

## **NATIONAL TRUCKING AND FORWARDING CORPORATION, PETITIONER, VS. LORENZO SHIPPING CORPORATION, RESPONDENT.**

*G.R. NO. 153563. February 07, 2005*

Ponente: QUISUMBING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-153563/>

---

### **QUISUMBING, J.:**

For review on certiorari are the Decision[1] dated January 16, 2002, of the Court of Appeals, in CA-G.R. CV No. 48349, and its Resolution,[2] of May 13, 2002, denying the motion for reconsideration of herein petitioner National Trucking and Forwarding Corporation (NTFC). The impugned decision affirmed in toto the judgment[3] dated November 14, 1994 of the Regional Trial Court (RTC) of Manila, Branch 53, in Civil Case No. 90-52102.

The undisputed facts, as summarized by the appellate court, are as follows:

On June 5, 1987, the Republic of the Philippines, through the Department of Health (DOH), and the Cooperative for American Relief Everywhere, Inc. (CARE) signed an agreement wherein CARE would acquire from the United States government donations of non-fat dried milk and other food products from January 1, 1987 to December 31, 1989. In turn, the Philippines would transport and distribute the donated commodities to the intended beneficiaries in the country.

The government entered into a contract of carriage of goods with herein petitioner National Trucking and Forwarding Corporation (NTFC). Thus, the latter shipped 4,868 bags of non-fat dried milk through herein respondent Lorenzo Shipping Corporation (LSC) from September to December 1988. The consignee named in the bills of lading issued by the respondent was Abdurahman Jama, petitioner's branch supervisor in Zamboanga City.

On reaching the port of Zamboanga City, respondent's agent, Efren Ruste[4] Shipping Agency, unloaded the 4,868 bags of non-fat dried milk and delivered the goods to petitioner's warehouse. Before each delivery, Rogelio Rizada and Ismael Zamora, both delivery checkers of Efren Ruste Shipping Agency, requested Abdurahman to surrender the original bills of lading, but the latter merely presented certified true copies thereof. Upon completion of each delivery, Rogelio and Ismael asked Abdurahman to sign the delivery receipts. However, at times when Abdurahman had to attend to other business before a delivery was completed, he instructed his subordinates to sign the delivery receipts for him.

Notwithstanding the precautions taken, the petitioner allegedly did not receive the subject goods. Thus, in a letter dated March 11, 1989, petitioner NTFC filed a formal claim for non-delivery of the goods shipped through respondent.

In its letter of April 26, 1989, the respondent explained that the cargo had already been delivered to Abdurahman Jama. The petitioner then decided to investigate the loss of the goods. But before the investigation was over, Abdurahman Jama resigned as branch supervisor of petitioner.

Noting but disbelieving respondent's insistence that the goods were delivered, the government through the DOH,

CARE, and NTFC as plaintiffs filed an action for breach of contract of carriage, against respondent as defendant, with the RTC of Manila.

After trial, the RTC resolved the case as follows:

WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiffs, dismissing the latter's complaint, and ordering the plaintiffs, pursuant to the defendant's counterclaim, to pay, jointly and solidarily, to the defendant, actual damages in the amount of P50,000.00, and attorney's fees in the amount of P70,000.00, plus the costs of suit.

SO ORDERED.[5]

Dissatisfied with the foregoing ruling, herein petitioner appealed to the Court of Appeals. It faulted the lower court for not holding that respondent failed to deliver the cargo, and that respondent failed to exercise the extraordinary diligence required of common carriers. Petitioner also assailed the lower court for denying its claims for actual, moral, and exemplary damages, and for awarding actual damages and attorney's fees to the respondent.[6]

The Court of Appeals found that the trial court did not commit any reversible error. It dismissed the appeal, and affirmed the assailed decision in toto.

Undaunted, petitioner now comes to us, assigning the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO APPRECIATE AND APPLY THE LEGAL STANDARD OF EXTRAORDINARY DILIGENCE IN THE SHIPMENT AND DELIVERY OF GOODS TO THE RESPONDENT AS A COMMON CARRIER, AS WELL AS THE ACCOMPANYING LEGAL PRESUMPTION OF FAULT OR NEGLIGENCE ON THE PART OF THE COMMON CARRIER, IF THE GOODS ARE LOST, DESTROYED OR DETERIORATED, AS REQUIRED UNDER THE CIVIL CODE.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT SUSTAINED THE BASELESS AND ARBITRARY AWARD OF ACTUAL DAMAGES AND ATTORNEY'S FEES INASMUCH AS THE ORIGINAL COMPLAINT WAS FILED IN GOOD FAITH, WITHOUT MALICE AND WITH THE BEST INTENTION OF PROTECTING THE INTEREST AND INTEGRITY OF THE GOVERNMENT AND ITS CREDIBILITY AND RELATIONSHIP WITH INTERNATIONAL RELIEF AGENCIES AND DONOR STATES AND ORGANIZATION.[7]

The issues for our resolution are: (1) Is respondent presumed at fault or negligent as common carrier for the loss or deterioration of the goods? and (2) Are damages and attorney's fees due respondent?

Anent the first issue, petitioner contends that the respondent is presumed negligent and liable for failure to abide by the terms and conditions of the bills of lading; that Abdurahman Jama's failure to testify should not be held against petitioner; and that the testimonies of Rogelio Rizada and Ismael Zamora, as employees of respondent's agent, Efren Ruste Shipping Agency, were biased and could not overturn the legal presumption of respondent's fault or negligence.

For its part, the respondent avers that it observed extraordinary diligence in the delivery of the goods. Prior to releasing the goods to Abdurahman, Rogelio and Ismael required the surrender of the original bills of lading, and in their absence, the certified true copies showing that Abdurahman was indeed the consignee of the goods. In

addition, they required Abdurahman or his designated subordinates to sign the delivery receipts upon completion of each delivery.

We rule for respondent.

Article 1733[8] of the Civil Code demands that a common carrier observe extraordinary diligence over the goods transported by it. Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights.[9] This exacting standard imposed on common carriers in a contract of carriage of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for shipment. Hence, in case of loss of goods in transit, the common carrier is presumed under the law to have been at fault or negligent.[10] However, the presumption of fault or negligence, may be overturned by competent evidence showing that the common carrier has observed extraordinary diligence over the goods.

In the instant case, we agree with the court a quo that the respondent adequately proved that it exercised extraordinary diligence. Although the original bills of lading remained with petitioner, respondent's agents demanded from Abdurahman the certified true copies of the bills of lading. They also asked the latter and in his absence, his designated subordinates, to sign the cargo delivery receipts.

This practice, which respondent's agents testified to be their standard operating procedure, finds support in Article 353 of the Code of Commerce:

ART. 353. . . .

After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled, ....

In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading. (Emphasis supplied)

Conformably with the aforecited provision, the surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its contractual obligation. If surrender of the original bill of lading is not possible, acknowledgment of the delivery by signing the delivery receipt suffices. This is what respondent did.

We also note that some delivery receipts were signed by Abdurahman's subordinates and not by Abdurahman himself as consignee. Further, delivery checkers Rogelio and Ismael testified that Abdurahman was always present at the initial phase of each delivery, although on the few occasions when Abdurahman could not stay to witness the complete delivery of the shipment, he authorized his subordinates to sign the delivery receipts for him. This, to our mind, is sufficient and substantial compliance with the requirements.

We further note that, strangely, petitioner made no effort to disapprove Abdurahman's resignation until after the investigation and after he was cleared of any responsibility for the loss of the goods. With Abdurahman outside of its reach, petitioner cannot now pass to respondent what could be Abdurahman's negligence, if indeed he were responsible.

On the second issue, petitioner submits there is no basis for the award of actual damages and attorney's fees. It maintains that its original complaint for sum of money with damages for breach of contract of carriage was not fraudulent, in bad faith, nor malicious. Neither was the institution of the action rash nor precipitate. Petitioner avers the filing of the action was intended to protect the integrity and interest of the government and its

relationship and credibility with international relief agencies and donor states.

On the other hand, respondent maintains that petitioner's suit was baseless and malicious because instead of going after its absconding employee, petitioner wanted to recoup its losses from respondent. The trial court and the Court of Appeals were justified in granting actual damages and reasonable attorney's fees to respondent.

On this point, we agree with petitioner.

The right to litigate should bear no premium. An adverse decision does not ipso facto justify an award of attorney's fees to the winning party.[11] When, as in the instant case, petitioner was compelled to sue to protect the credibility of the government with international organizations, we are not inclined to grant attorney's fees. We find no ill motive on petitioner's part, only an erroneous belief in the righteousness of its claim.

Moreover, an award of attorney's fees, in the concept of damages under Article 2208 of the Civil Code,[12] requires factual and legal justifications. While the law allows some degree of discretion on the part of the courts in awarding attorney's fees and expenses of litigation, the discretion must be exercised with great care approximating as closely as possible, the instances exemplified by the law.[13] We have searched but found nothing in petitioner's suit that justifies the award of attorney's fees.

Respondent failed to show proof of actual pecuniary loss, hence, no actual damages are due in favor of respondent.[14]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed decision and resolution of the Court of Appeals in CA-G.R. CV No. 48349 dated January 16, 2002 and May 13, 2002 respectively, denying petitioner's claim for actual, moral and exemplary damages are **AFFIRMED**. The award of actual damages and attorney's fees to respondent pursuant to the latter's counterclaim in the trial court is **DELETED**.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

---

[1] Rollo, pp. 45-53. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eubulo G. Verzola, and Perlita J. Tria Tirona concurring.

[2] Id. at 56.

[3] Id. at 77-86.

[4] Sometimes "Rusty" in the records.

[5] Rollo, p. 86.

[6] Id. at 47-48.

[7] Id. at 21-22.

[8] Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in vigilance over the goods is further expressed in Articles 1734, 1735, and 1745. Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in Articles 1755 and 1756.

[9] BLACK'S LAW DICTIONARY (5[th] Ed. 1979) 411.

[10] CIVIL CODE, 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.

[11] "J" Marketing Corp. v. Sia, Jr., G.R. No. 127823, 29 January 1998, 285 SCRA 580, 584.

[12] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[13] BPI Family Savings Bank, Inc. v. Manikan, G.R. No. 148789, 16 January 2003, 395 SCRA 373, 376.

[14] CIVIL CODE, Art. 2199. Except as provided by law or by stipulation one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages. Ramos v. Court of Appeals, G.R. No. 124354, 29 December 1999, 321 SCRA 584, 624.

**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.