

**METRO PORT SERVICE, INC., (FORMERLY E. RAZON, INC.),
PETITIONER-APPELLANT, VS. COURT OF APPEALS AND CHARTER
INSURANCE CO., INC., RESPONDENTS-APPELLEES.**

G.R. No. 57582. August 24, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioner seeks a review of the Decision, and Resolution denying reconsideration, of the then Court of Appeals in CA-G.R. No. 63087-R entitled "The Charter Insurance Co., Inc. vs. Universal Shipping Lines, Inc. and E. Razon, Inc.".

The following are the established facts: Sometime in April 1973, Union Sales Marketing Corporation (UNION) ordered from Union Carbide of Antwerp, Belgium, 99,540 kilograms of Low Density Polyethylene, valued at US \$.245 per kilogram or a total purchase price of US \$24,417.30 (Exhibits "D" & "F"), at the conversion rate of P6.848 to a US Dollar (Exhibit "E").

The shipment was packed in 4,000 bags of 25 net kilo-grams, more or less, for each bag, and was loaded at Antwerp, Belgium, in good order condition on board the "S/S Dingalan Bay", owned and operated by Universal Shipping Lines, Inc. (CARRIER) and consigned to UNION in Manila. The shipment was covered by a Marine Risk Note (Exhibit "B") issued by Charter Insurance Co. (INSURER) for P212,738.17 against all risks. The CARRIER arrived in Manila on June 22, 1973 and arrastre services were handled by E. Razon, Inc. (ARRASTRE), now called Metro Port Service, Inc.

It is not disputed that out of the 4,000 bags, 1,050 bags were received by the consignee UNION in bad order condition (Exhibits "I" to "I-5"; Exhibits "22" to "27").[1] As a consequence of the damage and loss, the INSURER paid UNION the sum of P35,709.11 in full settlement of the claim, and the INSURER became the subrogee of all of UNION's rights to recover from the parties concerned.

On July 1, 1974, the INSURER sued for damages with the then Court of First Instance of Manila against the CARRIER and the ARRASTRE in the amount of P35,709.11, in addition to exemplary damages and attorney's fees.

Both defendants disclaimed liability, each one attributing the loss to the other.

In its Decision, the Trial Court allocated payment of liabilities as follows:

"WHEREFORE, defendant Universal Shipping Lines, Inc., is ordered to pay plaintiff the amount of P12,285.94 plus 12% interest per annum from July 1, 1974 until full payment thereof.

Defendant E. Razon, Inc., is ordered to pay plaintiff the amount of P9,763.94 plus 12% interest per annum from July 1, 1974 until full payment thereof.

Both defendants are ordered to pay the costs.

Both defendants also are jointly and severally liable to pay plaintiff P2,000.00 as attorney's fees."[2]

On appeal by the CARRIER and ARRASTRE, the then Court of Appeals, on March 23, 1981, absolved the CARRIER of any and all liability and held the ARRASTRE solely liable.

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the judgment appealed from is hereby MODIFIED as follows:

1. Defendant E. Razon, Inc., is hereby directed to pay to plaintiff, the total sum of P22,049.88, plus interest of 12% interest per annum from July 1, 1974 until the sum is fully paid;
2. Dismissing the complaint as against defendant Universal Shipping Lines, Inc.;
3. Defendant E. Razon, Inc., to pay costs under the complaint of plaintiff;
4. Plaintiff to pay costs by reason of its complaint against defendant Universal Shipping Lines, Inc.

Appellant E. Razon to pay costs of this appeal on its appeal against plaintiff-appellant;

Appellee to pay costs of this appeal to appellant Universal Shipping Lines, Inc."[3]

Reconsideration filed by the ARRASTRE was denied by the Appellate Court.[4]

Before us now, the ARRASTRE assails the appealed judgment in that 1) it did not give credence and belief to the ARRASTRE's Bad Order Certificates (Exhibits "22" to "27"-Razon), and 2) it erred in holding the ARRASTRE liable.[5]

Ordinarily, in a Petition for Review on Certiorari, only questions of law may be raised.[6] And, this Court has held in a number of cases that findings of fact by the Court of Appeals are, in general, conclusive on the Supreme Court when supported by the evidence on record.[7] The rule is not absolute, however, and allows of exceptions, which we find present in the case at bar in that respondent Court's findings of facts are contrary to those of the Trial Court and are contradicted by the evidence on record.[8]

In absolving the CARRIER, respondent Court stated:

"When the shipment was discharged from the carrying vessel, there were 443 bags of shipment which were broken at the ends. In other words, only the end-portions of the 443 bags were torn or broken, without any showing that any portion of the contents of these 443 bags was spilled or spoiled. x x x - and no loss or spoilage of the shipment having been proved or shown to have occurred when the shipment was under the care and custody of the vessel, then the vessel can and should not be held liable to answer for the loss of any part of it that was found upon the discharge of the shipment from the Arrastre Operator's care and custody into the consignee's Broker.

"x x x The trial court found the value of the losses at P22,049.88. Now, since the losses are shown to have occurred after the Arrastre Operator had received the entire shipment of 4,000 bags from the vessel, then it can be safely assumed that the losses occurred while the shipment was in the care and custody of the Arrastre Operator. The appellant E. Razon, Inc., should, therefore, be liable to pay for the whole claim."[9]

The foregoing completely disregards the evidence of the CARRIER and the ARRASTRE that 619 bags were discharged by the CARRIER to the ARRASTRE in bad order condition, as evidenced by the original and duplicate copies of the Cargo Receipts issued by the CARRIER to the ARRASTRE and signed by their respective representatives (Exhibits "1-DDDD to "1-HHHH"; Exhibits "2" to "2-D"-Razon).[10] The condition of the 619 bags before the turnover to the ARRASTRE from the CARRIER was loss or spoilage of up to 50%, as reflected in the Survey of Bad Order Cargoes, signed by the CARRIER and ARRASTRE representatives (Exhibits "1" to

"1-D"-Razon; Exhibits "2" to "2-C"-Universal).[11] Accordingly, the Trial Court held the CARRIER liable only for the value of a total of 443 bags, as this is the "evidence of the plaintiff" (INSURER), at 16.8209 kilograms per bag,[12] less than the actual weight of 25 kilograms net per bag (Exhibit "D"; Exhibits "1" to "1-C"-Razon) due to some recovery of spillage, or a total liability of P12,285.94.

Since 619 bags were discharged from the CARRIER already in bad order condition, it follows that the remaining 431 bags were damaged while in the ARRASTRE's custody for which it should be held liable. However, since the Trial Court computed the liability of the ARRASTRE at 351 bags, notwithstanding the ARRASTRE's admission that "80 bags were not included in the bad order cargo certificate",[13] and the INSURER did not appeal said award by the Trial Court in its desire to have the case terminated soonest,[14] the INSURER may not, in this appeal, have the judgment modified.[15] The liability of the ARRASTRE for P9,763.94 fixed by the Trial Court is thus in order.

WHEREFORE, the appealed judgment of respondent Court of Appeals is hereby REVERSED and SET ASIDE, and that of the Court of First Instance of Manila, Branch XI, is hereby reinstated. No costs. SO ORDERED.

Teehankee, Acting C.J., Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] T.s.n., February 24, 1976, p. 6; t.s.n., April 6, 1977, p. 28.

[2] Record on Appeal, p. 23.

[3] Rollo, pp. 28 & 28-A.

[4] Ibid., p. 38.

[5] Petition, p. 5.

[6] Section 2, Rule 45, Rules of Court.

[7] Vda. de Dela Cruz vs. Court of Appeals, 88 SCRA 695 (1979); Alsua-Betts vs. Court of Appeals, 92 SCRA 332 (1979).

[8] Macadangdang vs. Court of Appeals, 100 SCRA 73 (1980); Manero vs. Court of Appeals, 102 SCRA 817 (1981).

[9] Rollo, pp. 27 & 28.

[10] T.s.n., April 6, 1977, pp. 14, 27, 28, 31 & 42.

[11] T.s.n., April 6, 1977, pp. 14, 15, 31, 39 & 42.

[12] Printed Record on Appeal, p. 22.

[13] Decision, p. 22, Record on Appeal.

[14] Comment of Private Respondent, p. 3; Rollo, p. 55.

[15] Dy vs. Kuizon, 3 SCRA 617 (1961); Tenchavez vs. Escaño, 17 SCRA 674 (1966); De Enriquez vs. El Hogar Filipino, 28 SCRA 481 (1969).

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