

**PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER, VS.
UNKNOWN OWNER OF THE VESSEL M/V "NATIONAL
HONOR"; NATIONAL SHIPPING CORPORATION OF THE
PHILIPPINES AND INTERNATIONAL CO...**

G.R. No. 161833. July 08, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the Decision^[1] dated January 19, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 57357 which affirmed the Decision dated February 17, 1997 of the Regional Trial Court (RTC) of Manila, Branch 37, in Civil Case No. 95-73338.

The Antecedent

On November 5, 1995, J. Trading Co. Ltd. of Seoul, Korea, loaded a shipment of four units of parts and accessories in the port of Pusan, Korea, on board the vessel M/V "National Honor," represented in the Philippines by its agent, National Shipping Corporation of the Philippines (NSCP). The shipment was for delivery to Manila, Philippines. Freight forwarder, Samhwa Inter-Trans Co., Ltd., issued Bill of Lading No. SH9410306^[2] in the name of the shipper consigned to the order of Metropolitan Bank and Trust Company with arrival notice in Manila to ultimate consignee Blue Mono International Company, Incorporated (BMICI), Binondo, Manila.

NSCP, for its part, issued Bill of Lading No. NSGPBSML512565^[3] in the name of the freight forwarder, as shipper, consigned to the order of Stamm International Inc., Makati, Philippines. It is provided therein that:

- This Bill of Lading shall be prima facie evidence of the receipt of the Carrier in apparent good order and condition except as, otherwise, noted of the total number of Containers or other packages or units enumerated overleaf. Proof to the contrary shall be admissible when this Bill of Lading has been transferred to a third party acting in good faith. No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers, or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
- The shipper, whether principal or agent, represents and warrants that the goods are properly described, marked, secured, and packed and may be handled in ordinary course without damage to the goods, ship, or property or persons and guarantees the correctness of the particulars, weight or each piece or package and description of the goods and agrees to ascertain and to disclose in writing on shipment, any condition, nature, quality, ingredient or characteristic that may cause damage, injury or detriment to the goods, other property, the ship or to persons, and for the failure to do so the shipper agrees to be liable for and fully indemnify the carrier and hold it harmless in respect of any injury or death of any person and loss or damage to cargo or property. The carrier shall be responsible as to the correctness of any such mark, descriptions or representations.^[4]

The shipment was contained in two wooden crates, namely, Crate No. 1 and Crate No. 2, complete and in good order condition, covered by Commercial Invoice No. YJ-73564 DTD[5] and a Packing List.[6] There were no markings on the outer portion of the crates except the name of the consignee.[7] Crate No. 1 measured 24 cubic meters and weighed 3,620 kgs. It contained the following articles: one (1) unit Lathe Machine complete with parts and accessories; one (1) unit Surface Grinder complete with parts and accessories; and one (1) unit Milling Machine complete with parts and accessories. On the flooring of the wooden crates were three wooden battens placed side by side to support the weight of the cargo. Crate No. 2, on the other hand, measured 10 cubic meters and weighed 2,060 kgs. The Lathe Machine was stuffed in the crate. The shipment had a total invoice value of US\$90,000.00 C&F Manila.[8] It was insured for P2,547,270.00 with the Philippine Charter Insurance Corporation (PCIC) thru its general agent, Family Insurance and Investment Corporation,[9] under Marine Risk Note No. 68043 dated October 24, 1994.[10]

The M/V "National Honor" arrived at the Manila International Container Terminal (MICT) on November 14, 1995. The International Container Terminal Services, Incorporated (ICTSI) was furnished with a copy of the crate cargo list and bill of lading, and it knew the contents of the crate.[11] The following day, the vessel started discharging its cargoes using its winch crane. The crane was operated by Olegario Balsa, a winchman from the ICTSI,[12] the exclusive arrastre operator of MICT.

Denasto Dautz, Jr., the checker-inspector of the NSCP, along with the crew and the surveyor of the ICTSI, conducted an inspection of the cargo.[13] They inspected the hatches, checked the cargo and found it in apparent good condition.[14] Claudio Cansino, the stevedore of the ICTSI, placed two sling cables on each end of Crate No. 1.[15] No sling cable was fastened on the mid-portion of the crate. In Dautz's experience, this was a normal procedure.[16] As the crate was being hoisted from the vessel's hatch, the mid-portion of the wooden flooring suddenly snapped in the air, about five feet high from the vessel's twin deck, sending all its contents crashing down hard,[17] resulting in extensive damage to the shipment.

BMICI's customs broker, JRM Incorporated, took delivery of the cargo in such damaged condition.[18] Upon receipt of the damaged shipment, BMICI found that the same could no longer be used for the intended purpose. The Mariners' Adjustment Corporation hired by PCIC conducted a survey and declared that the packing of the shipment was considered insufficient. It ruled out the possibility of taxes due to insufficiency of packing. It opined that three to four pieces of cable or wire rope slings, held in all equal setting, never by-passing the center of the crate, should have been used, considering that the crate contained heavy machinery.[19]

BMICI subsequently filed separate claims against the NSCP,[20] the ICTSI,[21] and its insurer, the PCIC,[22] for US\$61,500.00. When the other companies denied liability, PCIC paid the claim and was issued a Subrogation Receipt[23] for P1,740,634.50.

On March 22, 1995, PCIC, as subrogee, filed with the RTC of Manila, Branch 35, a Complaint for Damages[24] against the "Unknown owner of the vessel M/V National Honor," NSCP and ICTSI, as defendants.

PCIC alleged that the loss was due to the fault and negligence of the defendants. It prayed, among others —

WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered ordering defendants to pay plaintiff, jointly or in the alternative, the following:

- Actual damages in the amount of P1,740,634.50 plus legal interest at the time of the filing of this complaint until fully paid;
- Attorney's fees in the amount of P100,000.00;
- Cost of suit.[25]

ICTSI, for its part, filed its Answer with Counterclaim and Cross-claim against its co-defendant NSCP, claiming that the loss/damage of the shipment was caused exclusively by the defective material of the wooden battens of the shipment, insufficient packing or acts of the shipper.

At the trial, Anthony Abarquez, the safety inspector of ICTSI, testified that the wooden battens placed on the wooden flooring of the crate was of good material but was not strong enough to support the weight of the machines inside the crate. He averred that most stevedores did not know how to read and write; hence, he placed the sling cables only on those portions of the crate where the arrow signs were placed, as in the case of fragile cargo. He said that unless otherwise indicated by arrow signs, the ICTSI used only two cable slings on each side of the crate and would not place a sling cable in the mid-section.[26] He declared that the crate fell from the cranes because the wooden batten in the mid-portion was broken as it was being lifted.[27] He concluded that the loss/damage was caused by the failure of the shipper or its packer to place wooden battens of strong materials under the flooring of the crate, and to place a sign in its mid-term section where the sling cables would be placed.

The ICTSI adduced in evidence the report of the R.J. Del Pan & Co., Inc. that the damage to the cargo could be attributed to insufficient packing and unbalanced weight distribution of the cargo inside the crate as evidenced by the types and shapes of items found.[28]

The trial court rendered judgment for PCIC and ordered the complaint dismissed, thus:

WHEREFORE, the complaint of the plaintiff, and the respective counterclaims of the two defendants are dismissed, with costs against the plaintiff.

SO ORDERED.[29]

According to the trial court, the loss of the shipment contained in Crate No. 1 was due to the internal defect and weakness of the materials used in the fabrication of the crates. The middle wooden batten had a hole (bukong-bukong). The trial court rejected the certification[30] of the shipper, stating that the shipment was properly packed and secured, as mere hearsay and devoid of any evidentiary weight, the affiant not having testified.

Not satisfied, PCIC appealed[31] to the CA which rendered judgment on January 19, 2004 affirming in toto the appealed decision, with this fallo —

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 35, dated February 17, 1997, is AFFIRMED.

SO ORDERED.[32]

The appellate court held, inter alia, that it was bound by the finding of facts of the RTC, especially so where the evidence in support thereof is more than substantial. It ratiocinated that the loss of the shipment was due to an excepted cause — "[t]he character of the goods or defects in the packing or in the containers" and the failure of the shipper to indicate signs to notify the stevedores that extra care should be employed in handling the shipment.[33] It blamed the shipper for its failure to use materials of stronger quality to support the heavy machines and to indicate an arrow in the middle portion of the cargo where additional slings should be attached.[34] The CA concluded that common carriers are not absolute insurers against all risks in the transport of the goods.[35]

Hence, this petition by the PCIC, where it alleges that:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN NOT HOLDING THAT

RESPONDENT COMMON CARRIER IS LIABLE FOR THE DAMAGE SUSTAINED BY THE SHIPMENT IN THE POSSESSION OF THE ARRASTRE OPERATOR.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN NOT APPLYING THE STATUTORY PRESUMPTION OF FAULT AND NEGLIGENCE IN THE CASE AT BAR.

III.

THE COURT OF APPEALS GROSSLY MISCOMPREHENDED THE FACTS IN FINDING THAT THE DAMAGE SUSTAINED BY THE [SHIPMENT] WAS DUE TO ITS DEFECTIVE PACKING AND NOT TO THE FAULT AND NEGLIGENCE OF THE RESPONDENTS.[36]

The petitioner asserts that the mere proof of receipt of the shipment by the common carrier (to the carrier) in good order, and their arrival at the place of destination in bad order makes out a prima facie case against it; in such case, it is liable for the loss or damage to the cargo absent satisfactory explanation given by the carrier as to the exercise of extraordinary diligence. The petitioner avers that the shipment was sufficiently packed in wooden boxes, as shown by the fact that it was accepted on board the vessel and arrived in Manila safely. It emphasizes that the respondents did not contest the contents of the bill of lading, and that the respondents knew that the manner and condition of the packing of the cargo was normal and barren of defects. It maintains that it behooved the respondent ICTSI to place three to four cables or wire slings in equal settings, including the center portion of the crate to prevent damage to the cargo:

. . . [A] simple look at the manifesto of the cargo and the bill of lading would have alerted respondents of the nature of the cargo consisting of thick and heavy machinery. Extra-care should have been made and extended in the discharge of the subject shipment. Had the respondent only bothered to check the list of its contents, they would have been nervous enough to place additional slings and cables to support those massive machines, which were composed almost entirely of thick steel, clearly intended for heavy industries. As indicated in the list, the boxes contained one lat[h]e machine, one milling machine and one grinding machine-all coming with complete parts and accessories. Yet, not one among the respondents were cautious enough. Here lies the utter failure of the respondents to observed extraordinary diligence in the handling of the cargo in their custody and possession, which the Court of Appeals should have readily observed in its appreciation of the pertinent facts.[37]

The petitioner posits that the loss/damage was caused by the mishandling of the shipment by therein respondent ICTSI, the arrastre operator, and not by its negligence.

The petitioner insists that the respondents did not observe extraordinary diligence in the care of the goods. It argues that in the performance of its obligations, the respondent ICTSI should observe the same degree of diligence as that required of a common carrier under the New Civil Code of the Philippines. Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[38] it posits that respondents are liable in solidum to it, inasmuch as both are charged with the obligation to deliver the goods in good condition to its consignee, BMICI.

Respondent NSCP counters that if ever respondent ICTSI is adjudged liable, it is not solidarily liable with it. It further avers that the "carrier cannot discharge directly to the consignee because cargo discharging is the monopoly of the arrastre." Liability, therefore, falls solely upon the shoulder of respondent ICTSI, inasmuch as the discharging of cargoes from the vessel was its exclusive responsibility. Besides, the petitioner is raising questions of facts, improper in a petition for review on certiorari.[39]

Respondent ICTSI avers that the issues raised are factual, hence, improper under Rule 45 of the Rules of Court. It claims that it is merely a depository and not a common carrier; hence, it is not obliged to exercise extraordinary

diligence. It reiterates that the loss/damage was caused by the failure of the shipper or his packer to place a sign on the sides and middle portion of the crate that extra care should be employed in handling the shipment, and that the middle wooden batten on the flooring of the crate had a hole. The respondent asserts that the testimony of Anthony Abarquez, who conducted his investigation at the site of the incident, should prevail over that of Rolando Balatbat. As an alternative, it argues that if ever adjudged liable, its liability is limited only to P3,500.00 as expressed in the liability clause of Gate Pass CFS-BR-GP No. 319773.

The petition has no merit.

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on certiorari. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[40]

We have reviewed the records and find no justification to warrant the application of any exception to the general rule.

We agree with the contention of the petitioner that common carriers, from the nature of their business and for reasons of public policy, are mandated 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.[41] The Court has defined extraordinary diligence in the vigilance over the goods as follows:

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 sale, 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 characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires." [42]

The common carrier's duty to observe the requisite diligence in the shipment of goods lasts from the time the articles are surrendered to or unconditionally placed in the possession of, and received by, the carrier for transportation until delivered to, or until the lapse of a reasonable time for their acceptance, by the person entitled to receive them.[43] When the goods shipped are either lost or arrive in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable.[44] To overcome the presumption of negligence in the case of loss, destruction or deterioration of the goods, the common carrier must prove that it exercised extraordinary diligence.[45]

However, under Article 1734 of the New Civil Code, the presumption of negligence does not apply to any of the following causes:

- Flood, storm, earthquake, lightning or other natural disaster or calamity;
- Act of the public enemy in war, whether international or civil;
- Act or omission of the shipper or owner of the goods;

- The character of the goods or defects in the packing or in the containers;
- Order or act of competent public authority.

It bears stressing that the enumeration in Article 1734 of the New Civil Code which exempts the common carrier for the loss or damage to the cargo is a closed list.[46] To exculpate itself from liability for the loss/damage to the cargo under any of the causes, the common carrier is burdened to prove any of the aforementioned causes claimed by it by a preponderance of evidence. If the carrier succeeds, the burden of evidence is shifted to the shipper to prove that the carrier is negligent.[47]

"Defect" is the want or absence of something necessary for completeness or perfection; a lack or absence of something essential to completeness; a deficiency in something essential to the proper use for the purpose for which a thing is to be used.[48] On the other hand, inferior means of poor quality, mediocre, or second rate.[49] A thing may be of inferior quality but not necessarily defective. In other words, "defectiveness" is not synonymous with "inferiority."

In the present case, the trial court declared that based on the record, the loss of the shipment was caused by the negligence of the petitioner as the shipper:

The same may be said with respect to defendant ICTSI. The breakage and collapse of Crate No. 1 and the total destruction of its contents were not imputable to any fault or negligence on the part of said defendant in handling the unloading of the cargoes from the carrying vessel, but was due solely to the inherent defect and weakness of the materials used in the fabrication of said crate.

The crate should have three solid and strong wooden batten placed side by side underneath or on the flooring of the crate to support the weight of its contents. However, in the case of the crate in dispute, although there were three wooden battens placed side by side on its flooring, the middle wooden batten, which carried substantial volume of the weight of the crate's contents, had a knot hole or "bukong-bukong," which considerably affected, reduced and weakened its strength. Because of the enormous weight of the machineries inside this crate, the middle wooden batten gave way and collapsed. As the combined strength of the other two wooden battens were not sufficient to hold and carry the load, they too simultaneously with the middle wooden battens gave way and collapsed (TSN, Sept. 26, 1996, pp. 20-24).

Crate No. 1 was provided by the shipper of the machineries in Seoul, Korea. There is nothing in the record which would indicate that defendant ICTSI had any role in the choice of the materials used in fabricating this crate. Said defendant, therefore, cannot be held as blame worthy for the loss of the machineries contained in Crate No. 1.[50]

The CA affirmed the ruling of the RTC, thus:

The case at bar falls under one of the exceptions mentioned in Article 1734 of the Civil Code, particularly number (4) thereof, i.e., the character of the goods or defects in the packing or in the containers. The trial court found that the breakage of the crate was not due to the fault or negligence of ICTSI, but to the inherent defect and weakness of the materials used in the fabrication of the said crate.

Upon examination of the records, We find no compelling reason to depart from the factual findings of the trial court.

It appears that the wooden batten used as support for the flooring was not made of good materials, which caused the middle portion thereof to give way when it was lifted. The shipper also failed to indicate signs to notify the stevedores that extra care should be employed in handling the shipment.

Claudio Cansino, a stevedore of ICTSI, testified before the court their duties and responsibilities:

"Q:

With regard to crates, what do you do with the crates?

A:

Everyday with the crates, there is an arrow drawn where the sling is placed, Ma'am.

Q:

When the crates have arrows drawn and where you placed the slings, what do you do with these crates?

A

sling is placed on it, Ma'am.

Q:

After you placed the slings, what do you do with the crates?

A:

After I have placed a sling properly, I ask the crane (sic) to haul it, Ma'am.

...

Q:

Now, what, if any, were written or were marked on the crate?

A:

The thing that was marked on the cargo is an arrow just like of a chain, Ma'am.

Q:

And where did you see or what parts of the crate did you see those arrows?

A:

At the corner of the crate, Ma'am.

Q:

How many arrows did you see?

A:

Four (4) on both sides, Ma'am.

...

Q:

What did you do with the arrows?

A:

When I saw the arrows, that's where I placed the slings, Ma'am.

...

Q:

Now, did you find any other marks on the crate?

A:

Nothing more, Ma'am.

Q:

Now, Mr. Witness, if there are no arrows, would you place slings on the parts where there are no arrows?

A:

You can not place slings if there are no arrows, Ma'am."

Appellant's allegation that since the cargo arrived safely from the port of [P]usan, Korea without defect, the fault should be attributed to the arrastre operator who mishandled the cargo, is without merit. The cargo fell while it was being carried only at about five (5) feet high above the ground. It would not have so easily collapsed had the cargo been properly packed. The shipper should have used materials of stronger quality to support the heavy machines. Not only did the shipper fail to properly pack the cargo, it also failed to indicate an arrow in the middle portion of the cargo where additional slings should be attached. At any rate, the issue of negligence is factual in nature and in this regard, it is settled that factual findings of the lower courts are entitled to great weight and respect on appeal, and, in fact, accorded finality when supported by substantial evidence.[51]

We agree with the trial and appellate courts.

The petitioner failed to adduce any evidence to counter that of respondent ICTSI. The petitioner failed to rebut the testimony of Dauz, that the crates were sealed and that the contents thereof could not be seen from the outside.[52] While it is true that the crate contained machineries and spare parts, it cannot thereby be concluded that the respondents knew or should have known that the middle wooden batten had a hole, or that it was not strong enough to bear the weight of the shipment.

There is no showing in the Bill of Lading that the shipment was in good order or condition when the carrier received the cargo, or that the three wooden battens under the flooring of the cargo were not defective or insufficient or inadequate. On the other hand, under Bill of Lading No. NSGPBSML512565 issued by the respondent NSCP and accepted by the petitioner, the latter represented and warranted that the goods were properly packed, and disclosed in writing the "condition, nature, quality or characteristic that may cause damage, injury or detriment to the goods." Absent any signs on the shipment requiring the placement of a sling cable in the mid-portion of the crate, the respondent ICTSI was not obliged to do so.

The statement in the Bill of Lading, that the shipment was in apparent good condition, is sufficient to sustain a finding of absence of defects in the merchandise. Case law has it that such statement will create a prima facie presumption only as to the external condition and not to that not open to inspection.[53]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Romeo A. Brawner (now Presiding Justice of the Court of Appeals), with

Associate Justices Rebecca De Guia-Salvador and Jose C. Reyes, Jr., concurring.

[2]Records, p. 160.

[3] Id. at 222.

[4]Records, pp. 226-227.

[5]Id. at 161.

[6]Id. at 162.

[7] TSN, 19 September 1996, pp. 12-13.

[8]Records, p. 161.

[9] TSN, 11 July 1996, p. 11.

[10]Records, p. 163.

[11] TSN, 26 September 1996, p. 34.

[12] TSN, 18 October 1996, p. 5.

[13] TSN, 19 September 1996, pp. 5-6.

[14] Id. at 7.

[15] Id. at 10.

[16] Id.

[17] TSN, 18 October 1996, pp. 13-15.

[18] Records, p. 166.

[19] Exhibits "G" to "G-2."

[20] Records, p. 184.

[21] Id. at 183.

[22] Id. at 187.

[23] Id. at 185.

[24] Id. at 1-6.

[25] Records, p. 4.

[26] TSN, 26 September 1996, p. 43.

[27] Id. at 24-27.

[28] Exhibit "4."

[29] Records, p. 294.

[30] Exhibit "K."

[31] Records, p. 295.

[32] Rollo, pp. 32-33.

[33] Rollo, pp. 30-31.

[34] Id. at 32.

[35] Id. at 30.

[36] Id. at 13-14.

[37] Rollo, p. 20.

[38] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[39] Rollo, pp. 41-42.

[40] Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, 28 April 2004, 428 SCRA 79.

[41] Article 1733 of the New Civil Code.

[42] Calvo v. UCPB General Insurance Co., Inc., G.R. No. 148496, 19 March 2002, 379 SCRA 510.

[43] Articles 1736-1738 of the New Civil Code.

[44] Article 1735 of the New Civil Code.

[45] Article 1735 of the New Civil Code.

[46] De Guzman v. Court of Appeals, G.R. No. L-47822, 22 December 1988, 168 SCRA 612.

[47] Ynchausti Steamship Co. v. Dexter and Unison, 41 Phil. 289 (1920); Mirasol v. Robot Dollar Co., 53 Phil. 125 (1929).

[48] Black's Law Dictionary, 5th Edition, p. 376.

[49] Webster's Third New International Dictionary, p. 1158.

[50] Records, p. 292.

[51] Rollo, pp. 30-32.

[52] TSN, 19 September 1996, p. 14.

[53] Minneapolis Fire & Marine Ins. Co. v. Baltimore & O.R. Co., 53 N.W.2d 828 (1952); Bingham v. Osaka Shosen Kaisha, 12 F.Supp. 35 (1935); The L. Hirschberg & Co. v. SS Caterina Gerolimich, 54 F.2d 1080 (1931); Bronstein Bros. & Co. v. Societa Anomina Co-op Fra Lavoratori Del, 25 F.2d 122 (1928).

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