by the appellate court, are as follows:

"On July 25, 1990 at Puerto Princesa, Palawan, the [petitioner] received on board its vessel, the M/V 'Central Bohol', 376 pieces [of] Philippine Apitong Round Logs and undertook to transport said shipment to Manila for delivery to Alaska Lumber Co., Inc.

"The cargo was insured for P3,000,000.00 against total loss under [respondent's] Marine Cargo Policy No. MCPB-00170.

"On July 25, 1990, upon completion of loading of the cargo, the vessel left Palawan and commenced the voyage to Manila.

"At about 0125 hours on July 26, 1990, while enroute to Manila, the vessel listed about 10 degrees starboardside, due to the shifting of logs in the hold.

"At about 0128 hours, after the listing of the vessel had increased to 15 degrees, the ship captain ordered his

men to abandon ship and at about 0130 hours of the same day the vessel completely sank. Due to the sinking of the vessel, the cargo was totally lost.

“[Respondent] alleged that the total loss of the shipment was caused by the fault and negligence of the [petitioner] and its captain and as direct consequence thereof the consignee suffered damage in the sum of P3,000,000.00.

“The consignee, Alaska Lumber Co. Inc., presented a claim for the value of the shipment to the [petitioner] but the latter failed and refused to settle the claim, hence [respondent], being the insurer, paid said claim and now seeks to be subrogated to all the rights and actions of the consignee as against the [petitioner].

“[Petitioner], while admitting the sinking of the vessel, interposed the defense that the vessel was fully manned, fully equipped and in all respects seaworthy; that all the logs were properly loaded and secured; that the vessel’s master exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the storm.

“It raised as its main defense that the proximate and only cause of the sinking of its vessel and the loss of its cargo was a natural disaster, a tropical storm which neither [petitioner] nor the captain of its vessel could have foreseen.”[5]

The RTC was unconvinced that the sinking of M/V Central Bohol had been caused by the weather or any other caso fortuito. It noted that monsoons, which were common occurrences during the months of July to December, could have been foreseen and provided for by an ocean-going vessel. Applying the rule of presumptive fault or negligence against the carrier, the trial court held petitioner liable for the loss of the cargo. Thus, the RTC deducted the salvage value of the logs in the amount of P200,000 from the principal claim of respondent and found that the latter was entitled to be subrogated to the rights of the insured. The court a quo disposed as follows:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the [respondent] and against the [petitioner] ordering the latter to pay the following:

1)

the amount of P2,800,000.00 with legal interest thereof from the filing of this complaint up to and until the same is fully paid;

2)

P80,000.00 as and for attorney’s fees;

3)

Plus costs of suit.”[6]

Ruling of the Court of Appeals

The CA affirmed the trial court’s finding that the southwestern monsoon encountered by the vessel was not unforeseeable. Given the season of rains and monsoons, the ship captain and his crew should have anticipated the perils of the sea. The appellate court further held that the weather disturbance was not the sole and proximate cause of the sinking of the vessel, which was also due to the concurrent shifting of the logs in the hold that could have resulted only from improper stowage. Thus, the carrier was held responsible for the consequent loss of or damage to the cargo, because its own negligence had contributed thereto.

The CA found no merit in petitioner’s assertion of the vessel’s seaworthiness. It held that the Certificates of Inspection and Drydocking were not conclusive proofs thereof. In order to consider a vessel to be seaworthy, it

must be fit to meet the perils of the sea.

Found untenable was petitioner's insistence that the trial court should have given greater weight to the factual findings of the Board of Marine Inquiry (BMI) in the investigation of the Marine Protest filed by the ship captain, Enriquito Cahatol. The CA further observed that what petitioner had presented to the court a quo were mere excerpts of the testimony of Captain Cahatol given during the course of the proceedings before the BMI, not the actual findings and conclusions of the agency. Citing *Arada v. CA*,^[7] it said that findings of the BMI were limited to the administrative liability of the owner/operator, officers and crew of the vessel. However, the determination of whether the carrier observed extraordinary diligence in protecting the cargo it was transporting was a function of the courts, not of the BMI.

The CA concluded that the doctrine of limited liability was not applicable, in view of petitioner's negligence -- particularly its improper stowage of the logs.

Hence, this Petition.^[8]

Issues

In its Memorandum, petitioner submits the following issues for our consideration: eileen

“(i) Whether or not the weather disturbance which caused the sinking of the vessel M/V Central Bohol was a fortuitous event.

“(ii) Whether or not the investigation report prepared by Claimsmen Adjustment Corporation is hearsay evidence under Section 36, Rule 130 of the Rules of Court.

“(iii) Whether or not the finding of the Court of Appeals that ‘the logs in the hold shifted and such shifting could only be due to improper stowage’ has a valid and factual basis.

“(iv) Whether or not M/V Central Bohol is seaworthy.

“(v) Whether or not the Court of Appeals erred in not giving credence to the factual finding of the Board of Marine Inquiry (BMI), an independent government agency tasked to conduct inquiries on maritime accidents.

“(vi) Whether or not the Doctrine of Limited Liability is applicable to the case at bar.”^[9]

The issues boil down to two: (1) whether the carrier is liable for the loss of the cargo; and (2) whether the doctrine of limited liability is applicable. These issues involve a determination of factual questions of whether the loss of the cargo was due to the occurrence of a natural disaster; and if so, whether its sole and proximate cause was such natural disaster or whether petitioner was partly to blame for failing to exercise due diligence in the prevention of that loss.

The Court's Ruling

The Petition is devoid of merit.

First Issue:

Liability for Lost Cargo

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case.^[10] In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible; that is, unless they can prove that such loss, destruction or deterioration was brought about -- among others -- by “flood, storm, earthquake, lightning or other natural disaster or calamity.”^[11] In all other cases not specified under Article 1734

of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.[12]

In the present case, petitioner disclaims responsibility for the loss of the cargo by claiming the occurrence of a “storm” under Article 1734(1). It attributes the sinking of its vessel solely to the weather condition between 10:00 p.m. on July 25, 1990 and 1:25 a.m. on July 26, 1990.

At the outset, it must be stressed that only questions of law[13] may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Questions of fact are not proper subjects in this mode of appeal,[14] for “[t]he Supreme Court is not a trier of facts.”[15] Factual findings of the CA may be reviewed on appeal[16] only under exceptional circumstances such as, among others, when the inference is manifestly mistaken,[17] the judgment is based on a misapprehension of facts,[18] or the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion.[19]

In the present case, petitioner has not given the Court sufficient cogent reasons to disturb the conclusion of the CA that the weather encountered by the vessel was not a “storm” as contemplated by Article 1734(1). Established is the fact that between 10:00 p.m. on July 25, 1990 and 1:25 a.m. on July 26, 1990, M/V Central Bohol encountered a southwestern monsoon in the course of its voyage.

The Note of Marine Protest,[20] which the captain of the vessel issued under oath, stated that he and his crew encountered a southwestern monsoon about 2200 hours on July 25, 1990, and another monsoon about 2400 hours on July 26, 1990. Even petitioner admitted in its Answer that the sinking of M/V Central Bohol had been caused by the strong southwest monsoon.[21] Having made such factual representation, it cannot now be allowed to retreat and claim that the southwestern monsoon was a “storm.”

The pieces of evidence with respect to the weather conditions encountered by the vessel showed that there was a southwestern monsoon at the time. Normally expected on sea voyages, however, were such monsoons, during which strong winds were not unusual. Rosa S. Barba, weather specialist of the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA), testified that a thunderstorm might occur in the midst of a southwest monsoon. According to her, one did occur between 8:00 p.m. on July 25, 1990, and 2 a.m. on July 26, 1990, as recorded by the PAGASA Weather Bureau.[22]

Nonetheless, to our mind it would not be sufficient to categorize the weather condition at the time as a “storm” within the absolatory causes enumerated in the law. Significantly, no typhoon was observed within the Philippine area of responsibility during that period.[23]

According to PAGASA, a storm has a wind force of 48 to 55 knots,[24] equivalent to 55 to 63 miles per hour or 10 to 11 in the Beaufort Scale. The second mate of the vessel stated that the wind was blowing around force 7 to 8 on the Beaufort Scale.[25] Consequently, the strong winds accompanying the southwestern monsoon could not be classified as a “storm.” Such winds are the ordinary vicissitudes of a sea voyage.[26]

Even if the weather encountered by the ship is to be deemed a natural disaster under Article 1739 of the Civil Code, petitioner failed to show that such natural disaster or calamity was the proximate and only cause of the loss. Human agency must be entirely excluded from the cause of injury or loss. In other words, the damaging effects blamed on the event or phenomenon must not have been caused, contributed to, or worsened by the presence of human participation.[27] The defense of fortuitous event or natural disaster cannot be successfully made when the injury could have been avoided by human precaution.[28]

Hence, if a common carrier fails to exercise due diligence -- or that ordinary care that the circumstances of the particular case demand -- to prevent or minimize the loss before, during and after the occurrence of the natural

disaster, the carrier shall be deemed to have been negligent. The loss or injury is not, in a legal sense, due to a natural disaster under Article 1734(1).[29]

We also find no reason to disturb the CA's finding that the loss of the vessel was caused not only by the southwestern monsoon, but also by the shifting of the logs in the hold. Such shifting could be due only to improper stowage. The assailed Decision stated:

"Notably, in Master Cahatol's account, the vessel encountered the first southwestern monsoon at about 1[0]:00 in the evening. The monsoon was coupled with heavy rains and rough seas yet the vessel withstood the onslaught. The second monsoon attack occurred at about 12:00 midnight. During this occasion, the master 'felt' that the logs in the hold shifted, prompting him to order second mate Percival Dayanan to look at the bodega. Complying with the captain's order, 2[nd] mate Percival Dayanan found that there was seawater in the bodega. 2[nd] mate Dayanan's account was: '14.T – Kung inyo pong natatandaan ang mga pangyayari, maari mo bang isalaysay ang naganap na paglubog sa barkong M/V Central Bohol?

'S – Opo, noong ika-26 ng Julio 1990 humigit kumulang alas 1:20 ng umaga (dst) habang kami ay nagnanabegar patungong Maynila sa tapat ng Cadlao Island at Cauayan Island sakop ng El Nido, Palawan, inutusan ako ni Captain Enriquito Cahatol na tingnan ko ang bodega; nang ako ay nasa bodega, nakita ko ang loob nang bodega na maraming tubig at naririnig ko ang malakas na agos ng tubig-dagat na pumapasok sa loob ng bodega ng barko; agad bumalik ako kay Captain Enriquito Cahatol at sinabi ko ang malakas na pagpasok ng tubig-dagat sa loob nang bodega ng barko na ito ay naka-tagilid humigit kumulang sa 020 degrees, nag-order si Captain Cahatol na standby engine at tinawag ang lahat ng mga officials at mga crew nang maipon kaming lahat ang barko ay naka-tagilid at ito ay tuloy-tuloy ang pagtatagilid na ang ilan sa mga officials ay naka-hawak na sa barandilla ng barko at di-nagtagal sumigaw nang ABANDO[N] SHIP si Captain Cahatol at kami ay nagkanya-kanya nang talunan at languyan sa dagat na malakas ang alon at nang ako ay lumington sa barko ito ay di ko na nakita.'

"Additionally, [petitioner's] own witnesses, boatswain Eduardo Viñas Castro and oiler Frederick Perena, are one in saying that the vessel encountered two weather disturbances, one at around 10 o'clock to 11 o'clock in the evening and the other at around 12 o'clock midnight. Both disturbances were coupled with waves and heavy rains, yet, the vessel endured the first and not the second. Why? The reason is plain. The vessel felt the strain during the second onslaught because the logs in the bodega shifted and there were already seawater that seeped inside." [30]

The above conclusion is supported by the fact that the vessel proceeded through the first southwestern monsoon without any mishap, and that it began to list only during the second monsoon immediately after the logs had shifted and seawater had entered the hold. In the hold, the sloshing of tons of water back and forth had created pressures that eventually caused the ship to sink. Had the logs not shifted, the ship could have survived and reached at least the port of El Nido. In fact, there was another motor launch that had been buffeted by the same weather condition within the same area, yet it was able to arrive safely at El Nido.[31]

In its Answer, petitioner categorically admitted the allegation of respondent in paragraph 5 of the latter's Complaint "[t]hat at about 0125 hours on 26 July 1990, while enroute to Manila, the M/V 'Central Bohol' listed about 10 degrees starboardside, due to the shifting of logs in the hold." Further, petitioner averred that "[t]he vessel, while navigating through this second southwestern monsoon, was under extreme stress. At about 0125 hours, 26 July 1990, a thud was heard in the cargo hold and the logs therein were felt to have shifted. The vessel thereafter immediately listed by ten (10) degrees starboardside." [32]

Yet, petitioner now claims that the CA's conclusion was grounded on mere speculations and conjectures. It alleges that it was impossible for the logs to have shifted, because they had fitted exactly in the hold from the port

to the starboard side.

After carefully studying the records, we are inclined to believe that the logs did indeed shift, and that they had been improperly loaded.

According to the boatswain's testimony, the logs were piled properly, and the entire shipment was lashed to the vessel by cable wire.[33] The ship captain testified that out of the 376 pieces of round logs, around 360 had been loaded in the lower hold of the vessel and 16 on deck. The logs stored in the lower hold were not secured by cable wire, because they fitted exactly from floor to ceiling. However, while they were placed side by side, there were unavoidable clearances between them owing to their round shape. Those loaded on deck were lashed together several times across by cable wire, which had a diameter of 60 millimeters, and were secured from starboard to port.[34]

It is obvious, as a matter of common sense, that the manner of stowage in the lower hold was not sufficient to secure the logs in the event the ship should roll in heavy weather. Notably, they were of different lengths ranging from 3.7 to 12.7 meters.[35] Being clearly prone to shifting, the round logs should not have been stowed with nothing to hold them securely in place. Each pile of logs should have been lashed together by cable wire, and the wire fastened to the side of the hold. Considering the strong force of the wind and the roll of the waves, the loose arrangement of the logs did not rule out the possibility of their shifting. By force of gravity, those on top of the pile would naturally roll towards the bottom of the ship.

The adjuster's Report, which was heavily relied upon by petitioner to strengthen its claim that the logs had not shifted, stated that "the logs were still properly lashed by steel chains on deck." Parenthetically, this statement referred only to those loaded on deck and did not mention anything about the condition of those placed in the lower hold. Thus, the finding of the surveyor that the logs were still intact clearly pertained only to those lashed on deck.

The evidence indicated that strong southwest monsoons were common occurrences during the month of July. Thus, the officers and crew of M/V Central Bohol should have reasonably anticipated heavy rains, strong winds and rough seas. They should then have taken extra precaution in stowing the logs in the hold, in consonance with their duty of observing extraordinary diligence in safeguarding the goods. But the carrier took a calculated risk in improperly securing the cargo. Having lost that risk, it cannot now escape responsibility for the loss.

Second Issue:

Doctrine of Limited Liability

The doctrine of limited liability under Article 587 of the Code of Commerce[36] is not applicable to the present case. This rule does not apply to situations in which the loss or the injury is due to the concurrent negligence of the shipowner and the captain.[37] It has already been established that the sinking of M/V Central Bohol had been caused by the fault or negligence of the ship captain and the crew, as shown by the improper stowage of the cargo of logs. "Closer supervision on the part of the shipowner could have prevented this fatal miscalculation." [38] As such, the shipowner was equally negligent. It cannot escape liability by virtue of the limited liability rule.

WHEREFORE, the Petition is DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, and Corona, JJ., concur.

Carpio-Morales, J., on official leave.

-
- [1] Rollo, pp. 10-49.
- [2] Id., pp. 51-64. Twelfth Division. Penned by Justice Presbitero J. Velasco Jr. and concurred in by Justices Ruben T. Reyes (Division chairman) and Juan Q. Enriquez Jr. (member).
- [3] CA Decision, p. 13; rollo, p. 63.
- [4] Rollo, p. 65.
- [5] CA Decision, pp. 1-2; rollo, pp. 51-52.
- [6] RTC Decision, p.7; records, p. 270.
- [7] 210 SCRA 624, July 1, 1992.
- [8] This case was deemed submitted for decision on September 25, 2002, upon this Court's receipt of petitioner's Memorandum, signed by Attys. Victor Y. Eleazar and Gerardo J. de Leon. Respondent's Memorandum, signed by Atty. Bienvenido V. Zapa, was received by this Court on September 11, 2002.
- [9] Petitioner's Memorandum, p. 5; rollo, p. 110.
- [10] Article 1733 of the Civil Code.
- [11] Article 1734 of the Civil Code states:
- “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.”
- [12] Article 1735 of the Civil Code; *Asia Lighterage and Shipping, Inc. v. Court of Appeals*, 409 SCRA 340, August 19, 2003; *Delsan Transport Lines, Inc. v. Court of Appeals*, 369 SCRA 24, November 15, 2001.
- [13] *Metropolitan Bank and Trust Co. v. Wong*, 412 Phil. 207, 216, June 26, 2001.
- [14] *Perez v. Court of Appeals*, 374 Phil. 388, 409-410, October 1, 1999.
- [15] *Far East Bank & Trust Co. v. CA*, 326 Phil. 15, 18, April 1, 1996, per *Hermosisima Jr., J.*
- [16] *Alsua-Betts v. CA*, 92 SCRA 332, 366, July 30, 1979.
- [17] *Luna v. Linatoc*, 74 Phil. 15, October 28, 1942.
- [18] *De la Cruz v. Sosing*, 94 Phil. 26, 28, November 27, 1953.
- [19] *Larena v. Mapili*, 408 SCRA 484, 489, August 7, 2003; *The Heirs of Felicidad Canque v. CA*, 341 Phil. 738, 750, July 21, 1997.
- [20] Exhibit 4; records, pp. 203-204.

[21] Answer dated August 29, 1991, p. 5; records, p. 16

[22] TSN, December 13, 1991, pp. 18-19.

[23] See Exhibit K; records, p. 109.

[24] Records, p. 111.

[25] See Petitioner's Memorandum quoting excerpts from the December 13, 1990 testimony of Mr. Percival Dayanan before the Board of Marine Inquiry, p. 10; rollo, p. 115.

[26] Philippine American General Insurance Co., Inc. v. Court of Appeals, 273 SCRA 262, June 11, 1997.

[27] Asia Lighterage and Shipping, Inc. v. Court of Appeals, 409 SCRA 340, August 19, 2003; Philippine American General Insurance Co., Inc. v. Court of Appeals, 273 SCRA 262, June 11, 1997; Arada v. Court of Appeals, 210 SCRA 624, July 1, 1992; Limpangco Sons v. Yangco Steamship Co., 34 Phil. 597, July 25, 1916. 1 Am Jur 2d (citing Cachick v. United States (DC III) 161 F Supp 15; Fairbrother v. Wiley's, Inc., 183 Kan 579, 331 P2d 330, 81 ALR2d 888; Jacoby v. Gillette, 62 Wyo 514, 177 P2d 204, 169 ALR 514).

[28] Ibid.

[29] Philippine American General Insurance Co., Inc. v. MGG Marine Services, Inc., 378 SCRA 650, March 8, 2002.

[30] CA Decision, pp. 6-7; rollo, pp. 56-57.

[31] See Final Report of Claimsmen Adjustment Corporation, Exhibit J-1, p. 2; records, p. 105.

[32] Answer, pp. 2 & 4; records, pp. 13 & 15.

[33] TSN, October 16, 1992, pp. 16-19.

[34] See Petitioner's Memorandum quoting Captain Cahatol's December 12, 1990 testimony before the Board of Marine Inquiry, pp. 20-23; rollo, pp. 125-128.

[35] See Tally Sheet/Log List, Exhibit H; records, pp. 97-100.

[36] Article 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons --those that may arise from the conduct of the captain in the care of goods loaded on the vessel; but the captain may be exempted therefrom by abandonment of the vessel, with all the equipment and the freight it might have earned during the voyage.

[37] Other exceptions are as follows: 1) when the vessel is insured; and 2) when workmen's compensation is claimed. Monarch Insurance Co., Inc. v. Court of Appeals, 333 SCRA 71, June 8, 2000; Chua Yek Hong v. Intermediate Appellate Court, 166 SCRA 183, September 30, 1988.

[38] Philippine American General Insurance Co., Inc. v. Court of Appeals, 273 SCRA 262, 272, June 11, 1997, per Bellosillo, J.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.