

EQUITABLE INSURANCE CORPORATION, PETITIONER, VS. TRANSMODAL INTERNATIONAL, INC., RESPONDENT.

G.R. No. 223592. August 07, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

This is to resolve the Petition for Review on Certiorari under Rule 45 of the Rules of Court, dated May 11, 2016, of petitioner Equitable Insurance Corporation that seeks to reverse and set aside the Decision[1] dated September 15, 2015 and Resolution[2] dated March 17, 2016 of the Court of Appeals (CA) reversing the Decision[3] dated June 18, 2013 of the Regional Trial Court (RTC), Branch 26, Manila in a civil case for actual damages.

The facts follow.

Sytengco Enterprises Corporation (Sytengco) hired respondent Transmodal International, Inc. (Transmodal) to clear from the customs authorities and withdraw, transport, and deliver to its warehouse, cargoes consisting of 200 cartons of gum Arabic with a total weight of 5,000 kilograms valued at US\$21,750.00.

The said cargoes arrived in Manila on August 14, 2004 and were brought to Ocean Links Container Terminal Center, Inc. pending their release by the Bureau of Customs (BOC) and on September 2, 2004, respondent Transmodal withdrew the same cargoes and delivered them to Sytengco's warehouse. It was noted in the delivery receipt that all the containers were wet.

In a preliminary survey conducted by Elite Adjusters and Surveyors, Inc. (Elite Surveyors), it was found that 187 cartons had water marks and the contents of the 13 wet cartons were partly hardened. On October 13, 2004, a re-inspection was conducted and it was found that the contents of the randomly opened 20 cartons were about 40% to 60% hardened, while 8 cartons had marks of previous wetting. In its final report dated October 27, 2004, Elite Surveyor fixed the computed loss payable at P728,712.00 after adjustment of 50% loss allowance.

Thus, on November 2, 2004, Sytengco demanded from respondent Transmodal the payment of P1,457,424.00 as compensation for total loss of shipment. On that same date, petitioner Equitable Insurance, as insurer of the cargoes per Marine Open Policy No. MN-MRN-HO-000549 paid Sytengco's claim for P728,712.00. On October 4, 2004, Sytengco then signed a subrogation receipt and loss receipt in favor of petitioner Equitable Insurance. As such, petitioner Equitable Insurance demanded from respondent Transmodal reimbursement of the payment given to Sytengco.

Thereafter, petitioner Equitable Insurance filed a complaint for damages invoking its right as subrogee after paying Sytengco's insurance claim and averred that respondent Transmodal's fault and gross negligence were the causes of the damages sustained by Sytengco's shipment. Petitioner Equitable Insurance prayed for the payment of P728,712.00 actual damages with 6% interest from the date of the filing of the complaint until full payment, plus attorney's fees and cost of suit.

Respondent Transmodal denied knowledge of an insurance policy and claimed that petitioner Equitable Insurance

has no cause of action against it because the damages to the cargoes were not due to its fault or gross negligence. According to the same respondent, the cargoes arrived at Sytengco's warehouse around 11:30 in the morning of September 1, 2004, however, Sytengco did not immediately receive the said cargoes and as a result, the cargoes got wet due to the rain that occurred on the night of September 1, 2004. Respondent Transmodal also questioned the timeliness of Sytengco's formal claim for payment which was allegedly made more than 14 days from the time the cargoes were placed at its disposal in contravention of the stipulations in the delivery receipts.

The RTC, in its Decision dated June 18, 2013, found in favor of petitioner Equitable Insurance, thus, the following dispositive portion of said decision:

WHEREFORE, based on the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the following:

- (1) Actual damages in the amount of Php728,712.00 plus 6% interest from judicial demand until full payment;
- (2) Attorney's fees in the amount equivalent to 10% of the amount claimed;
- (3) Costs of suit. SO ORDERED.[4]

According to the RTC, petitioner Equitable Insurance was able to prove by substantial evidence its right to institute an action as subrogee of Sytengco. It also ruled that petitioner Equitable Insurance's non-presentation of the insurance policy and non-compliance with Section 7, Rule 8 of the Rules of Court on actionable document were raised for the first time in respondent Transmodal's memorandum and also noted that petitioner Equitable Insurance had, in fact, submitted a copy of the insurance contract.

Respondent Transmodal appealed the RTC's decision to the CA. The CA, on September 15, 2015, promulgated its decision reversing the RTC's decision. It disposed of the appeal as follows:

WHEREFORE, the appeal is hereby GRANTED. The June 18, 2013 Decision of the Regional Trial Court, Branch 26, Manila in Civil Case No. 06-114861 is REVERSED and SET ASIDE. Accordingly, Equitable Insurance Corp.'s complaint is DISMISSED for failure to prove cause of action.

SO ORDERED.[5]

The CA ruled that there was no proof of insurance of the cargoes at the time of the loss and that the subrogation was improper. According to the CA, the insurance contract was neither attached in the complaint nor offered in evidence for the perusal and appreciation of the RTC, and what was presented was just the marine risk note.

Hence, the present petition after the CA denied petitioner Equitable Insurance's motion for reconsideration.

Petitioner Equitable Insurance enumerates the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE CASE OF MALAYAN INSURANCE CO., INC. V. REGIS BROKERAGE CORP. (G.R. NO. 172156, NOVEMBER 23, 2007) IS NOT APPLICABLE IN THE INSTANT CASE;
2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE FACTS SURROUNDING THE CASE OF MALAYAN INSURANCE CO., INC. V. REGIS BROKERAGE CORP. (G.R. NO. 172156, NOVEMBER 23, 2007) IS DIFFERENT FROM THE FACTS ATTENDING THE INSTANT CASE;
3. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF TISON V. COURT OF APPEALS, 276 SCRA 582;
4. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF COMPAÑA

MARITIMA V. INSURANCE COMPANY OF NORTH AMERICA, 12 SCRA 213;

5. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF DELSAN TRANSPORT LINES, INC. V. COURT OF APPEALS, 273 SCRA 262;

6. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE STATUTORY PRESUMPTION OF FAULT AND NEGLIGENCE.[6]

It is the contention of petitioner Equitable Insurance that the CA erred in not applying certain jurisprudence on this case which it deemed applicable. It also argues that the present case is not a suit between the insured Sytengco and the insurer but one between the consignee Sytengco and the respondent common carrier since petitioner Equitable Insurance merely stepped into the shoes of the said insured who has a direct cause of action against respondent Transmodal on account of the damage sustained by the subject cargo, thus, the carrier cannot set up as defense any defect in the insurance policy because it cannot avoid its liability to the consignee under the contract of carriage which binds it to pay any loss or damage that may be caused to the cargo involved therein.

In its Comment[7] dated July 25, 2016, respondent Transmodal avers that the CA did not err in not applying certain jurisprudence in the latter's decision. Respondent Transmodal further refutes all the assigned errors that petitioner Equitable Insurance enumerated in its petition.

A closer look at the arguments raised in the petition would show that petitioner is indeed asking this Court to review the factual findings of the CA which is not within the scope of a petition for review under Rule 45 of the Rules of Court. However, this Court has recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (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 facts are conflicting; (6) when in making its findings the CA 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 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; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[8] Considering that the findings of facts of the RTC and the CA are glaringly in contrast, this Court deems it proper to review the present case.

In ruling that petitioner's subrogation right is improper, the CA stated that it found no proof of insurance of the cargoes at the time of their loss. It also found that what was presented in court was the marine risk note and not the insurance contract or policy, thus:

A perusal of the complaint and the other documentary evidence submitted by Equitable Insurance such as the preliminary and final report clearly shows that the claims for damages and subrogation were based on Policy No. MN-MRN-HO-0005479. However, said insurance contract was neither attached in the complaint nor offered in evidence for the perusal and

appreciation of the court a quo. Instead, Equitable Insurance presented the marine risk note. For clarity, We quote the pertinent portions of the marine risk note, viz.:

Line & Subline
MARINE CARGO
RISK NOTE
Policy No.:

MN-MRN-HO-0005479

Issue date Sep. 08, 2004

Invoice No. 59298 V

Assured: SYTENGCO ENTERPRISES CORPORATION

Address: 10 RESTHAVEN ST.

SAN FRANCISCO DEL MONTE SUBDIVISION,

QUEZON CITY, METRO MANILA

We have this day noted the undermentioned risk in your favor and hereby guarantee that this document has all the force and effect of the terms and conditions of EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099.

L/C AMOUNT: USD 21,750.00 MARK-UP: 20%

SUM INSURED: PHP 1,457,424.00 EXCHANGE RATE: 55.8400

CARGO: 200 CTNS. GUM ARABIC POWDER KB-120

Supplier: JUMBO TRADING CO., LTD.

Vessel: ASIAN ZEPHYR VOYAGE No.: 062N

BL#:MNL04086310

ETD: 09-AUG-04 ETA: 13-AUG-04

From: THAILAND To: Manila, Philippines[9]

As such, according to the CA, the case of *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance, Inc.*[10] is applicable, wherein this Court held that a marine risk note is not an insurance policy. The CA also found applicable this Court's ruling in *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*,[11] stating that a marine policy is constitutive of the insurer-insured relationship, thus, such document should have been attached to the complaint as mandated by Section 7,[12] Rule 8 of the Rules of Court.

Petitioner, however, insists that the CA erred in applying the case of *Malayan* because the plaintiff therein did not present the marine insurance policy whereas in the present case, petitioner has presented not only the marine risk note but also Marine Open Policy No. MN-MOP-HO-0000099[13] which were all admitted in evidence.

Indeed, a perusal of the records would show that petitioner is correct in its claim that the marine insurance policy was offered as evidence. In fact, in the questioned decision of the CA, the latter, mentioned such policy, thus:

Contrary to the ruling of the RTC, the marine policy was not at all presented. As borne by the records, only the marine risk note and EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099 were offered in evidence. These pieces of evidence are immaterial to Equitable Insurance's cause of action. We have earlier pointed out that a marine risk note is insufficient to prove the insurer's claim. Although the marine risk note provided that it "has all the force and effect of the terms and conditions of EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099," there is nothing in the records showing that the said policy is related to Policy No. MN-MRN-HO-005479 which was the basis of Equitable Insurance's complaint. It did not escape our attention that the second page of the marine risk note explicitly stated that it was "attached to and forming part of the Policy No. MN-MRN-005479." Thus, without the presentation of Policy No. MN-MRN-005479, We cannot simply assume that the terms and conditions, including the period of coverage, of such policy are similar to Marine Policy No. MN-MOP-HO-0000099.[14]

As such, respondent had the opportunity to examine the said documents or to object to its presentation as pieces of evidence. The records also show that respondent was able to cross-examine petitioner's witness regarding the said documents. Thus, it was well established that petitioner has the right to step into the shoes of the insured who has

a direct cause of action against herein respondent on account of the damages sustained by the cargoes. "Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities." [15] The right of subrogation springs from Article 2207 of the Civil Code which states:

Art. 2207. If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

The records further show that petitioner was able to accomplish its obligation under the insurance policy as it has paid the assured of its insurance claim in the amount of P728,712,00 as evidenced by, among others, the Subrogation Receipt, [16] Loss Receipt, [17] Check Voucher, [18] and Equitable PCI Bank Check No. 0000013925. [19] The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim. [20]

This Court's ruling in *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corporation* [21] is highly instructive, thus:

As a general rule, the marine insurance policy needs to be presented in evidence before the insurer may recover the insured value of the lost/damaged cargo in the exercise of its subrogatory right. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, the Court stated that the presentation of the contract constitutive of the insurance relationship between the consignee and insurer is critical because it is the legal basis of the latter's right to subrogation.

In *Home Insurance Corporation v. CA*, the Court also held that the insurance contract was necessary to prove that it covered the hauling portion of the shipment and was not limited to the transport of the cargo while at sea. The shipment in that case passed through six stages with different parties involved in each stage until it reached the consignee. The insurance contract, which was not presented in evidence, was necessary to determine the scope of the insurer's liability, if any, since no evidence was adduced indicating at what stage in the handling process the damage to the cargo was sustained.

An analogous disposition was arrived at in the *Wallem* case cited by ATI wherein the Court held that the insurance contract must be presented in evidence in order to determine the extent of its coverage. It was further ruled therein that the liability of the carrier from whom reimbursement was demanded was not established with certainty because the alleged shortage incurred by the cargoes was not definitively determined.

Nevertheless, the rule is not inflexible. In certain instances, the Court has admitted exceptions by declaring that a marine insurance policy is dispensable evidence in reimbursement claims instituted by the insurer.

In *Delsan Transport Lines, Inc. v. CA*, the Court ruled that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Hence, presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim. The presentation of the insurance contract was deemed not fatal to the insurer's cause of action because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel.

The same rationale was the basis of the judgment in *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, wherein the arrastre operator was found liable for the lost shipment despite the failure of the insurance company to offer in evidence the insurance contract or policy. As in *Delsan*, it was certain that the loss of the cargo occurred while in the petitioner's custody.[22]

In view thereof, the RTC did not err in its ruling, thus:

Defendant in its memorandum, raised the issue that plaintiff failed to attach in its complaint a copy of the Marine Open Insurance Policy, thus, it failed to establish its cause of action as subrogee of the consignee quoting the case of *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*

The above-mentioned case is not applicable in the instant case. In *Malayan Insurance Co. v. Regis Brokerage*, Malayan did not submit the copy of the insurance contract or policy. In the instant case, plaintiff submitted the copy of the insurance contract. In fact, the non-presentation of the insurance contract is not fatal to its cause of action.

In the more recent case of *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, it was held:

Similarly, in this case, the presentation of the insurance contract or policy was not necessary. Although petitioner objected to the admission of the Subrogation Receipt in its Comment to respondent's formal offer of evidence on the ground that respondent failed to present the insurance contract or policy, a perusal of petitioner's Answer and Pre-trial Brief shows that petitioner never questioned respondent's right to subrogation, nor did it dispute the coverage of the insurance contract or policy. Since there was no issue regarding the validity of the insurance contract or policy, or any provision thereof, respondent had no reason to present the insurance contract or policy as evidence during the trial.

Perusal of the records likewise show that the defendant failed to raise the issue of non-compliance with Section 7, Rule 8 of the 1997 Rules of Procedure and the non-presentation of insurance policy during the pre-trial. In the same case, it was held:

Petitioner claims that respondent's non-presentation of the insurance contract or policy between the respondent and the consignee is fatal to its cause of action.

We do not agree.

First of all, this was never raised as an issue before the RTC. In fact, it is not among the issues agreed upon by the parties to be resolved during the pre-trial. As we have said, the determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal. Thus, [t]he parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. x x x The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.

Plaintiff was able to prove by substantial evidence their right to institute this action as subrogee of the insured. The defendant did not present any evidence or witness to bolster their defense and to contradict plaintiffs allegation.[23]

To reiterate, in this case, petitioner was able to present as evidence the marine open policy that vested upon it, its rights as a subrogee. Subrogation is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who injustice, equity and good conscience ought to pay.[24]

WHEREFORE, the Petition for Review on Certiorari under Rule 45 of the Rules of Court, dated May 11, 2016, of petitioner Equitable Insurance Corporation is GRANTED. Consequently, the Decision dated September 15, 2015 and Resolution dated March 17, 2016 of the Court of Appeals in CA-G.R. CV No. 101296 are REVERSED and

SET ASIDE, and the Decision dated June 18, 2013 of the Regional Trial Court, Branch 26, Manila is AFFIRMED and REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Mendoza, Leonen, and Martires, JJ., concur.

[1] Penned by Associate Justice Pedro B. Corales, with the concurrence of Associate Justices Franchito N. Diamante and Rodil V. Zalameda; rollo, pp. 37-49.

[2] Rollo, pp. 69-70.

[3] Penned by Presiding Judge Silvino T. Pampilo, Jr., id. at 166-170.

[4] Id. at 170.

[5] Id. at 49.

[6] Id. at 16-17.

[7] Id. at 228-241.

[8] Philippine Shell Petroleum Corporation v. Gobonseng, Jr., 528 Phil. 724, 735 (2006); Spouses Sta. Maria v. Court of Appeals, 349 Phil. 275, 282-283 (1998); Fuentes v. Court of Appeals, 335 Phil. 1163, 1168 (1997); Reyes v. Court of Appeals, 328 Phil. 171, 180 (1996); Floro v. Llenado, 314 Phil. 715, 727-728 (1995); Remalante v. Tibe, 241 Phil. 930, 935-936 (1988).

[9] Rollo, pp. 43-44.

[10] 615 Phil. 627, 634 (2009).

[11] 563 Phil. 1003, 1016 (2007).

[12] Sec. 7. Action or defense based on document. - Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading, as an exhibit, which shall be deemed to be part of the pleading, or said copy may, with like effect, be set forth in the pleading.

[13] (Exhibits "L" to "L-5")

[14] Rollo, pp. 45-46. (Emphasis ours)

[15] Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation, 654 Phil. 67, 75 (2011).

[16] Exhibit "N".

[17] Exhibit "O".

[18] Exhibit "J".

[19] Exhibit "J-I".

[20] Aboitiz Shipping Corporation v. Insurance Company of North America, 583 Phil. 257, 272 (2008).

[21] 736 Phil. 373 (2014).

[22] Asian Terminal, Inc. v. First Lepanto-Taisho Insurance Corporation, *supra*, at 392-393. (Citations omitted)

[23] Rollo, pp. 168-169. (Citations omitted)

[24] PHILAMGEN v. CA, 339 Phil. 455, 466 (1997).

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