

CITADEL LINES, INC., PETITIONER, VS. COURT OF APPEALS AND MANILA WINE MERCHANTS, INC., RESPONDENTS.

G.R. NO. 88092. April 25, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Through this petition, we are asked to review the decision of the Court of Appeals dated December 20, 1988, in CA-G.R. No. CV-10070,[1] which affirmed the August 30, 1985 decision of the Regional Trial Court of Manila, Branch 27, in Civil Case No. 126415, entitled "Manila Wine Merchants, Inc. vs. Citadel Lines, Inc. and E. Razon, Inc.," with a modification by deleting the award of attorney's fees and costs of suit.

The following recital of the factual background of this case is culled from the findings in the decision of the court a quo and adopted by respondent court based on the evidence of record.

Petitioner Citadel Lines, Inc. (hereafter referred to as the CARRIER) is the general agent of the vessel "Cardigan Bay/Strait Enterprise," while respondent Manila Wine Merchants, Inc. (hereafter, the CONSIGNEE) is the importer of the subject shipment of Dunhill cigarettes from England.

On or about March 17, 1979, the vessel "Cardigan Bay/Strait Enterprise" loaded on board at Southampton, England, for carriage to Manila, 180 Filbrite cartons of mixed British manufactured cigarettes called "Dunhill International Filter" and "Dunhill International Menthol," as evidenced by Bill of Lading No. 70621374[2] and Bill of Lading No. 70608680[3] of the Ben Line Containers Ltd. The shipment arrived at the Port of Manila, Pier 13, on April 18, 1979 in container van No. BENU 204850-9. The said container was received by E. Razon, Inc. (later known as Metro Port Service, Inc. and referred to herein as the ARRASTRE) under Cargo Receipt No. 71923 dated April 18, 1979.[4]

On April 30, 1979, the container van, which contained two shipments was stripped. One shipment was delivered and the other shipment consisting of the imported British manufactured cigarettes was palletized. Due to lack of space at the Special Cargo Coral, the aforesaid cigarettes were placed in two containers with two pallets in container No. BENU 204850-9, the original container, and four pallets in container No. BENU 201009-9, with both containers duly padlocked and sealed by the representative of the CARRIER.

In the morning of May 1, 1979, the CARRIER'S head-checker discovered that container van No. BENU 201009-9 had a different padlock and the seal was tampered with. The matter was reported to Jose G. Sibucan, Pier Superintendent, Pier 13, and upon verification, it was found that 90 cases of imported British manufactured cigarettes were missing. This was confirmed in the report of said Superintendent Sibucan to Ricardo Cosme, Assistant Operations Manager, dated May 1, 1979[5] and the Official Report/Notice of Claim of Citadel Lines, Inc. to E. Razon, Inc. dated May 8, 1979.[6] Per investigation conducted by the ARRASTRE, it was revealed that the cargo in question was not formally turned over to it by the CARRIER but was kept inside container van No. BENU 201009-9 which was padlocked and sealed by the representatives of the CARRIER without any participation of the ARRASTRE.

When the CONSIGNEE learned that 90 cases were missing, it filed a formal claim dated May 21, 1979[7] with the CARRIER, demanding the payment of P315,000.00 representing the market value of the missing cargoes. The CARRIER, in its reply letter dated May 23, 1979,[8] admitted the loss but alleged that the same occurred at Pier 13, an area absolutely under the control of the ARRASTRE. In view thereof, the CONSIGNEE filed a formal claim, dated June 4, 1979,[9] with the ARRASTRE, demanding payment of the value of the goods but said claim was denied.

After trial, the lower court rendered a decision on August 30, 1985, exonerating the ARRASTRE of any liability on the ground that the subject container van was not formally turned over to its custody, and adjudging the CARRIER liable for the principal amount of P312,480.00 representing the market value of the lost shipment, and the sum of P30,000.00 as and for attorney's fees and the costs of suit.

As earlier stated, the Court of Appeals affirmed the decision of the court a quo but deleted the award of attorney's fees and costs of suit.

The two main issues for resolution are:

1. Whether the loss occurred while the cargo in question was in the custody of E. Razon, Inc. or of Citadel Lines, Inc; and
2. Whether the stipulation limiting the liability of the carrier contained in the bill of lading is binding on the consignee.

The first issue is factual in nature. The Court of Appeals declared in no uncertain terms that, on the basis of the evidence presented, the subject cargo which was placed in a container van, padlocked and sealed by the representative of the CARRIER was still in its possession and control when the loss occurred, there having been no formal turnover of the cargo to the ARRASTRE. Besides, there is the categorical admission made by two witnesses, namely, Atty. Lope M. Velasco and Ruben Ignacio, Claims Manager and Head Checker, respectively, of the CARRIER,[10] that for lack of space the containers were not turned over to and as the responsibility of E. Razon Inc. The CARRIER is now estopped from claiming otherwise.

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.[11] If the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733 of the Civil Code.[12] The duty of the consignee is to prove merely that the goods were lost. Thereafter, the burden is shifted to the carrier to prove that it has exercised the extraordinary diligence required by law. And, its extraordinary responsibility lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee or to the person who has the right to receive them.[13]

Considering, therefore, that the subject shipment was lost while it was still in the custody of herein petitioner. CARRIER, and considering further that it failed to prove that the loss was occasioned by an excepted cause, the inescapable conclusion is that the CARRIER was negligent and should be held liable therefor.

The cases cited by petitioner in support of its allegations to the contrary do not find proper application in the case at bar simply because those cases involve a situation wherein the shipment was turned over to the custody and possession of the arrastre operator.

We, however, find the award of damages in the amount of P312,800.00 for the value of the goods lost, based on the alleged market value thereof, to be erroneous. It is clearly and expressly provided under Clause 6 of the aforementioned bills of lading issued by the CARRIER that its liability is limited to \$2.00 per kilo. Basic is the rule, long since enshrined as a statutory provision, that a stipulation limiting the liability of the carrier to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.[14] Further, 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.[15]

The CONSIGNEE itself admits in its memorandum that the value of the goods shipped does not appear in the bills of lading.[16] Hence, the stipulation on the carrier's limited liability applies. There is no question that the stipulation is just and reasonable under the circumstances and have been fairly and freely agreed upon. In *Sea-land Service, Inc. vs. Intermediate Appellate Court, et al.*,[17] we there explained what is a just and reasonable, and a fair and free, stipulation, in this wise:

"x x x 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 it 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 stipulations - 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 law would require, freely and fairly sought and given."

The bill of lading shows that 120 cartons weigh 2,978 kilos or 24.82 kilos per carton. Since 90 cartons were lost and the weight of said cartons is 2,233.80 kilos, at \$2.00 per kilo the CARRIER's liability amounts to only US\$4,467.60.

WHEREFORE, the judgment of respondent court is hereby MODIFIED and petitioner Citadel Lines, Inc. is ordered to pay private respondent Manila Wine Merchants, Inc. the sum of US\$4,465.60 or its equivalent in Philippine currency at the exchange rate obtaining at the time of payment thereof. In all other respects, said judgment of respondent Court is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

* Impleaded as a respondent and added to complete the title of the case stated in the petition.

[1] Justice Josue N. Bellosillo, ponente, and Justices Felipe B. Kalalo and Regina G. Ordoñez-Benitez concurring.

[2] Exh. A; Exh. 7-Citadel.

[3] Exh. B; Exh. 8-Citadel.

[4] Exh. 1-Citadel.

[5] Exh. 10-D-Razon.

[6] Exh. 4-Citadel.

[7] Exh. C.

[8] Exh. D.

[9] Exh. E.

[10] Rollo, 45.

[11] Art. 1733, Civil Code.

[12] Art. 1735, id.

[13] Art. 1736, id.

[14] Art. 1749, id.

[15] Art. 1750, id.

[16] Rollo, 120.

[17] 153 SCRA 552 (1987).

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