

SEA-LAND SERVICE INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND PAULINO CUE, DOING BUSINESS UNDER THE NAME AND STYLE OF "SEN HIAP HING"; RESPONDENTS.

G.R. No. 75118. August 31, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

The main issue here is whether or not the consignee of seaborne freight is bound by stipulations in the covering bill of lading limiting to a fixed amount the liability of the carrier for loss or damage to the cargo where its value is not declared in the bill.

The factual antecedents, for the most part, are not in dispute.

On or about January 8, 1981, Sea-Land Service, Inc. (Sea-Land, for brevity), a foreign shipping and forwarding company licensed to do business in the Philippines, received from Seaborne Trading Company in Oakland, California a shipment consigned to Sen Hiap Hing, the business name used by Paulino Cue in the wholesale and retail trade which he operated out of an establishment located on Borromeo and Plaridel Streets, Cebu City.

The shipper not having declared the value of the shipment, no value was indicated in the bill of lading. The bill described the shipment only as "8 CTNS on 2 SKIDS-FILES."^[1] Based on volume measurements Sea-Land charged the shipper the total amount of US\$209.28^[2] for freightage and other charges. The shipment was loaded on board the MS Patriot, a vessel owned and operated by Sea-Land for discharge at the Port of Cebu.

The shipment arrived in Manila on February 12, 1981, and there discharged in Container No. 310996 into the custody of the arrastre contractor and the customs and port authorities.^[3] Sometime between February 13 and 16, 1981, after the shipment had been transferred, along with other cargoes, to Container No. 40158 near Warehouse 3 at Pier 3 in South Harbor, Manila, awaiting trans-shipment to Cebu, it was stolen by pilferers and has never been recovered.^[4]

On March 10, 1981, Paulino Cue, the consignee, made formal claim upon Sea-Land for the value of the lost shipment allegedly amounting to P179,643.48.^[5] Sea-Land offered to settle for US\$4,000.00, or its then Philippine peso equivalent of P30,600.00, asserting that said amount represented its maximum liability for the loss of the shipment under the package limitation clause in the covering bill of lading.^[6] Cue rejected the offer and thereafter brought suit for damages against Sea-Land in the then Court of First Instance of Cebu, Branch X.^[7] Said Court, after trial, rendered judgment in favor of Cue, sentencing Sea-Land to pay him P186,048.00 representing the Philippine currency value of the lost cargo, P55,814.00 for unrealized profit with one (1%) percent monthly interest from the filing of the complaint until fully paid, P25,000.00 for attorney's fees and P2,000.00 as litigation expenses.^[8]

Sea-Land appealed to the Intermediate Appellate Court.^[9] That Court however affirmed the decision of the Trial

Court "**** in all its parts ****"[10] Sea-Land thereupon filed the present petition for review which, as already stated, poses the question of whether, upon the facts above set forth, it can be held liable for the loss of the shipment in any amount beyond the limit of US\$500.00 per package stipulated in the bill of lading.

To begin with, there is no question of the right, in principle, of a consignee in a bill of lading to recover from the carrier or shipper for loss of, or damage to, goods being transported under said bill, although that document may have been -- as in practice it oftentimes is -- drawn up only by the consignor and the carrier without the intervention of the consignee. In *Mendoza vs. Philippine Air Lines, Inc.*[11] the Court delved at some length into the reasons behind this when, upon a claim made by the consignee of a motion picture film shipped by air that he was never a party to the contract of transportation and was a complete stranger thereto, it said:

"But appellant now contends that he is not suing on a breach of contract but on a tort as provided for in Art. 1902 of the Civil Code. We are a little perplexed as to this new theory of the appellant. First, he insists that the articles of the Code of Commerce should be applied; that he invokes the provisions of said Code governing the obligations of a common carrier to make prompt delivery of goods given to it under a contract of transportation. Later, as already said, he says that he was never a party to the contract of transportation and was a complete stranger to it, and that he is now suing on a tort or a violation of his rights as a stranger (*culpa aquiliana*). If he does not invoke the contract of carriage entered into with the defendant company, then he would hardly have any leg to stand on. His right to prompt delivery of the can of film at the Phil Air Port stems and is derived from the contract of carriage under which contract, the PAL undertook to carry the can of film safely and to deliver it to him promptly. Take away or ignore that contract and the obligation to carry and to deliver and right to prompt delivery disappear. Common carriers are not obligated by law to carry and to deliver merchandise, and persons are not vested with the right to prompt delivery, unless such common carriers previously assume the obligation. Said rights and obligations are created by a specific contract entered into by the parties. In the present case, the findings of the trial court which as already stated, are accepted by the parties and which we must accept are to the effect that the LVN Pictures Inc. and Jose Mendoza on one side, and the defendant company on the other, entered into a contract of transportation (p.29, Rec. on Appeal). One interpretation of said finding is that the LVN Pictures Inc. through previous agreement with Mendoza acted as the latter's agent. When he negotiated with the LVN Pictures Inc. to rent the film 'Himala ng Birhen' and show it during the Naga town fiesta, he most probably authorized and enjoined the Picture Company to ship the film for him on the PAL on September 17th. Another interpretation is that even if the LVN Pictures Inc. as consignor of its own initiative, and acting independently of Mendoza for the time being, made Mendoza as consignee, a stranger to the contract if that is possible, nevertheless when he, Mendoza appeared at the Phil Air Port armed with the copy of the Air Way Bill (Exh. 1) demanding the delivery of the shipment to him, he thereby made himself a party to the contract of transportation. The very citation made by appellant in his memorandum supports this view. Speaking of the possibility of a conflict between the order of the shipper on the one hand and the order of the consignee on the other, as when the shipper orders the shipping company to return or retain the goods shipped while the consignee demands their delivery, Malagarriga in his book *Codigo de Comercio Comentado*, Vol. 1, p. 400, citing a decision of the Argentina Court of Appeals on commercial matters, cited by Tolentino in Vol. II of his book entitled '*Commentaries and Jurisprudence on the Commercial Laws of the Philippines*' p. 209, says that the right of the shipper to countermand the shipment terminates when the consignee or legitimate holder of the bill of lading appears with such bill of lading before the carrier and makes himself a party to the contract. Prior to that time he is a stranger to the contract.

Still another view of this phase of the case is that contemplated in Art. 1257, paragraph 2, of the old Civil Code (now Art. 1311, second paragraph) which reads thus:

Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment provided he has given notice of his acceptance to the person bound before the stipulation has been revoked.'

Here, the contract of carriage between the LVN Pictures Inc. and the defendant carrier contains the stipulations

of delivery to Mendoza as consignee. His demand for the delivery of the can of film to him at the Phil Air Port may be regarded as a notice of his acceptance of the stipulation of the delivery in his favor contained in the contract of carriage and delivery. In this case he also made himself a party to the contract, or at least has come to court to enforce it. His cause of action must necessarily be founded on its breach."

Since the liability of a common carrier for loss of or damage to goods transported by it under a contract of carriage is governed by the laws of the country of destination[12] and the goods in question were shipped from the United States to the Philippines, the liability of petitioner Sea-Land to the respondent consignee is governed primarily by the Civil Code, and as ordained by the said Code, suppletorily, in all matters not determined thereby, by the Code of Commerce and special laws.[13] One of these suppletory special laws is the Carriage of Goods by Sea Act, U.S. Public Act No. 521 which was made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by Commonwealth Act No. 65, approved on October 22, 1936. Sec. 4(5) of said Act in part reads:

"(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: Provided, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

* * * ."

Clause 22, first paragraph, of the long-form bill of lading customarily issued by Sea-Land to its shipping clients[14] is a virtual copy of the the first paragraph of the foregoing provision. It says:

"22. VALUATION. In the event of any loss, damage or delay to or in connection with goods exceeding in actual value \$500 per package, lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be \$500 per package or per customary freight unit, as the case may be, and the carrier's liability, if any, shall be determined on the basis of a value of \$500 per package or customary freight unit, unless the nature and a higher value shall be declared by the shipper in writing before shipment and inserted in this Bill of Lading."

And in its second paragraph, the bill states:

"If a value higher than \$500 shall have been declared in writing by the shipper upon delivery to the carrier and inserted in this bill of lading and extra freight paid, if required and in such case if the actual value of the goods per package or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be declared value and the carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value."

Since, as already pointed out, Article 1766 of the Civil Code expressly subjects the rights and obligations of common carriers to the provisions of the Code of Commerce and of special laws in matters not regulated by said (Civil) Code, the Court fails to fathom the reason or justification for the Appellate Court's pronouncement in its appealed Decision that the Carriage of Goods by Sea Act "* * *" has no application whatsoever in this case."[15] Not only is there nothing in the Civil Code which absolutely prohibits agreements between shipper and carrier limiting the latter's liability for loss of or damage to cargo shipped under contracts of carriage; it is also quite clear

that said Code in fact has agreements of such character in contemplation in providing, in its Articles 1749 and 1750, that:

"ART. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding."

"ART. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon."

Nothing contained in section 4(5) of the Carriage of Goods by Sea Act already quoted is repugnant to or inconsistent with any of the just-cited provisions of the Civil Code. Said section merely gives more flesh and greater specificity to the rather general terms of Article 1749 (without doing any violence to the plain intent thereof) and of Article 1750, to give effect to just agreements limiting carriers' liability for loss or damage which are freely and fairly entered into.

It seems clear that even if said section 4(5) of the Carriage of Goods by Sea Act did not exist, the validity and binding effect of the liability limitation clause in the bill of lading here are nevertheless fully sustainable on the basis alone of the cited Civil Code provisions. That said stipulation is just and reasonable is arguable from the fact that it echoes Art. 1750 itself in providing a limit to liability only if a greater value is not declared for the shipment in the bill of lading. To hold otherwise would amount to questioning the justice and fairness of that law itself, and this the private respondent does not pretend to do. But over and above that consideration, the just and reasonable character of such stipulation is implicit in its giving the shipper or owner the option of avoiding accrual of liability limitation by the simple and surely far from onerous expedient of declaring the nature and value of the shipment in the bill of lading. And since the shipper here has not been heard to complain of having been "rushed," imposed upon or deceived in any significant way into agreeing to ship the cargo under a bill of lading carrying such a stipulation -- in fact, it does not appear that said party has been heard from at all insofar as this dispute is concerned -- there is simply no ground for assuming that its agreement thereto was not, as the laws would require, freely and fairly sought and given.

The private respondent had no direct part or intervention in the execution of the contract of carriage between the shipper and the carrier as set forth in the bill of lading in question. As pointed out in *Mendoza vs. PAL*, supra, the right of a party in the same situation as respondent here, to recover for loss of a shipment consigned to him under a bill of lading drawn up only by and between the shipper and the carrier, springs from either a relation of agency that may exist between him and the shipper or consignor, or his status as a stranger in whose favor some stipulation is made in said contract, and who becomes a party thereto when he demands fulfillment of that stipulation, in this case the delivery of the goods or cargo shipped. In neither capacity can he assert personally, in bar to any provision of the bill of lading, the alleged circumstance that fair and free agreement to such provision was vitiated by its being in such fine print as to be hardly readable. Parenthetically, it may be observed that in one comparatively recent case^[16] where this Court found that similar package limitation clause was "(p)rinted in the smallest type on the back of the bill of lading," it nonetheless ruled that the consignee was bound thereby on the strength of authority holding that such provisions on liability limitation are as much a part of a bill of lading as though physically in it and as though placed therein by agreement of the parties.

There can, therefore, be no doubt or equivocation about the validity and enforceability of freely-agreed-upon stipulations in a contract of carriage or bill of lading limiting the liability of the carrier to an agreed valuation unless the shipper declares a higher value and inserts it into said contract or bill. This proposition, moreover, rests upon an almost uniform weight of authority.^[17]

The issue of alleged deviation is also settled by Clause 13 of the bill of lading which expressly authorizes transshipment of the goods at any point in the voyage in these terms:

"13. THROUGH CARGO AND TRANSSHIPMENT. The carrier or master, in the exercise of its or his discretion and although transshipment or forwarding of the goods may not have been contemplated or provided for herein, may at port of discharge or any other place whatsoever transship or forward the goods or any part thereof by any means at the risk and expense of the goods and at any time, whether before or after loading on the ship named herein and by any route, whether within or outside the scope of the voyage or beyond the port of discharge or destination of the goods and without notice to the shipper or consignee. The carrier or master may delay such transshipping or forwarding for any reason, including but not limited to awaiting a vessel or other means of transportation whether by the carrier or others."

Said provision obviates the necessity to offer any other justification for offloading the shipment in question in Manila for transshipment to Cebu City, the port of destination stipulated in the bill of lading. Nonetheless, the Court takes note of Sea-Land's explanation that it only directly serves the Port of Manila from abroad in the usual course of voyage of its carriers, hence its maintenance of arrangements with a local forwarder, Aboitiz and Company, for delivery of its imported cargo to the agreed final point of destination within the Philippines, such arrangements not being prohibited, but in fact recognized, by law.[18]

Furthermore, this Court has also ruled[19] that the Carriage of Goods by Sea Act is applicable up to the final port of destination and that the fact that transshipment was made on an inter-island vessel did not remove the contract of carriage of goods from the operation of said Act.

Private respondent also contends that the aforecited Clauses 22 and 13 of the bill of lading relied upon by petitioner Sea-Land form no part of the short-form bill of lading attached to his complaint before the Trial Court and appear only in the long form of that document which, he claims. Sea-Land offered (as its Exhibit 2) as an unused blank form with no entries or signatures therein. He, however, admitted in the Trial Court that several times in the past shipments had been delivered to him through Sea-Land[20], from which the assumption may fairly follow that by the time of the consignment now in question, he was already reasonably apprised of the usual terms covering contracts of carriage with said petitioner.

At any rate, as observed earlier, it has already been held that the provisions of the Carriage of Goods by Sea Act on package limitation [sec. 4(5) of the Act hereinabove referred to] are as much a part of a bill of lading as though actually placed therein by agreement of the parties.[21]

Private respondent, by making claim for loss on the basis of the bill of lading, to all intents and purposes accepted said bill. Having done so, he –

"* * * becomes bound by all stipulations contained therein whether on the front or the back thereof. Respondent cannot elude its provisions simply because they prejudice him and take advantage of those that are beneficial. Secondly, the fact that respondent shipped his goods on board the ship of petitioner and paid the corresponding freight thereon shows that he impliedly accepted the bill of lading which was issued in connection with the shipment in question, and so it may be said that the same is binding upon him as if it had been actually signed by him or by any other person in his behalf. * * *"[22]

There is one final consideration. The private respondent admits[23] that as early as on April 22, 1981, Sea-Land had offered to settle his claim for US\$4,000.00, the limit of said carrier's liability for loss of the shipment under the bill of lading. This Court having reached the conclusion that said sum is all that is justly due said respondent, it does not appear just or equitable that Sea-Land, which offered that amount in good faith as early as six years ago, should, by being made to pay at the current conversion rate of the dollar to the peso, bear for its own account all of the increase in said rate since the time of the offer of settlement. The decision of the Regional Trial Court

awarding the private respondent P186,048.00 as the peso value of the lost shipment is clearly based on a conversion rate of P8.00 to US\$1.00, said respondent having claimed a dollar value of \$23,256.00 for said shipment.[24] All circumstances considered, it is just and fair that Sea-Land's dollar obligation be convertible at the same rate.

WHEREFORE, the Decision of the Intermediate Appellate Court complained of is reversed and set aside. The stipulation in the questioned bill of lading limiting Sea-Land's liability for loss of or damage to the shipment covered by said bill to US\$500.00 per package is held valid and binding on private respondent. There being no question of the fact that said shipment consisted of eight (8) cartons or packages, for the loss of which Sea-Land is therefore liable in the aggregate amount of US\$4,000.00, it is the judgment of the Court that said petitioner discharge that obligation by paying private respondent the sum of P32,000.00, the equivalent in Philippine currency of US\$4,000.00 at the conversion rate of P8.00 to \$1.00. Costs against private respondent.

SO ORDERED.

Teehankee, C.J., Cruz, Paras, and Gancayco, JJ., concur.

[1] Exhibits 1, 1-B: TSN Dec. 14, 1982, pp. 19-20

[2] Petition, p. 2; Rollo, p. 11

[3] Exhibits 6, 6-A: TSN Jan. 26, 1983, pp. 18-20

[4] Exhibits E, 3-A, 4, 8 and 9; TSN id.

[5] Exhibit F

[6] Exhibits 2, 2-A

[7] Civil Case No. 20810

[8] Rollo, p. 21

[9] AC-G.R. CV No. 06150

[10] Rollo, p. 12, 21-32

[11] 90 Phil. 836, 845-846; see also *American Co. vs. Natividad*, 46 Phil. 207 and *Phoenix Assurance Co., Ltd. vs. United States Lines*, 22 SCRA 675

[12] Art. 1753, Civil Code

[13] Art. 1766, Civil Code; *Samar Mining Co., Inc. vs. Nordeutscher Lloyd*, 132 SCRA 529; *Eastern Shipping Lines, Inc. vs. The Nisshin Fire & Marine Insurance Co., et al.*, G. R. Nos. 69044 and 71478, May 29, 1987

[14] Exhibit 2

[15] Rollo pp. 26-27

[16] *Phoenix Assurance Company vs. Macondray & Co. Inc.*, 64 SCRA 15, May 15, 1973

[17] *Freixas and Co. vs. Pacific Mail Steamship Co.*, 42 Phil. 198; *H.E. Heacock Co. vs. Macondray & Co.*, 43 Phil. 205; *American President Lines vs. Klepper*, *infra*; *Phoenix Assurance Co. vs. Macondray Co.*, *supra*

[18] Art. 373, Code of Commerce

[19] American Insurance Company vs. Compania Maritima, 21 SCRA 998

[20] Reply to Comment, p.11, Rollo, p.87, citing TSN Sept. 1, 1982

[21]Phoenix Assurance Company vs. Macondray & Company, supra, citing Shackman vs. Cunard White Star, D.C.N.Y. 1940; see also Eastern Shipping Lines, Inc. vs. IAC, supra, which cites the same American case.

[22] American President Lines vs. Klepper, supra

[23] Appellee's brief, p. 6; Rollo, p. 53

[24] Appellee's brief, p. 5; Rollo, p. 53

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