

KHOSROW MINUCHEHR, PETITIONER, VS. THE HON. COURT OF APPEALS, THE PHILAMGEN INSURANCE CO., INC. AND CROWN PACIFIC MOVING (PHILS.) INC., RESPONDENTS.

G.R. No. 61487. May 28, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by certiorari from the decision of the then Court of Appeals, dated July 30, 1982, reversing and setting aside the decision appealed from, dismissing the complaint and awarding P50,000.00 as attorney's fees to private respondent Crown Pacific Moving (Phils.) Inc. Further, petitioner (plaintiff-appellee) was adjudged to pay the costs.

Petitioner filed complaint with the then Court of First Instance of Manila to recover from private respondents Crown Pacific Moving (Phils.) Inc. (Crown Pacific, for brevity) and Philippine American General Insurance, Inc. (Philamgen, for brevity), jointly and severally, the sums of (1) US \$88,282.00 or its equivalent in Philippine currency, with interest thereon from the time of demand representing the value of the alleged missing Persian rugs and carpets and damages to other personal belongings of plaintiff; (2) US \$230.00 as cost of survey; (3) P8,000.00 a month representing alleged costs of living expenses of plaintiff in following up his claim in Manila; (4) 25% of the total claim as attorney's fees; and costs.

Petitioner, an Iranian citizen and a former Labor Attache of Iran to the Philippines, upon termination of his tenure of office, contracted the services of private respondent Crown Pacific to undertake the packing, crating and shipping of petitioner's personal effects to Iran.

On May 29, 1977, a packing crew of Crown Pacific, led by its Team Supervisor Eduardo Delgado and its Sales Manager Nilo Nuñez, Jr. went to the residence of petitioner at 1774 Adriatico St., Ermita, Manila and packed and hauled his household and personal effects. Based on a list (Exhibit F or 1) which included rugs and carpets, petitioner secured a marine insurance covering his belongings listed thereunder with private respondent Philamgen against all risks for US \$88,282.00.

Nuñez, Jr. submitted an inventory (Exhibit. 2-Crown Pacific) to Crown Pacific for shipping purposes. Thereupon, as forwarder of the goods, Crown Pacific issued a weighing and loading chart indicating petitioner's goods to weigh 992 kilograms or 2,287 pounds. On October 10, 1977, the goods were loaded on board Maersk Line's "Maersk Tempo - 7739" bound for Iran and the goods were weighed showing a total weight of 1,000 kilograms (Exhibit E). The Gulf Orient Express Service Bill of Lading No. CPM-0146, dated June 6, 1977, disclosed that the cargo weighed 2,325 pounds.

Upon arrival in Tehran, through Hongkong and Khorramashahr, Iran, the shipment was found to contain no rugs or carpets and the survey report of private respondent Philamgen's agent indicated that the goods weighed only 600 kilograms and that there were no empty space in the lift vans to hold the alleged missing items.

The issue is whether or not the alleged missing rugs and carpets were actually taken and received by Crown Pacific from petitioner for shipment to Iran. Decisive to this question are the three household goods descriptive inventories, Exhibit D (Exhibit 1- Crown Pacific); Exhibit 2 - Crown Pacific; and Exhibit C (Exhibit 3-Crown Pacific). Which inventory or inventories reflect the true and correct listing of petitioner's belongings: the first which contained no rugs or carpets, or the second and third which had items of rugs and carpets?

Petitioner declared that Exhibit D (Exhibit 1-Crown Pacific) which was signed by Crown Pacific Team Supervisor Eduardo Delgado and his housekeeper, Rosauro Mariano, is a mere partial listing of his household effects which were initially packed and removed by the packers of Crown Pacific while he was in the Iranian Embassy. He claimed that Exhibit C (Exhibit 3-Crown Pacific) is the full inventory of his house-hold belongings, including Persian rugs and carpets, the same was prepared upon his return to his house by Nilo Nuñez, Jr. and jointly signed by him and Nuñez, Jr.

On the other hand, Crown Pacific relied on the list bearing the signatures of Delgado and Mariano, which listed no rugs or carpets (Exhibit D or 1).

Nuñez explained the preparation of the lists (Exhibits 2 and 3 or C), thus: "In order to conform with industry practice of assigning an item number to an article, which the first list (Exhibit D or 1) did not observe, Exhibit 2 was accomplished to assign item numbers to the effects and antedated May 29, 1977, to coincide with the actual date of receipt of the articles from the residence of petitioner. He added four items of rugs and carpets, as Items Nos. 40 to 43, on the promise of petitioner that he will soon be sending them for crating and shipment. He prepared Exhibit 3, also antedated May 29, 1977, relisting rugs and carpets as Items Nos. 37 to 40, on the assurance of petitioner that he would be able to get satisfactory insurance coverage and that payment to Crown Pacific would be facilitated upon collect-ion from the Iranian Embassy, by reason of which he signed the "official receipt" for P18,500.00 al-though no payment has been made. However, when he learned that petitioner did not in fact intend to ship the rugs and carpets through Crown Pacific, he confronted petitioner who gave him P7,500.00 as bribe money. In January, 1978, still going along with petitioner's aims, and upon a promise of being given the sum of P2,000.00 for his efforts, Nuñez, Jr. sent a cable to petitioner and a telex to Crown Pacific, both addressed to Tehran, Iran, acknowledging receipt of the rugs and carpets. He added that Crown Pacific suspended him, following which he re-signed, when his involvement in the job surfaced."

Eduardo Delgado admitted seeing carpets in petitioner's house but he did not include them among the belongings which were packed and removed by his men. As found by the then Court of Appeals -

"From the evidence, We find and so hold that the appellee did not have rugs and carpets in his house at all. At this juncture, Crown remarked in its comprehensive and well-prepared brief, as follows:

'It is a cause of dismay on our part that the trial court not only took the testimony of Delgado out of context but, also, in effect brushed aside the testimonies of Panganiban, Alagao and Magallanes without giving any explanation whatsoever therefor.' (p. 24)

Crown was referring to the finding of the lower court that Delgado, Crown's representative, testified that he saw rug in the house of plaintiff, and the lower court concluded from his statement that appellee in fact had rugs and carpets in his house.

That the lower court was out of context, as submitted by Crown, is borne out by the record. Delgado testified as follows:

Q Did you see any rugs in the house of Mr. Minuschehr that day?

A Yes, Ma'am.

Q Could you tell us what rug did you see and how many?

A I just remember one big rug in the room of Mr. Minuschehr but we did not touch it.

Q When you said you did not touch, you mean you did not take it with you when you left the house of Mr. Minuschehr?

A Yes, ma'am"

(pp. 31-32, t.s.n., Nov. 8, 1979)

Delgado's statement was corroborated by Ramon Panganiban and Rodolfo Alagao, crew members. Panganiban declared as follows:

"Q Do you remember if you packed any rugs?

A None, Ma'am (p. 17, t.s.n., Feb. 7, 1980)

xxx xxx xxx

"Q Do you remember if you see any rugs that were packed?

A None that I saw." (p. 20, supra)

xxx xxx xxx

"Q And in connection with your packing of the furnitures, silverwares and books belonging to Mr. Minuschehr, did you have the opportunity to go around the house of Mr. Minuschehr?

A Yes, sir.

Q And in connection with your going around the house of Mr. Minuschehr, did you see any rugs or carpets around?

A In one of his roans there was, but it was not packed. And there was a bed placed on top of the carpet." (pp. 25-27, supra)

while Alagao testified as follows:

"Q Do you recall if you saw any rugs in the house of Mr. Minuschehr?

A Yes, sir, I remember. I remember having seen.

Q Where did you see the rugs?

A It was inside a room upstairs.

xxx xxx xxx

Q Well, whether it was rolled or laid down on the floor.

COURT:

All right, objection overruled. Answer the question.

A It was spread out on the floor, ma'am.

Q Did you pack that rug?

A No, ma'am." (pp. 64-66, supra).

Delgado testified seeing only one (1) rug, and not several, much less, 18 rugs. The one big rug laid out inside one of the rooms of the residence of appellee, which was not packed, probably belonged to the owner or lessor of the house. We have not missed to note Rosauro Mariano's claim in his testimony that the appellee had twenty (20) rugs and carpets that were taken away by Crown's crew. As between the testimony of Mariano and those of the crew members of Crown, We are bent on according faith and credit to the latter. The appellee failed to call to the witness-stand disinterested witnesses such as visitors to his residence, who could support his claim of the existence of rugs and carpets in his house. He had sufficient time to look up acquaintances. He came back in January, 1978. He first testified on August 25, 1979.

The claim that the goods arriving in the residence of the plaintiff-appellee in Tehran, weighed only 600 kilograms, instead of 992 kilograms, more or less, as weighed by Crown in Manila, does not prove that rugs and carpets of about 400 kilograms represented the weight of the rugs and carpets, as found by the lower court. We have carefully examined Exh. HH (p. 51, Folder of Exhibits). The slips of paper tend to support Crown's argument contained in its brief. The slips do not conclusively connect them with plaintiff's effects. The name appearing therein is 'Mancher'. There is no date of arrival. There is no list of the articles weighed. The survey report (Exh. H) did not include the weight of the effects (p. 15, Folder of Exhibits).

The survey report (Exh. H) indicated that there were 'no empty space in the lifts that could have possibly held the above listed missing items.' It also reports that 'there appeared to be no signs of any irregularities.' If 18 rugs and carpets were in fact crated and shipped there would have been big spaces in the lifts and there would have been signs of irregularities.

With the foregoing views that We take of the case, We find and hold that the evidence safely preponderates in favor of the defendants-appellants." (pp. 33-35, Rollo).

The issue of whether respondent Crown Pacific did receive the rugs and carpets from the petitioner is clearly factual. It is clear from the decision of the then Court of Appeals that no rugs or carpets were received by respondent Crown Pacific. Being a question of fact, it is for this appellate court to decide and its findings will not be disturbed by this Court unless clearly baseless or irrational. The exceptions do not obtain in this case.

WHEREFORE, the petition is dismissed, but the award of P50,000.00 as for attorney's fees to respondent Crown Pacific is reduced to P10,000.00 only. SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

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