

FIREMAN'S FUND INSURANCE CO., PETITIONER, VS. METRO PORT SERVICE, INC., (FORMERLY E. RAZON, INC.), RESPONDENT.

G.R. No. 83613. February 21, 1990

Ponente: GUTIERREZ, Jr., J.

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GUTIERREZ, Jr., J.:

This is a petition for review of the decision and resolution denying reconsideration of the Court of Appeals in CA-G.R. CV No. 00673 entitled "Fireman's Fund Insurance Co. v. Maersk Line, Compañía General de Tabacos de Filipinas and E. Razon, Inc."

The facts are as follows:

Vulcan Industrial and Mining Corporation imported from the United States several machineries and equipment which were loaded on board the S/S Albert Maersk at the port of Philadelphia, U.S.A., and transhipped for Manila through the vessel S/S Maersk Tempo.

The cargo which was covered by a clean bill of lading issued by Maersk Line and Compania General de Tabacos de Filipinas (referred to as the CARRIER) consisted of following:

xxx xxx xxx

1

piece truck mounted core drill

1

piece trailer mounted core drill

1

(40') container of 321 pieces steel tubings

1

(40') container of 170 pieces steel tubings

1

(40') container of 13 cases, 3 crates, 2 pallets and 26 mining machinery parts." (Rollo, p. 4)

The shipment arrived at the port of Manila on June 3, 1979 and was turned over complete and in good order condition to the arrastre operator E. Razon Inc. (now Metro Port Service Inc. and referred to as the ARRASTRE).

At about 10:20 in the morning of June 8, 1979, a tractor operator, named Danilo Librando and employed by the ARRASTRE, was ordered to transfer the shipment to the Equipment Yard at Pier 3. While Librando was maneuvering the tractor (owned and provided by Maersk Line) to the left, the cargo fell from the chassis and hit

one of the container vans of American President Lines. It was discovered that there were no twist locks at the rear end of the chassis where the cargo was loaded.

There was heavy damage to the cargo as the parts of the machineries were broken, dented, cracked and no longer useful for their purposes.

The value of the damage was estimated at P187,500.00 which amount was paid by the petitioner insurance company to the consignee, Vulcan Industrial and Mining Corporation.

The petitioner, under its subrogation rights, then filed a suit against Maersk Line, Compañia General de Tabacos (as agent) and E. Razon, Inc., for the recovery of the amount it paid the assured under the covering insurance policy.

On October 26, 1980, the trial court rendered judgment, the decretal portion of which reads as follows:

xxx xxx xxx

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants by ordering the latter to pay, jointly and severally, the plaintiff the sum of P187,500.00, with legal interest thereon from August 29, 1980 until full payment thereof.

"Defendants are also ordered to pay, in solidum, the sum of P10,000.00 as attorney's fees to the plaintiff, and to pay the costs of this suit.

"There shall be no award for exemplary damages in favor of the plaintiff, for the reason that defendants are probably acting in good faith in resisting the complaint." (Rollo, pp. 45-46)

All the defendants appealed to the Court of Appeals. Eventually, Maersk Line and Compañia General de Tabacos negotiated with the petitioner for the settlement of the latter's claim and no longer pursued their appeal.

On the appeal of the ARRASTRE, the Court of Appeals rendered a decision with the following dispositive portion:

"WHEREFORE, foregoing premises considered, the decision of the court a quo insofar as herein defendant-appellant is concerned is REVERSED. It is hereby ordered that the complaint against herein defendant-appellant be dismissed. No costs." (Rollo, p. 50)

Reconsideration of the decision was denied in a resolution dated May 23, 1988.

Hence, the present recourse.

The petitioner raises this lone assignment of error:

"THE HONORABLE COURT OF APPEALS ERRED IN LIMITING LIABILITY SOLELY ON CO-DEFENDANT MAERSK LINES, CONTRARY TO THE FINDINGS OF FACTS OF THE TRIAL COURT A QUO AND OTHER FACTORS SHOWING CLEAR JOINT LIABILITY OF DEFENDANTS IN SOLIDUM."

There is merit in this petition.

This Court has held in a number of cases that findings of fact of the Court of Appeals are, in general, conclusive on the Supreme Court when supported by the evidence on record. The rule is not absolute, however, and allows exceptions, which we find present in the case at bar. The respondent court's findings of facts are contrary to those of the trial court and appear to be contradicted by the evidence on record thus calling for our review. (Metro Port

Service, Inc. v. Court of Appeals, 131 SCRA 365 [1984]).

In absolving the ARRASTRE, the respondent Court ruled that although Librando was an employee of the ARRASTRE, since he was included in its payroll, he was technically and strictly an employee of Maersk Line in this particular instance when he drove the tractor admittedly owned by the foreign shipping line. The Court ruled that he received instructions not from Metro Port but from Maersk Line relative to this job. He was performing a duty that properly pertained to Maersk Line which, for lack of a tractor operator, had to get or hire from the ARRASTRE as per their management contract. Nevertheless, Librando was not remiss in his duty as tractor-driver considering that the proximate and direct cause of the damage was the absence of twist locks in the rear end of the chassis which Maersk Line failed to provide. The respondent court thereby placed the entire burden of liability on the owner of the chassis which in this case was the foreign shipping company, Maersk Line.

The foregoing conclusion disregarded the pertinent findings of facts made by the lower court which are supported by the evidence on record, to wit:

"1. The accident occurred while the cargoes were in the custody of the arrastre operator.

"2. The tractor operator was an employee of the arrastre operator.

xxx xxx xxx

"4. By the management contract inasmuch as the foreign shipping company has no tractor operator in its employ, the arrastre provided the operator.

xxx xxx xxx

"8. It was likewise the responsibility of the tractor operator, an employee of the arrastre operator to inspect the chassis and tractor before driving the same, but which obligation the operator failed to do.

"9. It was also the responsibility of the supervisor in the employ of the arrastre operator to see that their men complied with their respective tasks, which included the examination if the chassis has twist lock." (Rollo, pp. 44-45)

The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman (*Lua Kian v. Manila Railroad Co.*, 19 SCRA 5 [1967]). The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator (*Northern Motors, Inc. v. Prince Line, et al.*, 107 Phil. 253 [1960]). Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.

In general, the nature of the work of an arrastre operator covers the handling of cargoes at piers and wharves (*Visayan Cebu Terminal Co., Inc. v. Commissioner of Internal Revenue*, 13 SCRA 357 [1965]). This is embodied in the Management Contract drawn between the Bureau of Customs and *E. Razon Inc.*, as the Arrastre Operator. The latter agreed to bind itself, to wit:

"CLAIMS AND LIABILITY FOR LOSSES AND DAMAGES

"1. Responsibility and Liability for Losses and Damages;

"Claims. — The CONTRACTOR shall, at its own expense handle all merchandise in the piers and other designated places and at its own expense perform all work undertaken by it hereunder diligently and in skillful workmanlike and efficient manner; That the CONTRACTOR shall be solely responsible as an independent

CONTRACTOR, and hereby agrees to accept liability and to promptly pay to the steamship company, consignee, consignor or other interested party or parties for the loss, damage, or non-delivery of cargoes to the extent of the actual invoice value of each package which in no case shall be more than Three Thousand Five Hundred Pesos (P3,500.00) for each package unless the value of the importation is otherwise specified or manifested or communicated in writing together with the invoice value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge of the goods, as well as all damage that may be suffered on account of loss, damage, or destruction of any merchandise while in custody or under the control of the CONTRACTOR in any pier, shed, warehouse, facility or other designated place under the supervision of the BUREAU, but said CONTRACTOR shall not be responsible for the condition of the contents of any package received nor for the weight, nor for any loss, injury or damage to the said cargo before or while the goods are being received or remained on the piers, sheds, warehouse or facility if the loss, injury or damage is caused by force majeure, or other causes beyond the CONTRACTOR'S control or capacity to prevent or remedy; x x x

xxx xxx xxx

"The CONTRACTOR shall be solely responsible for any and all injury or damage that may arise on account of the negligence or carelessness of the CONTRACTOR, its agent or employees in the performance of the undertaking by it to be performed under the terms of this contract, and the CONTRACTOR hereby agrees to save and hold the BUREAU at all times harmless therefrom and the whole or any part thereof." (Original Records, pp. 110-112; Italics supplied)

To carry out its duties, the ARRASTRE is required to provide cargo handling equipment which includes among others trailers, chassis for containers. In same cases, however, the shipping line has its own cargo handling equipment.

In this particular instance, the records reveal that Maersk Line provided the chassis and the tractor which carried the subject shipment. It merely requested the ARRASTRE to dispatch a tractor operator to drive the tractor inasmuch as the foreign shipping line did not have any truck operator in its employ. Such arrangement is allowed between the ARRASTRE and the CARRIER pursuant to the Management Contract. It was clearly one of the services offered by the ARRASTRE. We agree with the petitioner that it is the ARRASTRE which had the sole discretion and prerogative to hire and assign Librando to operate the tractor. It was also the ARRASTRE's sole decision to detail and deploy Librando for that particular task from among its pool of tractor operators or drivers. It is, therefore, inaccurate to state that Librando should be considered an employee of Maersk Line on that specific occasion.

Handling cargo is mainly the ARRASTRE's principal work so its drivers/operators, "cargadors", or employees should observe the standards and indispensable measures necessary to prevent losses and damage to shipments under its custody. Since the ARRASTRE offered its drivers for the operation of tractors in the handling of cargo and equipment, then the ARRASTRE should see to it that the driver's under its employ must exercise due diligence in the performance of their work. From the testimonies of witnesses presented, we gather that driver/operator Librando was remiss in his duty. Benildez Cepeda, an arrastre-investigator of Metro Port admitted that Librando as tractor-operator should first have inspected the chassis and made sure that the cargo was securely loaded on the chassis. He testified:

xxx xxx xxx

"Q —

My question is in your investigation report including enclosures, the principal reason was that the chassis has no rear twist lock?

A —

Yes, sir.

Q —

Did you investigate whether the driver Librando inspected the truck before he operated the same whether there was rear twist lock or not?

A —

I have asked him about that question whether he had inspected the chassis has any rear twist lock and the answer he did not inspect, sir.

Q —

As a tractor operator, do you agree with me that it is the duty also of Librando to see to it that the tractor is in good condition and fit to travel, is that correct?

A —

Yes, sir.

Q —

And as a tractor operator it is his duty to see to it that the van mounted on top of the tractor was properly secured, is that correct?

A —

Yes, Sir." (At pp. 18-20, T.S.N., February 17, 1982)

Again Danilo Librando also admitted that it was usually his practice to inspect not only the tractor but the chassis as well but failed to do so in this particular instance.

xxx xxx xxx

"Q —

You mentioned of the absence of a twist lock. Will you tell us where is this twist lock supposed to be located?

A —

At the rear end of the chassis.

Q —

Before you operated the tractor which carried the mounted cord drill truck and trailer did you examine if the chassis had any twist locks?

A —

No, sir, because I presumed that it had twist locks and I was confident that it had twist locks.

Q —

As a matter of procedure and according to you, you examined the tractor, do you not make it a practice to examine whether the chassis had any twist locks?

A —

I used to do that but in that particular instance I thought it had already its twist locks." (p. 8, T.S.N., October 5, 1981)

It is true that Maersk Line is also at fault for not providing twist locks on the chassis. However, we find the testimony of Manuel Heraldez who is the Motor Pool General Superintendent of Metro Port rather significant. On cross-examination, he stated that:

"Q —

In your experience, Mr. witness, do you know which is ahead of the placing of the container van or the placing of the twist lock on the chassis?

"A —

The twist lock is already permanently attached on the chassis, sir.

"Q —

Earlier, you mentioned that you cannot see the twist lock if the chassis is loaded, correct?

"A —

Yes, sir.

"Q —

Do you want to impress upon the Honorable Court that, by mere looking at a loaded chassis, the twist lock cannot be seen by the naked eye? Because the van contained a hole in which the twist lock thus entered inside the hold and locked itself. It is already loaded. So, you cannot no longer see it.

"Q —

But if you closely examine this chassis which has a load of container van. You can see whether a twist lock is present or not?

"A —

Yes, sir. A twist lock is present.

"Q —

In other words, if the driver of this tractor closely examined this van, he could have detected whether or not a twist lock is present?

"A —

Yes, sir." (pp. 33-35, T.S.N., March 23, 1982; Italics supplied)

Whether or not the twist lock can be seen by the naked eye when the Cargo has been loaded on the chassis, an efficient and diligent tractor operator must nevertheless check if the cargo is securely loaded on the chassis.

We, therefore, find Metro Port Service Inc., solidarily liable in the instant case for the negligence of its employee. With respect to the limited liability of the ARRASTRE, the records disclose that the value of the importation was relayed to the arrastre operator and in fact processed by its chief claims examiner based on the documents submitted.

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, 6th Judicial District, Branch II is REINSTATED. No costs.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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