

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. PHILIPPINE AMERICAN GENERAL INSURANCE CO., RESPONDENT.

G.R. No. 77530. October 05, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Marinduque Mining Industrial Corporation (Marinduque for short) shipped on board SS Arthur Maersk from Boston, U.S.A. a shipment of one (1) skid carton parts for valves as evidenced by bill of lading No. BOSF-45607 issued by the Maersk Lines dated April 25, 1980.[1]

The shipment was ordered from Jamesbury, Singapore PTE, LTD., which issued the cargo's packing list[2] and Invoice number[3] showing the contents of the carton. The consular invoice was issued by the Philippine Consulate in Singapore for the shipment showing the contents and its total price amounting to \$39,417.60 as well as the freight and other charges amounting to \$2,791.73.[4] When the cargo arrived in Manila, it was received and deposited in the office of Aboitiz Shipping Corporation (Aboitiz for short) at Pier 4, North Harbor, Manila for transshipment to Nonoc Island for which it issued bill of lading No. 23.[5]

On July 7, 1980 Marinduque, as consignee of the cargo, made a report to the effect that said cargo was pilfered on the night of July 3, 1980 while there was heavy rain at the Aboitiz terminal and that of the total value of the cargo of \$42,209.33, only \$7,412.00 worth remains of the cargo with the recommendation that the claim be made against Aboitiz.[6]

The service of the Manila Adjusters and Surveyors Co. (Manila Adjusters for brevity) were engaged by the Phil-American General Insurance Co., Inc. (Phil Am for short) which came out with the report that the cargo in question was delivered at Pier 4, North Harbor on July 3, 1980 which cargo, when inspected on July 5, 1980 showed that it was pilfered. The list of the remaining contents was in the report.[7] A confirmatory report was submitted by the Manila Adjusters dated November 8, 1980.[8]

On August 11, 1980, Marinduque filed a claim against Aboitiz in the amount of P246,430.80 representing the value of the pilfered cargo.[9] On the same day Marinduque filed a claim for the same amount against the Phil-Am on the latter's policy MRN-01754 PAG.[10]

On August 25, 1981 Phil-Am paid Marinduque the sum of P246,430.80 as insurer of the cargo.[11]

Phil-Am then filed a complaint in the Regional Trial Court (RTC) of Manila against Aboitiz for the recovery of the same amount alleging that it has been subrogated to the rights of Marinduque.

In a decision rendered on January 11, 1984, the complaint was dismissed with costs against the plaintiff. A motion for reconsideration of this decision was denied in an order dated March 19, 1984.

Hence the Phil-Am appealed to the Court of Appeals wherein in due course a decision was rendered on December 17, 1986 reversing the appealed order of dismissal of the complaint and ordering defendant Aboitiz to pay

plaintiff Phil-Am the sum of P246,430.80 plus P15,000.00 as attorney's fees.[12] A motion for reconsideration thereof was denied in a resolution of the appellate court dated February 27, 1987.

Hence the herein petition for review for certiorari filed by Aboitiz predicated on five assignments of errors, the resolution of which revolves on the singular issue of whether petitioner was properly held liable to the private respondent by the appellate court.

The petition is devoid of merit.

The main thrust of the petition is that the findings of the trial court that the insurance policy covering the cargo was issued at the time when the cargo was already pilfered and that the coverage under Marine Policy No. 100105 PAG never began and that Marine Policy No. 100184 did not attach to the shipment because the shipment was never loaded on any vessel of the defendant should be entitled to considerable weight.

The records of this case show that private respondent executed a continuous and open insurance coverage covering goods of Marinduque imported into and exported from the Philippines which took effect after September 1, 1975, as contained in Marine Open Policy No. 100184.[13] A similar insurance coverage was also executed by petitioner in favor of Marinduque for all its goods shipped or moved within the territorial limits of the Philippines also effective after September 1, 1975 and contained in Marine Open Policy No. 100185.[14]

The questioned shipment is covered by this continuing open insurance coverage from the time it was loaded aboard the SS Arthur Maersk in Boston, U.S.A. to the time it was delivered to the possession of petitioner at its offices at Pier 4 in Manila until it was pilfered when the great majority of the cargo was lost on July 3, 1980.

The trial court in dismissing the complaint apparently relied on Marine Risk Note No. 017545 which was issued by private respondent only on July 28, 1980[15] after the shipment in question was already pilfered.[16] Obviously the trial court mistook said Marine Risk Note as an insurance policy when it is not. It is only an acknowledgment or declaration of the private respondent confirming the specific shipment covered by its Marine Open Policy, the evaluation of the cargo and the chargeable premium.[17]

The contention of the petitioner that it could not be liable for the pilferage of the cargo as it was stolen even before it was loaded on its vessel is untenable. Petitioner received the cargo when it arrived in Manila at its offices at Pier 4, North Harbor and it was while in its possession and before loading it in its vessel that the cargo was pilfered. Its liability is clear.

Petitioner also decries the proceedings before the lower court as ex-parte without affording it due process. The records however show that the petitioner was declared in default and thus the evidence for Marinduque was received ex-parte in accordance with the rules. Petitioner had only itself to blame under the circumstances.

WHEREFORE, the petition is DISMISSED with costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit "A".

[2] Exhibit "B".

[3] Exhibit "C".

[4] Exhibit "D".

[5] Exhibit "E".

[6] Exhibit "F".

[7] Exhibit "G".

[8] Exhibit "H".

[9] Exhibit "I".

[10] Exhibits "J" and "J-1".

[11] Exhibit "K".

[12] Decision penned by Mr. Justice Jorge R. Coquia, concurred in by Justices Leonor Ines Luciano and Emeterio C. Cui.

[13] Exhibit "M".

[14] Exhibit "N".

[15] Exhibit "L".

[16] Exhibits "G" and "H".

[17] Annex "C", page 86, Records.

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