

LOADSTAR SHIPPING CO., INC., PETITIONER, VS. PIONEER ASIA INSURANCE CORP., RESPONDENT.

G.R. NO. 157481. January 24, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are (1) the Decision[1] dated October 15, 2002 and (2) the Resolution[2] dated February 27, 2003, of the Court of Appeals in CA-G.R. CV No. 40999, which affirmed with modification the Decision[3] dated February 15, 1993 of the Regional Trial Court of Manila, Branch 8 in Civil Case No. 86-37957.

The pertinent facts are as follows:

Petitioner Loadstar Shipping Co., Inc. (Loadstar for brevity) is the registered owner and operator of the vessel M/V Weasel. It holds office at 1294 Romualdez St., Paco, Manila.

On June 6, 1984, Loadstar entered into a voyage-charter with Northern Mindanao Transport Company, Inc. for the carriage of 65,000 bags of cement from Iligan City to Manila. The shipper was Iligan Cement Corporation, while the consignee in Manila was Market Developers, Inc.

On June 24, 1984, 67,500 bags of cement were loaded on board M/V Weasel and stowed in the cargo holds for delivery to the consignee. The shipment was covered by petitioner's Bill of Lading[4] dated June 23, 1984.

Prior to the voyage, the consignee insured the shipment of cement with respondent Pioneer Asia Insurance Corporation for P1,400,000, for which respondent issued Marine Open Policy No. MOP-006 dated September 17, 1980, covering all shipments made on or after September 30, 1980.[5]

At 12:50 in the afternoon of June 24, 1984, M/V Weasel left Iligan City for Manila in good weather. However, at 4:31 in the morning of June 25, 1984, Captain Vicente C. Montera, master of M/V Weasel, ordered the vessel to be forced aground. Consequently, the entire shipment of cement was good as gone due to exposure to sea water. Petitioner thus failed to deliver the goods to the consignee in Manila.

The consignee demanded from petitioner full reimbursement of the cost of the lost shipment. Petitioner, however, refused to reimburse the consignee despite repeated demands.

Nonetheless, on March 11, 1985, respondent insurance company paid the consignee P1,400,000 plus an additional amount of P500,000, the value of the lost shipment of cement. In return, the consignee executed a Loss and Subrogation Receipt in favor of respondent concerning the latter's subrogation rights against petitioner.

Hence, on October 15, 1986, respondent filed a complaint docketed as Civil Case No. 86-37957, against petitioner with the Regional Trial Court of Manila, Branch 8. It alleged that: (1) the M/V Weasel was not seaworthy at the commencement of the voyage; (2) the weather and sea conditions then prevailing were usual and expected for that time of the year and as such, was an ordinary peril of the voyage for which the M/V Weasel should have been normally able to cope with; and (3) petitioner was negligent in the selection and supervision of its agents and

employees then manning the M/V Weasel.

In its Answer, petitioner alleged that no fault nor negligence could be attributed to it because it exercised due diligence to make the ship seaworthy, as well as properly manned and equipped. Petitioner insisted that the failure to deliver the subject cargo to the consignee was due to force majeure. Petitioner claimed it could not be held liable for an act or omission not directly attributable to it.

On February 15, 1993, the RTC rendered a Decision in favor of respondent, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff and against defendant Loadstar Shipping Co., Inc. ordering the latter to pay as follows:

- To pay plaintiff the sum of P1,900,000.00 with legal rate of interest per annum from date of complaint until fully paid;
- To pay the sum equal to 25% of the claim as and for attorney's fees and litigation expenses; and,
- To pay the costs of suit.

IT IS SO ORDERED.[6]

The RTC reasoned that petitioner, as a common carrier, bears the burden of proving that it exercised extraordinary diligence in its vigilance over the goods it transported. The trial court explained that in case of loss or destruction of the goods, a statutory presumption arises that the common carrier was negligent unless it could prove that it had observed extraordinary diligence.

Petitioner's defense of force majeure was found bereft of factual basis. The RTC called attention to the PAG-ASA report that at the time of the incident, tropical storm "Asiang" had moved away from the Philippines. Further, records showed that the sea and weather conditions in the area of Hinubaan, Negros Occidental from 8:00 p.m. of June 24, 1984 to 8:00 a.m. the next day were slight and smooth. Thus, the trial court concluded that the cause of the loss was not tropical storm "Asiang" or any other force majeure, but gross negligence of petitioner.

Petitioner appealed to the Court of Appeals.

In its Decision dated October 15, 2002, the Court of Appeals affirmed the RTC Decision with modification that Loadstar shall only pay the sum of 10% of the total claim for attorney's fees and litigation expenses. It ruled,

WHEREFORE, premises considered, the Decision dated February 15, 1993, of the Regional Trial Court of Manila, National Capital Judicial Region, Branch 8, in Civil Case No. 86-37957 is hereby AFFIRMED with the MODIFICATION that the appellant shall only pay the sum of 10% of the total claim as and for attorney's fees and litigation expenses. Costs against the appellant.

SO ORDERED.[7]

Petitioner's Motion for Reconsideration was denied.[8]

The instant petition is anchored now on the following assignments of error:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS A COMMON CARRIER UNDER ARTICLE 1732 OF THE CIVIL CODE.

II

ASSUMING ARGUENDO THAT PETITIONER IS A COMMON CARRIER, THE HONORABLE COURT

OF APPEALS ERRED IN HOLDING THAT THE PROXIMATE CAUSE OF THE LOSS OF CARGO WAS NOT A FORTUITOUS EVENT BUT WAS ALLEGEDLY DUE TO THE FAILURE OF PETITIONER TO EXERCISE EXTRAORDINARY DILIGENCE.

III

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD BY THE TRIAL COURT OF ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF HEREIN RESPONDENT.[9]

On the first and second issues, petitioner contends that at the time of the voyage the carrier's voyage-charter with the shipper converted it into a private carrier. Thus, the presumption of negligence against common carriers could not apply. Petitioner further avers that the stipulation in the voyage-charter holding it free from liability is valid and binds the respondent. In any event, petitioner insists that it had exercised extraordinary diligence and that the proximate cause of the loss of the cargo was a fortuitous event.

With regard to the third issue, petitioner points out that the award of attorney's fees and litigation expenses appeared only in the dispositive portion of the RTC Decision with nary a justification. Petitioner maintains that the Court of Appeals thus erred in affirming the award.

For its part, respondent dismisses as factual issues the inquiry on (1) whether the loss of the cargo was due to force majeure or due to petitioner's failure to exercise extraordinary diligence; and (2) whether respondent is entitled to recover attorney's fees and expenses of litigation.

Respondent further counters that the Court of Appeals was correct when it held that petitioner was a common carrier despite the charter of the whole vessel, since the charter was limited to the ship only.

Prefatorily, we stress that the finding of fact by the trial court, when affirmed by the Court of Appeals, is not reviewable by this Court in a petition for review on certiorari. However, the conclusions derived from such factual finding are not necessarily pure issues of fact when they are inextricably intertwined with the determination of a legal issue. In such instances, the conclusions made may be raised in a petition for review before this Court.[10]

The threshold issues in this case are: (1) Given the circumstances of this case, is petitioner a common or a private carrier? and (2) In either case, did petitioner exercise the required diligence i.e., the extraordinary diligence of a common carrier or the ordinary diligence of a private carrier?

Article 1732 of the Civil Code defines a "common carrier" as follows:

Article 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.

Petitioner is a corporation engaged in the business of transporting cargo by water and for compensation, offering its services indiscriminately to the public. Thus, without doubt, it is a common carrier. However, petitioner entered into a voyage-charter with the Northern Mindanao Transport Company, Inc. Now, had the voyage-charter converted petitioner into a private carrier?

We think not. The voyage-charter agreement between petitioner and Northern Mindanao Transport Company, Inc. did not in any way convert the common carrier into a private carrier. We have already resolved this issue with finality in *Planters Products, Inc. v. Court of Appeals*[11] where we ruled that:

It is therefore imperative that a public carrier shall remain as such, notwithstanding the charter of the whole or portion of a vessel by one or more persons, provided the charter is limited to the ship only, as in the case of a

time-charter or voyage-charter. It is only when the charter includes both the vessel and its crew, as in a bareboat or demise that a common carrier becomes private, at least insofar as the particular voyage covering the charter-party is concerned. Indubitably, a shipowner in a time or voyage charter retains possession and control of the ship, although her holds may, for the moment, be the property of the charterer.[12]

Conformably, petitioner remains a common carrier notwithstanding the existence of the charter agreement with the Northern Mindanao Transport Company, Inc. since the said charter is limited to the ship only and does not involve both the vessel and its crew. As elucidated in *Planters Products*, its charter is only a voyage-charter, not a bareboat charter.

As a common carrier, petitioner is required to observe extraordinary diligence in the vigilance over the goods it transports.[13] When the goods placed in its care are lost, petitioner is presumed to have been at fault or to have acted negligently. Petitioner therefore has the burden of proving that it observed extraordinary diligence in order to avoid responsibility for the lost cargo.[14]

In *Compania Maritima v. Court of Appeals*,[15] we said:

... it is incumbent upon the common carrier to prove that the loss, deterioration or destruction was due to accident or some other circumstances inconsistent with its liability.

...

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for safe carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and "to use all reasonable means to ascertain the nature and characteristics of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires." [16]

Article 1734 enumerates the instances when a carrier might be exempt from liability for the loss of the goods. These are:

- (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; and
- (5) Order or act of competent public authority.[17]

Petitioner claims that the loss of the goods was due to a fortuitous event under paragraph 1. Yet, its claim is not substantiated. On the contrary, we find supported by evidence on record the conclusion of the trial court and the Court of Appeals that the loss of the entire shipment of cement was due to the gross negligence of petitioner.

Records show that in the evening of June 24, 1984, the sea and weather conditions in the vicinity of Negros Occidental were calm. The records reveal that petitioner took a shortcut route, instead of the usual route, which exposed the voyage to unexpected hazard. Petitioner has only itself to blame for its misjudgment.

Petitioner heavily relies on *Home Insurance Co. v. American Steamship Agencies, Inc.*[18] and *Valenzuela Hardwood and Industrial Supply, Inc. v. Court of Appeals*. [19] The said cases involved a private carrier, not a common carrier. Moreover, the issue in both cases is not the effect of a voyage-charter on a common carrier, but the validity of a stipulation absolving the private carrier from liability in case of loss of the cargo attributable to

the negligence of the private carrier.

Lastly, on the third issue, we find consistent with law and prevailing jurisprudence the Court of Appeals' award of attorney's fees and expenses of litigation equivalent to ten percent (10%) of the total claim. The contract between the parties in this case contained a stipulation that in case of suit, attorney's fees and expenses of litigation shall be limited to only ten percent (10%) of the total monetary award. Given the circumstances of this case, we deem the said amount just and equitable.

WHEREFORE, the petition is DENIED. The assailed Decision dated October 15, 2002 and the Resolution dated February 27, 2003, of the Court of Appeals in CA-G.R. CV No. 40999, are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Carpio, Carpio-Morales, and Tinga, JJ., concur.

[1]Rollo, pp. 73-83. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr., and Sergio L. Pestaño concurring.

[2] Id. at 85.

[3]Records, pp. 505-528.

[4] Id. at 11.

[5]Id. at 97.

[6]Rollo, p. 73.

[7] Id. at 83.

[8] Id. at 85.

[9]Id. at 47.

[10] Philippine American General Insurance Company v. PKS Shipping Company, G.R. No. 149038, 9 April 2003, 401 SCRA 222, 227.

[11] G.R. No. 101503, 15 September 1993, 226 SCRA 476.

[12] Id. at 486.

[13]Civil Code, Article 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.

...

[14] Civil Code, Article 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.

[15] No. L-31379, 29 August 1988, 164 SCRA 685.

[16]Id. at 691-692.

[17] Civil Code, Article 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.

[18] No. L-25599, 4 April 1968, 23 SCRA 24.

[19]G.R. No. 102316, 30 June 1997, 274 SCRA 642.

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