

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., RESPONDENTS.

G.R. No. 89757. August 06, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The extent of the liability of a carrier of goods is again brought to the fore in this case.

On October 28, 1980, the vessel M/V "P. Aboitiz" took on board in Hongkong for shipment to Manila some cargo consisting of one (1) twenty (20)-footer container holding 271 rolls of goods for apparel covered by Bill of Lading No. 515-M and one (1) forty (40)-footer container holding four hundred forty-seven (447) rolls, ten (10) bulk and ninety-five (95) cartons of goods for apparel covered by Bill of Lading No. 505-M. The total value, including invoice value, freightage, customs duties, taxes and similar imports amounts to US\$39,885.85 for the first shipment while that of the second shipment amounts to US\$94,190.55. Both shipments were consigned to the Philippine Apparel, Inc. and insured with the General Accident Fire and Life Assurance Corporation, Ltd. (GAFLAC for short). The vessel is owned and operated by Aboitiz Shipping Corporation (Aboitiz for short).

On October 31, 1980 on its way to Manila the vessel sunk and it was declared lost with all its cargoes. GAFLAC paid the consignee the amounts US\$39,885.85 or P319,086.80 and US\$94,190.55 or P753,524.40 for the lost cargo. As GAFLAC was subrogated to all the rights, interests and actions of the consignee against Aboitiz, it filed an action for damages against Aboitiz in the Regional Trial Court of Manila alleging that the loss was due to the fault and negligence of Aboitiz and the master and crew of its vessel in that they did not observe the extraordinary diligence required by law as regards common carriers.

After the issues were joined and the trial on the merits a decision was rendered by the trial court on June 29, 1985, the dispositive part of which reads as follows:

"PREMISES CONSIDERED, the Court finds in favor of the plaintiff and against the defendant, ordering the latter to pay the former actual damages in the sum of P1,072,611.20 plus legal interest from the date of the filing of the complaint on October 28, 1981, until full payment thereof, attorney's fees in the amount of 20% of the total claim and to pay the costs.

"SO ORDERED."[1]

Not satisfied therewith, Aboitiz appealed to the Court of Appeals wherein in due course a decision was rendered on March 9, 1989 affirming in toto the appealed decision, with costs against defendant Aboitiz.[2]

A motion for reconsideration of said decision filed by Aboitiz was denied in a resolution dated August 15, 1989.

Hence the herein petition for review alleging that the Court of Appeals decided the case not in accordance with law when -

"1. The Court of Appeals held that 'findings of administrative bodies are not always binding on courts. This is especially so in the case at bar where GAFLAC was not a party in the BMI proceedings and which proceedings was not adversary in character.' This ruling is contrary to the principle established in Vasquez vs. Court of Appeals (138 SCRA 559), where it was held that since the BMI possesses the required expertise in shipping matters and is imbued with quasi-judicial powers, its factual findings are conclusive and binding on the court. Likewise, the case of Timber Export Inc. vs. Retla Steamship Co. (CA-G.R. No. 66143-R) also established the rule that decision of BMI must be given 'great materiality and weight to the determination and resolution of the case.'

2. The Court of Appeals also held that the trial court did not err when it fixed the liability of Aboitiz not on the basis of the stipulation in the bills of lading at US\$500.00 per package/container but on the actual value of the shipment lost notwithstanding the long line of cases decided by this Honorable Supreme Court holding a contrary opinion, as shown below.

3. The Court of Appeals also held that the trial court did not abuse its discretion in granting GAFLAC's motion for execution pending appeal notwithstanding the absence of reasonable and justifiable grounds to support the same."[3]

Under the first issue petitioner states that the sinking of the vessel M/V "P. Aboitiz" was the subject of an administrative investigation conducted by the Board of Marine Inquiry (BMI) whereby in a decision dated December 26, 1984, it was found that the sinking of the vessel may be attributed to force majeure on account of a typhoon. Petitioner contends that these findings are conclusive on the courts.

In rejecting the evidence offered by the petitioner the appellate court ruled -

"But over and above all these considerations, the trial court did not err in not giving weight to the finding of the BMI that the vessel sank due to a fortuitous event. Findings of administrative bodies are not always binding on courts. This is especially so in the case at bar where plaintiff was not a party in the BMI proceedings and which proceeding was not adversary in character."[4]

As a general rule, administrative findings of facts are not disturbed by the courts when supported by substantial evidence unless it is tainted with unfairness or arbitrariness that would amount to abuse of discretion or lack of jurisdiction.[5] Even in Vasquez vs. Court of Appeals[6] which is cited by petitioner, this Court ruled that We nevertheless disagree with the conclusion of the BMI exonerating the captain from any negligence "since it obviously had not taken into account the legal responsibility of a common carrier towards the security of the passengers involved."

This case was brought to court on October 28, 1981. The trial court was never informed of a parallel administrative investigation that was being conducted by the BMI in any of the pleadings of the petitioner. It was only on March 22, 1985 when petitioner revealed to the trial court the decision of the BMI dated December 26, 1984 (one day after Christmas day).[7] The said decision appears to have been rendered over three (3) years after the case was brought to court.

Moreover, said administrative investigation was conducted unilaterally. Private respondent GAFLAC was not notified or given an opportunity to participate therein. It cannot thereby be bound by said findings and conclusions of the BMI.

The trial court and the appellate court found that the sinking of the M/V "P. Aboitiz" was not due to the waves caused by tropical storm "Yoning" but due to the fault and negligence of petitioner, its master and crew. The court reproduces with approval said findings -

"xxx xxx

'After a careful examination of the evidence, the Court is convinced in the plaintiff's claim that the M/V 'Aboitiz' and its cargo were not lost due to fortuitous event or force majeure.

'To begin with, paragraph 4 of the marine protest (Exh. "4", also Exhibit "M"), which is defendant's own evidence, shows that the wind force when the ill-fated ship foundered was 10 to 15 knots. According to the Beaufort Scale (Exhibit "I"), which is admittedly an accurate reference for measuring wind velocity, the wind force of 10 to 15 knots is classified as scale no. 4 and described as 'moderate breeze,' small waves, becoming longer, fairly frequent white horses.' Meteorologist Justo Iglesias, Jr. himself affirms the above description of a wind force of 10 to 15 knots and adds that the weather condition prevailing under said wind force is usual and foreseeable. Thus, Iglesias, Jr. testified:

'Q.- In the marine protest of the master of the vessel of Aboitiz, there is reference to wind force from ten to 15 knots. In this Beaufort Scale, will you be able to clarify what this wind force of 10 to 15 as stated in the marine protest?

A.- It will be under Force 4 of the Beaufort Scale.

Q.- What is the basis of your answer?

A.- 10 to 15 falls within this scale of the Beaufort Scale, Force 4.

Atty. Dollete:

May I read into the records, Your Honor. Force 4, descriptive term moderate breeze. Near velocity in knots 11-16 meters per second, 5.5-7.9 in kilometers per hour to 20 to 28 kilometers per hour and 13 to 18 miles per hour. See the description of this will be small waves becoming longer fairly frequent white horse (sic).

Q.- In the layman's language how do you interpret this white horses?

A.- It means white forms. At the top of the crest they were beginning to form white foams.

Q.- How about this moderate breeze as described under this Force 4 of the Beaufort Scale, how will you interpret that?

'A.- Moderate breeze will only give winds of 29 kilometers per hour which is equivalent to just extending your hand out of a running car at that speed.

Q.- This weather condition between October 28 and November 1, 1980, will you classify this as extraordinary or ordinary?

A.- It was ordinary.

Q.- When you said ordinary, was it usual or unusual?

A.- It is usual.

Q.- When you said it is usual it is foreseeable and predictable?

A.- For an experienced meteorologist like a ship captain, it is foreseeable.

Q.- When it is foreseeable, necessarily it follows that the weather could be predicted based on the weather bulletin or report?

A.- Yes, sir.

Q.- And usually the bulletin states the condition in other words, this weather condition which you testified to and reflected in your Exhibit '7' is an ordinary occurrence within that area of Philippine responsibility?

A.- Yes, sir.

Q.- And in fact this weather condition is to be anticipated at that time of the year with respect to weather condition which is reflected in Exhibit '7'?

A.- It is a regular occurrence.'

xxx.

'Moreover, Capt. Racines again admitted in Court that his ill-fated vessel was 200 miles away from the storm 'Yoning' when it sank. Said Capt. Racines:

'Q.- How far were you from this depression or weather disturbance on October 30, 1980?

A.- Two hundred miles.

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'Q.- In other words, this depression was far from your route because it took a northern approach whereas you were towards the south approach?

A.- As I have said, I was 200 miles away from the disturbance.' xxx.

"Considering the foregoing reasons, the Court holds that the vessel M/V "Aboitiz" and its cargo were not lost due to fortuitous event or force majeure.

"In accordance with Article 1732 of the Civil Code, the defendant common carrier, from the nature of its business and for reasons of public policy, is bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by it according to all the circumstances of each case. While the goods are in the possession of the carrier, it is but fair that it exercise extraordinary diligence in protecting them from loss or damage, and if loss occurs, the law presumes that it was due to the carrier's fault or negligence; that is necessary to protect the interest of the shipper which is at the mercy of the carrier (Article 1756, Civil Code; Anuran vs. Puno, 17 SCRA 224; Nocum vs. Laguna Tayabas Bus CO., 30 SCRA 69; Landigan vs. Pangasinan Transportation Company, 88 SCRA 284). In the case at bar, the defendant failed to prove that the loss of the subject cargo was not due to its fault or negligence."[8]

The said factual findings of the appellate court and the trial court are binding on this Court. Its conclusion as to the negligence of the petitioner is supported by the evidence.

The second issue raised to the effect that the liability of the petitioner should be fixed at US\$500.00 per package/container, as stipulated in the bill of lading and not at the actual value of the cargo, should be resolved against petitioner.

While it is true that in the bill of lading there is such stipulation that the liability of the carrier is US\$500.00 per package/container/customary freight, there is an exception, that is, when the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This is provided for in Section 4(5) of the Carriage of Goods By Sea Act to wit -

"(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 of 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 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.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently mis-stated by the shipper in the bill of lading." (Underscoring supplied.)

In this case the description of the nature and the value of the goods shipped are declared and reflected in the bills of lading. Thus, it is the basis of the liability of the carrier as the actual value of the loss.

Moreover, it is absurd to interpret "container," as provided in the bill of lading to be valued at US\$500.00 each, to refer to the container which is the modern substitute for the hold of the vessel.[9] The package/container contemplated by the law to limit the liability of the carrier should be sensibly related to the unit in which the shipper packed the goods and described them, not a large metal object, functionally a part of the ship, in which the carrier caused them to be contained.[10] Such "container" must be given the same meaning and classification as a "package" and "customary freight unit."

The appellate court in disposing this issue quoted its decision in *Allied Guarantee Insurance Co. Inc. vs. Aboitiz Shipping Corporation*, CA GR. CV No. 04121, March 23, 1987, viz;

"Third. Still it is contended that the carrier's liability is limited to \$500.00, pursuant to section 8 of the Bill of Lading which provides that 'The liability of the Carrier for any loss or damage to the goods shall in no case exceed the sum of U.S. \$500.00 per package/container/customary freight unit, unless the value of the goods has been correctly declared and extra freight paid, prior to shipment and a signed declaration to this effect appears in the bill of lading, duly confirmed by the Carrier. ...' It is contended that the Bill of Lading does not indicate the value of the goods. Nor was the corresponding freight ... paid prior to shipment.

"Generally speaking a stipulation, limiting the common carrier's liability to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is valid. (Civil Code, Art. 1749). Such stipulation, however, must be reasonable and just under the circumstances and must have been fairly and freely agreed upon. (*St. Paul Fire & Marine Insurance Co. vs. Macondray Co.*, 70 SCRA 122, 126-127 (1976)) In the case at bar, the goods shipped on the M/V "P. Aboitiz" were insured for P278,530.50, which may be taken as their value. To limit the liability of the carrier to \$500.00 would obviously put it in its power to have taken the whole cargo. In *Juan Ysmael & Co. vs. Gabino Barreto & Co.*, 51 Phil. 90 (1927), it was held that a stipulation limiting the carrier's liability to \$500.00 per package of silk when the value of such package was P2,500.00 unless the true value had been declared and the corresponding freight paid was 'void as against public policy.' That ruling applies to this case.

"Moreover, by the weight of modern authority, a carrier cannot limit its liability for injury or loss of goods shipped where such injury or loss was caused by its own negligence. (*Juan Ysmael & Co. v. Gabino Barreto & Co.*, supra) Here to limit the liability of Aboitiz Shipping to \$500.00 would nullify the policy of the law imposing on common carriers the duty to observe extraordinary diligence in the carriage of goods.

"Indeed, it is even doubtful whether the word 'container' in section B of the Bill of Lading includes containers which are a substitute for the hold of a vessel. This provision limits the carrier's liability to 'the sum of US \$500.00 per package/container/customary freight unit.' By the rule of *noscitur a sociis*, the word 'container' must be given the same meaning as 'package' and 'customary freight unit' and therefore cannot possibly refer to modern containers which are used for shipment of goods in bulk." [11]

In the same light, the third issue questioning the order of execution pending appeal of the trial court must be

resolved against petitioner as well.

The averments in the motion for execution pending appeal dated December 8, 1985 are as follows?

"Aside from the fact that petitioner can easily post a supersedeas bond to stay execution, still other circumstances are present peculiar in the incident of the sinking of M/V P. Aboitiz which would justify the issuance of execution pending appeal. There are other decided cases adjudging petitioner liable in the lower court in the same incident. Other cases are on appeal, upcoming and about to be decided. The value of cargo loss caused by the sinking of petitioner's vessel is in the tune of no less than fifty million pesos inclusive of interests fees and all claims. Its insurer has gone bankrupt and petitioner alone must face and answer for all those claims. In one branch of the Regional Trial Court of Manila alone there are twenty five (25) cases pending against petitioner involving the same loss of cargoes aboard M/V "P. Aboitiz" as per certification herewith attached as Annex "A". This claims do not include others, pending in various courts in Metro Manila which would have to be satisfied ultimately by petitioner, it being a common carrier which failed to exercise extraordinary diligence over the goods lost. The judgment sought to be enforced may indeed be rendered imminently ineffectual in the ultimate analysis.

"The purpose of Sec. 2 Rule 39 would not be achieved or execution pending appeal would not be achieved if insolvency would still be awaited. The remedy is available to petitioner under Sec. 3 Rule 39 of the Rules of Court but to place insolvency as a condition to issuance of a writ of execution pending appeal would render it illusory and ineffectual.

"Justice and equity therefore dictates, that as a consequence of the bond posted by private respondent and there being several other cases against petitioner, decided as well as pending, the totality of which claims may render the appealed decision imminently ineffectual and the further fact that the appeal being interposed is evidently for delay as a consequence of the several adverse decisions against it as a common carrier in the lower court, a reconsideration of the decision dated November 25, 1985 of the Honorable Court will be in consonance with law, jurisprudence and equity.

"In order to erase all apprehensions that the aforesaid judgment award will wind up ineffectual when not immediately executed, it is most respectfully prayed that herein respondent be required to post a supersedeas bond. The statutory undertaking of posting a bond will then achieve a three-pronged direction of justice, (1) it will cast no doubt on the solvency of the herein petitioner; (2) it will not defeat or render phyrrie a just resolution of the case whichever party prevails in the end or in the main case on appeal, since both of their claims are secured by their corresponding bonds; and (3) it will put to equitable operation Sec. 3 Rule 39 of the Revised Rules of Court.[12]

The foregoing allegations which were not traversed that petitioner is facing many law suits arising from said sinking of its vessel involving cargo loss of no less than 50 million pesos, in some cases of which judgment had been rendered against Aboitiz, and considering that its insurer is now bankrupt, leaving Aboitiz alone to face and answer the suits, which may render any judgment for GAFLAC ineffectual, that the appeal is interposed manifestly for delay and the willingness of GAFLAC to put up a bond certainly are cogent bases for the issuance of an order of execution pending appeal.

Finally, in a similar case for damages arising from the same incident entitled Aboitiz Shipping Corporation vs. Honorable Court of Appeals and Allied Guaranteed Insurance Company, Inc., G.R. No. 88159, this Court in a resolution dated November 13, 1989 dismissed the petition for lack of merit. Therein this Court held in part -

"The appellate court affirmed the decision of the lower court based on its findings that the cause of sinking of the vessel was due to its unseaworthiness and the failure of its crew and the master to exercise extraordinary diligence.

The petitioner, however, contends that the appellate court erred on this matter and insists that the contrary

findings of the Board of Marine Inquiry (BMI), which conducted a separate investigation to the effect that the proximate cause of the sinking of the vessel was due to force majeure and that the officers and crew had exhausted all preventive measures to save the vessel and her cargo but to no avail, should prevail. This, according to the petitioner is based on the doctrine of primary administrative jurisdiction.

This argument is untenable.

A cursory reading of the decision and resolution of the appellate court shows that the same took into consideration not only the findings of the lower court but also the findings of the BMI. Thus, the appellate court stated:

'Indeed, the decision of the Board was based simply on its finding that the Philippine Coast Guard had certified the vessel to be seaworthy and that it sank because it was exposed later to an oncoming typhoon plotted within the radius where the vessel was positioned. This generalization certainly cannot prevail over the detailed explanation of the trial court in this case as basis for its contrary conclusion.' (Rollo, at p. 42)

We find no cogent reason to deviate from the factual findings of the appellate court and rule that the doctrine of primary administrative jurisdiction is not applicable in the case at bar.

The other issue raised is whether or not the carrier's liability is limited to \$500.00 pursuant to section 8 of the Bill of Lading. The petitioner claims that the appellate court erred in disregarding the limitation of liability stipulated in the bill of lading. It argues that the consignee agreed to this amount (and) therefore is bound by this rate and that there is no basis for the appellate court's finding that the rate is unreasonable.

The argument is not well-taken. As aptly stated by the appellate court:

'Generally speaking any stipulation, limiting the common carrier's liability to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value is valid. (Civil Code, Art. 1749) Such stipulation, however, must be reasonable and just under the circumstances and must have been fairly and freely agreed upon. (St. Paul Fire & Marine Insurance Co. v. Macondray & Co., 70 SCRA 122, 126-127 [1976]) In the case at bar, the goods shipped on the M/V 'P. Aboitiz' were insured for P278,536.50, which may be taken as their value. To limit the liability of the carrier to \$500.00 would obviously put in its power to have taken the whole cargo. In Juan Ysmael & Co. v. Gabino Barretto & Co., 51 Phil. 90 [1927], it was held that a stipulation limiting the carrier's liability to P300.00 per package of silk, when the value of such package was P2,500.00, unless the true value had been declared and the corresponding freight paid; was void as against public policy. That ruling applies to this case.'

As argued by the respondent, a limitation of liability in this case would render inefficacious the extraordinary diligence required by law of common carriers."^[13]

The motion for reconsideration of said resolution filed by petitioner was denied with finality in a resolution dated January 8, 1990. Said resolution of the case had become final and executory, entry of judgment having been made and the records remanded for execution on March 22, 1990.

Said case is now the law of the case applicable to the present petition.

WHEREFORE, the petition is dismissed with costs against petitioner.

SO ORDERED.

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

[1] Page 36, Rollo.

[2] Justice Reynato S. Puno was the ponente with Justices Jorge S. Imperial and Cezar D. Francisco concurring.

[3] Pages 14 to 15, Rollo.

[4] Page 44, Rollo.

[5] *Manahan vs. People*, 167 SCRA 1, 7 (1988); *Mangubat vs. de Castro*, 163 SCRA 608, 612 (1988); *Rosario Bros. Inc. vs. Ople*, 131 SCRA 72 (1984).

[6] 138 SCRA 553, 559 (1985).

[7] Page 174, Rollo.

[8] Pages 38 to 41, Rollo.

[9] *Northeast Marine Terminal Co. Inc. vs. Caputo*, 432 U.S. 249, 270, 1977 AMC 1037, 1053-54 (1977); *Mitsui & Co. vs. American Export Lines, Inc.*, 1981 AMC at 343; 636 F. 2d at 816.

[10] *Leather's Best, Inc vs. S.S. Meamaclynx*, 1871 AMC 2383, 2403, 451 F. 2d 800, 815 (2 Cir. 1971).

[11] Pages 50-51, Rollo.

[12] Pages 182 to 183, Rollo.

14 Pages 92 to 94, Rollo.

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