

INSURANCE COMPANY OF NORTH AMERICA, PETITIONER, VS. ASIAN TERMINALS, INC., RESPONDENT.

G.R. No. 180784. February 15, 2012

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-180784/>

PERALTA, J.:

This is a petition for review on certiorari[1] of the Decision of the Regional Trial Court (RTC) of Makati City, Branch 138 (trial court) in Civil Case No. 05-809 and its Order dated December 4, 2007 on the ground that the trial court committed reversible error of law.

The trial court dismissed petitioner's complaint for actual damages on the ground of prescription under the Carriage of Goods by Sea Act (COGSA).

The facts are as follows:

On November 9, 2002, Macro-Lite Korea Corporation shipped to San Miguel Corporation, through M/V "DIMIP" vessel, one hundred eighty-five (185) packages (231,000 sheets) of electrolytic tin free steel, complete and in good order condition and covered by Bill of Lading No. POBUPOHMAN20638.[2] The shipment had a declared value of US\$169,850.35[3] and was insured with petitioner Insurance Company of North America against all risks under Marine Policy No. MOPA-06310.[4]

The carrying vessel arrived at the port of Manila on November 19, 2002, and when the shipment was discharged therefrom, it was noted that seven (7) packages thereof were damaged and in bad order.[5] The shipment was then turned over to the custody of respondent Asian Terminals, Inc. (ATI) on November 21, 2002 for storage and safekeeping pending its withdrawal by the consignee's authorized customs broker, R.V. Marzan Brokerage Corp. (Marzan).

On November 22, 23 and 29, 2002, the subject shipment was withdrawn by Marzan from the custody of respondent. On November 29, 2002, prior to the last withdrawal of the shipment, a joint inspection of the said cargo was conducted per the Request for Bad Order Survey[6] dated November 29, 2002, and the examination report, which was written on the same request, showed that an additional five (5) packages were found to be damaged and in bad order.

On January 6, 2003, the consignee, San Miguel Corporation, filed separate claims[7] against respondent and petitioner for the damage to 11,200 sheets of electrolytic tin free steel.

Petitioner engaged the services of an independent adjuster/surveyor, BA McLarens Phils., Inc., to conduct an investigation and evaluation on the claim and to prepare the necessary report.[8] BA McLarens Phils., Inc. submitted to petitioner an Survey Report[9] dated January 22, 2003 and another report[10] dated May 5, 2003 regarding the damaged shipment. It noted that out of the reported twelve (12) damaged skids, nine (9) of them were rejected and three (3) skids were accepted by the consignee's representative as good order. BA McLarens Phils., Inc. evaluated the total cost of damage to the nine (9) rejected skids (11,200 sheets of electrolytic tin free

steel) to be P431,592.14.

The petitioner, as insurer of the said cargo, paid the consignee the amount of P431,592.14 for the damage caused to the shipment, as evidenced by the Subrogation Receipt dated January 8, 2004. Thereafter, petitioner, formally demanded reparation against respondent. As respondent failed to satisfy its demand, petitioner filed an action for damages with the RTC of Makati City.

The trial court found, thus:

The Court finds that the subject shipment indeed suffered additional damages. The Request for Bad Order Survey No. 56422 shows that prior to the turn over of the shipment from the custody of ATI to the consignee, aside from the seven (7) packages which were already damaged upon arrival at the port of Manila, five (5) more packages were found with "dent, cut and crumple" while in the custody of ATI. This document was issued by ATI and was jointly executed by the representatives of ATI, consignee and customs, and the Shed Supervisor. Thus, ATI is now estopped from claiming that there was no additional damage suffered by the shipment. It is, therefore, only logical to conclude that the damage was caused solely by the negligence of defendant ATI. This evidence of the plaintiff was refuted by the defendant by merely alleging that "the damage to the 5 Tin Plates is only in its external packaging." However, the fact remains that the consignee has rejected the same as total loss for not being suitable for their intended purpose. In addition, the photographs presented by the plaintiff show that the shipment also suffered severe dents and some packages were even critically crumpled.[11]

As to the extent of liability, ATI invoked the Contract for Cargo Handling Services executed between the Philippine Ports Authority and Marina Ports Services, Inc. (now Asian Terminals, Inc.). Under the said contract, ATI's liability for damage to cargoes in its custody is limited to P5,000.00 for each package, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing, together with the declared Bill of Lading value and supported by a certified packing list to the contractor by the interested party or parties before the discharge or lading unto vessel of the goods.

The trial court found that there was compliance by the shipper and consignee with the above requirement. The Bill of Lading, together with the corresponding invoice and packing list, was shown to ATI prior to the discharge of the goods from the vessel. Since the shipment was released from the custody of ATI, the trial court found that the same was declared for tax purposes as well as for the assessment of arrastre charges and other fees. For the purpose, the presentation of the invoice, packing list and other shipping documents to ATI for the proper assessment of the arrastre charges and other fees satisfied the condition of declaration of the actual invoices of the value of the goods to overcome the limitation of liability of the arrastre operator.[12]

Further, the trial court found that there was a valid subrogation between the petitioner and the assured/consignee San Miguel Corporation. The respondent admitted the existence of Global Marine Policy No. MOPA-06310 with San Miguel Corporation and Marine Risk Note No. 3445,[13] which showed that the cargo was indeed insured with petitioner. The trial court held that petitioner's claim is compensable because the Subrogation Receipt,¹⁶ which was admitted as to its existence by respondent, was sufficient to establish not only the relationship of the insurer and the assured, but also the amount paid to settle the insurance claim.[14]

However, the trial court dismissed the complaint on the ground that the petitioner's claim was already barred by the statute of limitations. It held that COGSA, embodied in Commonwealth Act (CA) No. 65, applies to this case, since the goods were shipped from a foreign port to the Philippines. The trial court stated that under the said law, particularly paragraph 4, Section 3 (6)[15] thereof, the shipper has the right to bring a suit within one year after the delivery of the goods or the date when the goods should have been delivered, in respect of loss or damage thereto.

The trial court held:

In the case at bar, the records show that the shipment was delivered to the consignee on 22, 23 and 29 of November 2002. The plaintiff took almost a year to approve and pay the claim of its assured, San Miguel, despite the fact that it had initially received the latter's claim as well as the inspection report and survey report of McLarens as early as January 2003. The assured/consignee had only until November of 2003 within which to file a suit against the defendant. However, the instant case was filed only on September 7, 2005 or almost three (3) years from the date the subject shipment was delivered to the consignee. The plaintiff, as insurer of the shipment which has paid the claim of the insured, is subrogated to all the rights of the said insured in relation to the reimbursement of such claim. As such, the plaintiff cannot acquire better rights than that of the insured. Thus, the plaintiff has no one but itself to blame for having acted lackadaisically on San Miguel's claim.

WHEREFORE, the complaint and counterclaim are hereby DISMISSED.[16]

Petitioner's motion for reconsideration was denied by the trial court in the Order[17] dated December 4, 2007.

Petitioner filed this petition under Rule 45 of the Rules of Court directly before this Court, alleging that it is raising a pure question of law:

THE TRIAL COURT COMMITTED A PURE AND SERIOUS ERROR OF LAW IN APPLYING THE ONE-YEAR PRESCRIPTIVE PERIOD FOR FILING A SUIT UNDER THE CARRIAGE OF GOODS BY SEA ACT (COGSA) TO AN ARRASTRE OPERATOR.[18]

Petitioner states that while it is in full accord with the trial court in finding respondent liable for the damaged shipment, it submits that the trial court's dismissal of the complaint on the ground of prescription under the COGSA is legally erroneous. It contends that the one-year limitation period for bringing a suit in court under the COGSA is not applicable to this case, because the prescriptive period applies only to the carrier and the ship. It argues that respondent, which is engaged in warehousing, arrastre and stevedoring business, is not a carrier as defined by the COGSA, because it is not engaged in the business of transportation of goods by sea in international trade as a common carrier. Petitioner asserts that since the complaint was filed against respondent arrastre operator only, without impleading the carrier, the prescriptive period under the COGSA is not applicable to this case.

Moreover, petitioner contends that the term "carriage of goods" in the COGSA covers the period from the time the goods are loaded to the vessel to the time they are discharged therefrom. It points out that it sued respondent only for the additional five (5) packages of the subject shipment that were found damaged while in respondent's custody, long after the shipment was discharged from the vessel. The said damage was confirmed by the trial court and proved by the Request for Bad Order Survey No. 56422.[19]

Petitioner prays that the decision of the trial court be reversed and set aside and a new judgment be promulgated granting its prayer for actual damages.

The main issues are: (1) whether or not the one-year prescriptive period for filing a suit under the COGSA applies to this action for damages against respondent arrastre operator; and (2) whether or not petitioner is entitled to recover actual damages in the amount of P431,592.14 from respondent.

To reiterate, petitioner came straight to this Court to appeal from the decision of the trial court under Rule 45 of the Rules of Court on the ground that it is raising only a question of law.

Microsoft Corporation v. Maxicorp, Inc.[20] explains the difference between questions of law and questions of fact, thus:

The distinction between questions of law and questions of fact is settled. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometimes problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. x x x[21]

In this case, although petitioner alleged that it is merely raising a question of law, that is, whether or not the prescriptive period under the COGSA applies to an action for damages against respondent arrastre operator, yet petitioner prays for the reversal of the decision of the trial court and that it be granted the relief sought, which is the award of actual damages in the amount of P431,592.14. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[22] However, to resolve the issue of whether or not petitioner is entitled to recover actual damages from respondent requires the Court to evaluate the evidence on record; hence, petitioner is also raising a question of fact.

Under Section 1, Rule 45, providing for appeals by certiorari before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[23] The Court may resolve questions of fact only when the case falls under the following exceptions:

(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[24]

In this case, the fourth exception cited above applies, as the trial court rendered judgment based on a misapprehension of facts.

We first resolve the issue on whether or not the one-year prescriptive period for filing a suit under the COGSA applies to respondent arrastre operator.

The Carriage of Goods by Sea Act (COGSA), Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of CA No. 65.

Section 1 of CA No. 65 states:

Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: Provided, That nothing in the Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application.

Section 1, Title I of CA No. 65 defines the relevant terms in Carriage of Goods by Sea, thus:

Section 1. When used in this Act -

(a) The term "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) The term "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) The term "goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) The term "ship" means any vessel used for the carriage of goods by sea.

(e) The term "carriage of goods" covers the period from the time when the goods are loaded to the time when they are discharged from the ship.[25]

It is noted that the term "carriage of goods" covers the period from the time when the goods are loaded to the time when they are discharged from the ship; thus, it can be inferred that the period of time when the goods have been discharged from the ship and given to the custody of the arrastre operator is not covered by the COGSA.

The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3, thus:

6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.[26]

From the provision above, the carrier and the ship may put up the defense of prescription if the action for damages is not brought within one year after the delivery of the goods or the date when the goods should have been delivered. It has been held that not only the shipper, but also the consignee or legal holder of the bill may invoke the prescriptive period.[27] However, the COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator.

Respondent arrastre operator's responsibility and liability for losses and damages are set forth in Section 7.01 of the Contract for Cargo Handling Services executed between the Philippine Ports Authority and Marina Ports Services, Inc. (now Asian Terminals, Inc.), thus:

Section 7.01 Responsibility and Liability for Losses and Damages; Exceptions - The CONTRACTOR shall, at its own expense, handle all merchandise in all work undertaken by it hereunder, diligently and in a skillful, workman-like and efficient manner. The CONTRACTOR shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (P5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods. This amount of Five Thousand Pesos (P5,000.00) per package may be reviewed and adjusted by the AUTHORITY from time to time. The CONTRACTOR shall not be responsible for the condition or the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by force majeure or other causes beyond the CONTRACTOR's control or capacity to prevent or remedy; PROVIDED, that a formal claim together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and Computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRACTOR within fifteen (15) days from day of issuance by the CONTRACTOR of a certificate of non-delivery; PROVIDED, however, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) day period within which to file the claim commences; PROVIDED, finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the package to the consignee.[28]

Based on the Contract above, the consignee has a period of thirty (30) days from the date of delivery of the package to the consignee within which to request a certificate of loss from the arrastre operator. From the date of the request for a certificate of loss, the arrastre operator has a period of fifteen (15) days within which to issue a certificate of non-delivery/loss either actually or constructively. Moreover, from the date of issuance of a certificate of non-delivery/loss, the consignee has fifteen (15) days within which to file a formal claim covering the loss, injury, damage or non-delivery of such goods with all accompanying documentation against the arrastre operator.

Petitioner clarified that it sued respondent only for the additional five (5) packages of the subject shipment that were found damaged while in respondent's custody, which fact of damage was sustained by the trial court and proved by the Request for Bad Order Survey No. 56422.[29]

Petitioner pointed out the importance of the Request for Bad Order Survey by citing *New Zealand Insurance Company Limited v. Navarro*.^[30] In the said case, the Court ruled that the request for, and the result of, the bad order examination, which were filed and done within fifteen days from the haulage of the goods from the vessel, served the purpose of a claim, which is to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available. Hence, even if the consignee therein filed a formal claim beyond the stipulated period of 15 days, the arrastre operator was not relieved of liability as the purpose of a formal claim had already been satisfied by the consignee's timely request for the bad order examination of the goods shipped and the result of the said bad order examination.

To elaborate, *New Zealand Insurance Company, Ltd. v. Navarro* held:

We took special note of the above pronouncement six (6) years later in *Fireman's Fund Insurance Co. v. Manila Port Service Co., et al.* There, fifteen (15) cases of nylon merchandise had been discharged from the

carrying vessel and received by defendant Manila Port Service Co., the arrastre operator, on 7 July 1961. Out of those fifteen (15) cases, however, only twelve (12) had been delivered to the consignee in good condition. Consequently, on 20 July 1961, the consignee's broker requested a bad order examination of the shipment, which was later certified by defendant's own inspector to be short of three (3) cases. On 15 August 1961, a formal claim for indemnity was then filed by the consignee, who was later replaced in the action by plaintiff Fireman's Fund Insurance Co., the insurer of the goods. Defendant, however, refused to honor the claim, arguing that the same had not been filed within fifteen (15) days from the date of discharge of the shipment from the carrying vessel, as required under the arrastre Management Contract then in force between itself and the Bureau of Customs. The trial court upheld this argument and hence dismissed the complaint. On appeal by the consignee, this Court, speaking through Mr. Justice J.B.L. Reyes, reversed the trial court and found the defendant arrastre operator liable for the value of the lost cargo, explaining as follows:

“However, the trial court has overlooked the significance of the request for, and the result of, the bad order examination, which were filed and done within fifteen days from the haulage of the goods from the vessel. Said request and result, in effect, served the purpose of a claim, which is —

‘to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available.’ (Consunji vs. Manila Port Service, L-15551, 29 November 1960)

Indeed, the examination undertaken by the defendant's own inspector not only gave the defendant an opportunity to check the goods but is itself a verification of its own liability x x x.

In other words, what the Court considered as the crucial factor in declaring the defendant arrastre operator liable for the loss occasioned, in the Fireman's Fund case, was the fact that defendant, by virtue of the consignee's request for a bad order examination, had been able formally to verify the existence and extent of its liability within fifteen (15) days from the date of discharge of the shipment from the carrying vessel -- i.e., within the same period stipulated under the Management Contract for the consignee to file a formal claim. That a formal claim had been filed by the consignee beyond the stipulated period of fifteen (15) days neither relieved defendant of liability nor excused payment thereof, the purpose of a formal claim, as contemplated in Consunji, having already been fully served and satisfied by the consignee's timely request for, and the eventual result of, the bad order examination of the nylon merchandise shipped.

Relating the doctrine of Fireman's Fund to the case at bar, the record shows that delivery to the warehouse of consignee Monterey Farms Corporation of the 5,974 bags of soybean meal, had been completed by respondent Razon (arrastre operator) on 9 July 1974. On that same day, a bad order examination of the goods delivered was requested by the consignee and was, in fact, conducted by respondent Razon's own inspector, in the presence of representatives of both the Bureau of Customs and the consignee. The ensuing bad order examination report — what the trial court considered a "certificate of loss" — confirmed that out of the 5,974 bags of soybean meal loaded on board the M/S "Zamboanga" and shipped to Manila, 173 bags had been damaged in transitu while an additional 111 bags had been damaged after the entire shipment had been discharged from the vessel and placed in the custody of respondent Razon. Hence, as early as 9 July 1974 (the date of last delivery to the consignee's warehouse), respondent Razon had been able to verify and ascertain for itself not only the existence of its liability to the consignee but, more significantly, the exact amount thereof - i.e., P5,746.61, representing the value of 111 bags of soybean meal. We note further that such verification and ascertainment of liability on the part of respondent Razon, had been accomplished "within thirty (30) days from the date of delivery of last package to the consignee, broker or importer" as well as "within fifteen (15) days from the date of issuance by the Contractor [respondent Razon] of a certificate of loss, damage or injury or certificate of non-delivery" — the periods prescribed under Article VI, Section 1 of the Management Contract here involved, within which a request for certificate of loss and a formal claim, respectively, must be filed by the consignee or his agent. Evidently, therefore, the rule laid down by the Court in Fireman's Fund finds appropriate application in the case at bar.[31]

In this case, the records show that the goods were deposited with the arrastre operator on November 21, 2002. The goods were withdrawn from the arrastre operator on November 22, 23 and 29, 2002. Prior to the withdrawal on November 29, 2002, the broker of the importer, Marzan, requested for a bad order survey in the presence of a Customs representative and other parties concerned. The joint inspection of cargo was conducted and it was found that an additional five (5) packages were found in bad order as evidenced by the document entitled Request for Bad Order Survey[32] dated November 29, 2002, which document also contained the examination report, signed by the Custom's representative, Supervisor/Superintendent, consignee's representative, and the ATI Inspector.

Thus, as early as November 29, 2002, the date of the last withdrawal of the goods from the arrastre operator, respondent ATI was able to verify that five (5) packages of the shipment were in bad order while in its custody. The certificate of non-delivery referred to in the Contract is similar to or identical with the examination report on the request for bad order survey.[33] Like in the case of *New Zealand Insurance Company Ltd. v. Navarro*, the verification and ascertainment of liability by respondent ATI had been accomplished within thirty (30) days from the date of delivery of the package to the consignee and within fifteen (15) days from the date of issuance by the Contractor (respondent ATI) of the examination report on the request for bad order survey. Although the formal claim was filed beyond the 15-day period from the issuance of the examination report on the request for bad order survey, the purpose of the time limitations for the filing of claims had already been fully satisfied by the request of the consignee's broker for a bad order survey and by the examination report of the arrastre operator on the result thereof, as the arrastre operator had become aware of and had verified the facts giving rise to its liability.[34] Hence, the arrastre operator suffered no prejudice by the lack of strict compliance with the 15-day limitation to file the formal complaint.[35]

The next factual issue is whether or not petitioner is entitled to actual damages in the amount of P431,592.14. The payment of the said amount by petitioner to the assured/consignee was based on the Evaluation Report[36] of BA McLarens Phils., Inc., thus:

x x x x

CIRCUMSTANCES OF LOSS

As reported, the shipment consisting of 185 packages (344.982 MT) Electrolytic Tin Free Steel, JISG 3315SPTFS, MRT-4CA, Matte Finish arrived Manila via Ocean Vessel, M/V "DIMI P" V-075 on November 9, 2002 and subsequently docked alongside Pier No. 9, South Harbor, Manila. The cargo of Electrolytic Tin Free Steel was discharged ex-vessel complete with seven (7) skids noted in bad order condition by the vessel's representative. These skids were identified as nos. 2HD804211, 2HD804460, SHD804251, SHD803784, 2HD803763, 2HD803765 and 2HD803783 and covered with Bad Order Tally Receipts No. 3709, 3707, 3703 and 3704. Thereafter, the same were stored inside the warehouse of Pier No. 9, South Harbor, Manila, pending delivery to the consignee's warehouse.

On November 22, 23 and 29, 2002, the subject cargo was withdrawn from the Pier by the consignee authorized broker, R. V. Marzan Brokerage Corp. and the same was delivered to the consignee's final warehouse located at Silangan, Canlubang, Laguna complete with twelve (12) skids in bad order condition.

VISUAL INSPECTION

We conducted an ocular inspection on the reported damaged Electrolytic Tin Free Steel, Matte Finish at the consignee's warehouse located at Brgy. Silangan, Canlubang, Laguna and noted that out of the reported twelve (12) damaged skids, nine (9) of them were rejected and three (3) skids were accepted by the consignee's representative as complete and without exceptions.

x x x x

EVALUATION OF INDEMNITY

We evaluated the loss/damage sustained by the subject shipments and arrived as follows:

PRODUCT NOS.

PRODUCTS NAMED

NO. OF SHEETS

NET WT. PER PACKING LIST

2HD803763

Electrolytic Tin Free
Steel JISG3315

1,200

1,908

2HD803783

-do-

1,200

1,908

2HD803784

-do-

1,200

1,908

2HD804460

-do-

1,400

1,698

2HD803765

-do-

1,200

1,908

2HD804522

-do-

1,200

1,987

2HD804461

-do-

1,400

1,698

2HD804540

-do-

1,200

1,987

2HD804549

-do-

1,200

1,987

9 SKIDS

TOTAL

11,200

16,989 kgs.

P9,878,547.58

P478,959.88

----- =

42.7643 x 11,200

231,000

Less: Deductible 0.50% based on sum insured

49,392.74

Total

P429,567.14

Add: Surveyor's Fee

2,025.00

Sub-Total

P431,592.14

Note: Above evaluation is Assured's tentative liability as the salvage proceeds on the damaged stocks has yet to be determined.

RECOVERY ASPECT

Prospect of recovery would be feasible against the shipping company and the Arrastre operator considering the copies of Bad Order Tally Receipts and Bad Order Certificate issued by the subject parties.[37]

To clarify, based on the Evaluation Report, seven (7) skids were damaged upon arrival of the vessel per the Bad Order Cargo Receipts[38] issued by the shipping company, and an additional five (5) skids were damaged in the custody of the arrastre operator per the Bad Order Certificate/Examination Report[39] issued by the arrastre contractor. The Evaluation Report states that out of the reported twelve damaged skids, only nine were rejected, and three were accepted as good order by the consignee's representative. Out of the nine skids that were rejected, five skids were damaged upon arrival of the vessel as shown by the product numbers in the Evaluation Report, which product numbers matched those in the Bad Order Cargo Receipts[40] issued by the shipping company. It can then be safely inferred that the four remaining rejected skids were damaged in the custody of the arrastre operator, as the Bad Order Certificate/Examination Report did not indicate the product numbers thereof.

Hence, it should be pointed out that the Evaluation Report shows that the claim for actual damages in the amount of P431,592.14 covers five (5)[41] out of the seven (7) skids that were found to be damaged upon arrival of the vessel and covered by Bad Order Cargo Receipt Nos. 3704, 3706, 3707 and 3709,[42] which claim should have been filed with the shipping company. Petitioner must have realized that the claim for the said five (5) skids was already barred under COGSA; hence, petitioner filed the claim for actual damages only against respondent arrastre operator.

As regards the four (4) skids that were damaged in the custody of the arrastre operator, petitioner is still entitled to recover from respondent. The Court has ruled that the Request for Bad Order Survey and the examination report on the said request satisfied the purpose of a formal claim, as respondent was made aware of and was able to verify that five (5) skids were damaged or in bad order while in its custody before the last withdrawal of the shipment on November 29, 2002. Hence, even if the formal claim was filed beyond the 15-day period stipulated in the Contract, respondent was not prejudiced thereby, since it already knew of the number of skids damaged in its possession per the examination report on the request for bad order survey.

Remand of the case to the trial court for the determination of the liability of respondent to petitioner is not necessary as the Court can resolve the same based on the records before it.[43] The Court notes that petitioner, who filed this action for damages for the five (5) skids that were damaged while in the custody of respondent, was not forthright in its claim, as it knew that the damages it sought in the amount of P431,592.14, which was based on the Evaluation Report of its adjuster/surveyor, BA McLarens Phils., Inc., covered nine (9) skids. Based on the same Evaluation Report, only four of the nine skids were damaged in the custody of respondent. Petitioner should have been straightforward about its exact claim, which is borne out by the evidence on record, as petitioner can be granted only the amount of damages that is due to it.

Based on the Evaluation Report[44] of BA McLarens Phils., Inc., dated May 5, 2003, the four (4) skids damaged while in the custody of the arrastre operator and the amount of actual damages therefore are as follows:

PRODUCT NOS.

PRODUCTS NAMED

NO. OF SHEETS

NET WT. PER

PACKING LIST

2HD804522

Electrolytic Tin Free
Steel JISG3315

1,200

1,987

2HD804461

-do-

1,400

1,698

2HD804540

-do-

1,200

1,987

2HD804549

-do-

1,200

1,987

4 SKIDS

TOTAL

5,000

P9,878,547.58 (Insured value)[45]

P213,821.50

----- = 42.7643 x 5,000

231,000 (Total number of sheets)

Less: Deductible 0.50% based on sum insured[46]

49,392.74

Total

P164,428.76

In view of the foregoing, petitioner is entitled to actual damages in the amount of P164,428.76 for the four (4) skids damaged while in the custody of respondent.

WHEREFORE, the petition is GRANTED. The Decision of the Regional Trial Court of Makati City, Branch 138,

dated October 17, 2006, in Civil Case No. 05-809, and its Order dated December 4, 2007, are hereby REVERSED and SET ASIDE. Respondent Asian Terminals, Inc. is ORDERED to pay petitioner Insurance Company of North America actual damages in the amount of One Hundred Sixty-Four Thousand Four Hundred Twenty-Eight Pesos and Seventy-Six Centavos (P164,428.76). Twelve percent (12%) interest per annum shall be imposed on the amount of actual damages from the date the award becomes final and executory until its full satisfaction.

Costs against petitioner.

SO ORDERED.

Carpio,[*]Abad, Perez, [**] and Mendoza, JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as an additional member in lieu of Associate Justice Estela M. Perla-Bernabe, per Special Order No. 1192 dated February 10, 2012.

[1] Under Rule 45 of the Rules of Court.

[2] Annex “D,” records, p. 108.

[3] Annex “B,” id. at 106.

[4] Annex “A” of Complaint, id. at 68.

[5] Bad Order Cargo Receipts, Annexes “G” to “G-2,” id. at 111-113.

[6] Request for Bad Order Survey No. 56422, Annex “1,” id. at 153.

[7] Annexes “C” and “J,” id. at 107 and 118, respectively.

[8] Affidavit of Mr. Armel Santos, id. at 62, 64.

[9] Records, p. 125.

[10] Id. at 129.

[11] Rollo, p. 30.

[12] RTC Decision, rollo, p. 31, citing *E. Razon, Inc. v. CA*, G.R. No. L-50242, May 21, 1988, 161 SCRA 356.

[13] Annex “B,” records, p. 106.

[14] RTC Decision, rollo, p. 31, citing *Delsan Transport Lines, Inc. v. Court of Appeals*, G.R. No. 127897, November 15, 2001, 369 SCRA 24.

[15] COGSA, Section 3 (6) paragraph 4: In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit with one year after the delivery of the goods or the date when the goods should have been delivered. (Emphasis supplied)

[16] Rollo, p. 32.

- [17] Id. at 334.
- [18] Id. at 14.
- [19] Annex “F,” records, p. 16.
- [20] G.R. No. 140946, September 13, 2004, 438 SCRA 224.
- [21] Id. at 230-231.
- [22] Id. at 232.
- [23] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742, 747, citing *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486, 503.
- [24] Id.
- [25] Emphasis supplied.
- [26] Emphasis supplied.
- [27] *Belgian Overseas Chartering and Shipping, N.V. v. Philippine First Insurance Co., Inc.*, G.R. No. 143133, June 5, 2002, 383 SCRA 23.
- [28] Records, pp. 168-169. (Emphasis and underscoring supplied)
- [29] Annex “F,” id. at 16.
- [30] G.R. No. 48686, October 4, 1989, 178 SCRA 287.
- [31] Id. at 294-296. (Emphasis supplied.)
- [32] Annex “1,” records, p. 153.
- [33] See *New Zealand Insurance Company, Ltd. v. Navarro*, supra note 30.
- [34] Id. at 297.
- [35] Id.
- [36] Records, pp. 129-133.
- [37] Id. at 130-132. (Emphasis and underscoring supplied.)
- [38] Annexes “G,” “G-1,” “G-2,” records, pp. 111-113.
- [39] Annex “1,” id. at 153.
- [40] Annexes “G,” “G-1,” “G-2,” id. at 111-113.
- [41] Packages Nos. 2HD804460, SHD803784, 2HD803763, 2HD803765 and 2HD803783.
- [42] Annexes “G,” “G-1,” “G-2,” records, pp. 111-113.
- [43] See *Caltex Phils., Inc. v. Intermediate Appellate Court*, G.R. No. 74730, August 25, 1989, 176 SCRA 741.
- [44] Records, pp. 129-133.
- [45] *Marine Risk Note No. 3445*, Annex “B,” id. at 106.

[46] Id.

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.