

**AMERICAN HOME ASSURANCE, COMPANY, PETITIONER, VS. THE COURT OF APPEALS AND NATIONAL MARINE CORPORATION AND/OR NATIONAL MARINE CORPORATION (MANILA), RESPONDENTS.**

*G.R. No. 94149. May 05, 1992*

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-94149/>

---

**PARAS, J.:**

This is a petition for review on certiorari which seeks to annul and set aside the (a) decision[1] dated May 30, 1990 of the Court of Appeals in C.A. G.R. SP. No. 20043 entitled "American Home Assurance Company v. Hon. Domingo D. Panis, Judge of the Regional Trial Court of Manila, Branch 41 and National Marine Corporation and/or National Marine Corporation (Manila)", dismissing petitioner's petition for certiorari, and (b) resolution[2] dated June 29, 1990 of the Court of Appeals denying petitioner's motion for reconsideration.

The undisputed facts of the case are as follows:

Both petitioner American Home Assurance Co. and the respondent National Marine Corporation are foreign corporations licensed to do business in the Philippines, the former through its branch, The American Home Assurance Company (Philippines), Inc. and the latter through its branch, The National Marine Corporation (Manila) (Rollo, p. 20, Annex L, p. 1).

That on or about June 19, 1988, Cheng Hwa Pulp Corporation shipped 5,000 bales (1,000 ADMT) of bleached kraft pulp from Haulien, Taiwan on board "SS Kaunlaran", which is owned and operated by herein respondent National Marine Corporation with Registration No. PID-224. The said shipment was consigned to Mayleen Paper, Inc. of Manila, which insured the shipment with herein petitioner American Home Assurance Co. as evidenced by Bill of Lading No. HLMN-01.

On June 22, 1988, the shipment arrived in Manila and was discharged into the custody of the Marina Port Services, Inc., for eventual delivery to the consignee-assured. However, upon delivery of the shipment to Mayleen Paper, Inc., it was found that 122 bales had either been damaged or lost. The loss was calculated to be 4,360 kilograms with an estimated value of P61,263.41.

Mayleen Paper, Inc. then duly demanded indemnification from respondent National Marine Corporation for the aforesaid damages/losses in the shipment but, for apparently no justifiable reason, said demand was not heeded (Petition, p. 4).

As the shipment was insured with petitioner in the amount of US\$837,500.00, Mayleen Paper, Inc. sought recovery from the former. Upon demand and submission of proper documentation, American Home Assurance paid Mayleen Paper, Inc. the adjusted amount of P31,506.75 for the damages/losses suffered by the shipment, hence, the former was subrogated to the rights and interests of Mayleen Paper, Inc.

On June 6, 1989, the petitioner, as subrogee, then brought suit against respondent for the recovery of the amount of P31,506.75 and 25% of the total amount due as attorney's fees, by filing a complaint for recovery of sum of money (Petition, p. 4).

Respondent, National Marine Corporation, filed a motion to dismiss dated August 7, 1989 stating that American Home Assurance Company had no cause of action based on Article 848 of the Code of Commerce which provides "that claims for averages shall not be admitted if they do not exceed 5% of the interest which the claimant may have in the vessel or in the cargo if it be gross average and 1% of the goods damaged if particular average, deducting in both cases the expenses of appraisal, unless there is an agreement to the contrary." It contended that based on the allegations of the complaint, the loss sustained in the case was P35,506.75 which is only .18% of P17,420,000.00, the total value of the cargo.

On the other hand, petitioner countered that Article 848 does not apply as it refers to averages and that a particular average presupposes that the loss or damage is due to an inherent defect of the goods, an accident of the sea, or a force majeure or the negligence of the crew of the carrier, while claims for damages due to the negligence of the common carrier are governed by the Civil Code provisions on Common Carriers.

In its order dated November 23, 1989, the Regional Trial Court sustained private respondent's contention. In part it stated;

"Before the Court for resolution is a motion for reconsideration filed by defendant through counsel dated October 6, 1989.

"The record shows that last August 8, 1989, defendant through counsel filed a motion to dismiss plaintiff's complaint.

"Resolving the said motion last September 18, 1989, the court ruled to defer resolution thereof until after trial on the merits. In the motion now under consideration, defendant prays for the reconsideration of the order of September 18, 1989 and in lieu thereof, another order be entered dismissing plaintiff's complaint.

"There appears to be good reasons for the court to take a second look at the issues raised by the defendant.

"xxx xxx xxx

"It is not disputed by the defendant that the loss suffered by the shipment is only .18% or less than 1% of the interest of the consignee on the cargo. Invoking the provision of Article 848 of the Code of Commerce which reads:

'Claims for average shall not be admitted if they do not exceed five percent of the interest which the claimant may have in the vessel or cargo if it is gross average, and one percent of the goods damaged if particular average, deducting in both cases the expenses of appraisal, unless there is an agreement to the contrary.' (Underscoring supplied)

defendant claims that plaintiff is barred from suing for recovery.

"Decisive in this case is whether the loss suffered by the cargo in question is a 'particular average'.

'Particular average is a loss happening to the ship, freight, or cargo which is not be (sic) shared by contributing among all those interested, but must be borne by the owner of the subject to which it occurs. (Black's Law Dictionary, Revised Fourth Edition, p. 172, citing *Bargett v. Insurance Co. 3 Bosw. [N.Y.] 395*).'

as distinguished from general average which

'is a contribution by the several interests engaged in the maritime venture to make good the loss of one of them

for the voluntary sacrifice of a part of the ship or cargo to save the residue of the property and the lives of those on board, or for extraordinary expenses necessarily incurred for the common benefit and safety of all (*Ibid.*, citing *California Canneries Co. v. Canton Ins. Office* 25 Cal. App. 303, 143 p. 549-553).

"From the foregoing definition, it is clear that the damage on the cargo in question, is in the nature of the 'particular average.' Since the loss is less than 1% to the value of the cargo and there appears to be no allegations as to any agreement defendants and the consignee of the goods to the contrary, by express provision of the law, plaintiff is barred from suing for recovery.

"WHEREOF, plaintiff's complaint is hereby dismissed for lack of cause of action." (Rollo, p. 27; Annex A, pp. 3-4).

The petitioner then filed a motion for reconsideration of the order of dismissal but same was denied by the court in its order dated January 26, 1990 (*supra*).

Instead of filing an appeal from the order of the court a quo dismissing the complaint for recovery of a sum of money, American Home Assurance Company filed a petition for certiorari with the Court of Appeals to set aside the two orders of respondent judge in said court (Rollo, p. 25).

But the Court of Appeals in its decision dated May 30, 1990, dismissed the petition as constituting plain errors of law and not grave abuse of discretion correctible by certiorari (a Special Civil Action). If at all, respondent court ruled that there are errors of judgment subject to correction by certiorari as a mode of appeal but the appeal is to the Supreme Court under Section 17 of the Judiciary Act of 1948 as amended by Republic Act No. 5440. Otherwise stated, respondent Court opined that the proper remedy is a petition for review on certiorari with the Supreme Court on pure questions of law (Rollo, p. 30).

Hence this petition.

In a resolution dated December 10, 1990, this Court gave due course to the petition and required both parties to file their respective memoranda (Rollo, p. 58).

The procedural issue in this case is whether or not certiorari was the proper remedy in the case before the Court of Appeals.

The Court of Appeals ruled that appeal is the proper remedy, for aside from the fact that the two orders dismissing the complaint for lack of cause of action are final orders within the meaning of Rule 41, Section 2 of the Rules of Court, subject petition raised questions which if at all, constitute plain errors of law or of judgment not constituting grave abuse of discretion correctible by certiorari.

Evidently, the Court of Appeals did not err in dismissing the petition for certiorari for as ruled by this Court, an order of dismissal whether right or wrong is a final order, hence, a proper subject of appeal, not certiorari (*Marahay v. Melicor*, 181 SCRA 811 [1990]). However, where the fact remains that respondent Court of Appeals obviously in the broader interests of justice, nevertheless proceeded to decide the petition for certiorari and ruled on specific points raised therein in a manner akin to what would have been done on assignments of error in a regular appeal, the petition therein was therefore disposed of on the merits and not on a dismissal due to erroneous choice of remedies or technicalities (*Cruz v. I.A.C.*, 169 SCRA 14 [1989]). Hence, a review of the decision of the Court of Appeals on the merits against the petitioner in this case is in order.

On the main controversy, the pivotal issue to be resolved is the application of the law on averages (Articles 806, 809 and 848 of the Code of Commerce).

Petitioner avers that respondent court failed to consider that respondent National Marine Corporation being a

common carrier, in conducting its business is regulated by the Civil Code primarily and suppletorily by the Code of Commerce; and that respondent court refused to consider the Bill of Lading as the law governing the parties.

Private respondent countered that in all matters not covered by the Civil Code, the rights and obligations of the parties shall be governed by the Code of Commerce and by special laws as provided for in Article 1766 of the Civil Code: that Articles 806, 809 and 848 of the Code of Commerce should be applied suppletorily as they provide for the extent of the common carriers' liability.

This issue has been resolved by this Court in *National Development Co. v. C.A.* (164 SCRA 593 [1988]; citing *Eastern Shipping Lines, Inc. v. I.A.C.*, 150 SCRA 469, 470 [1987] where it was held that "the law of the country to which the goods are to be transported governs the liability of the common carrier in case of their loss, destruction or deterioration." (Article 1753, Civil Code). Thus, for cargoes transported to the Philippines as in the case at bar, the liability of the carrier is governed primarily by the Civil Code and in all matters not regulated by said Code, the rights and obligations of common carrier shall be governed by the Code of Commerce and by special laws (Article 1766, Civil Code).

Corollary thereto, the Court held further that under Article 1733 of the Civil Code, 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 passengers transported by them according to all circumstances of each case. Thus, under Article 1735 of the same Code, in all cases other than those mentioned in Article 1734 thereof, the common carrier shall be presumed to have been at fault or to have acted negligently, unless it proves that it has observed the extraordinary diligence required by law (*Ibid.*, p. 595).

But more importantly, the Court ruled that common carriers cannot limit their liability for injury or loss of goods where such injury or loss was caused by its own negligence. Otherwise stated, the law on averages under the Code of Commerce cannot be applied in determining liability where there is negligence (*Ibid.*, p. 606).

Under the foregoing principle and in line with the Civil Code's mandatory requirement of extraordinary diligence on common carriers in the care of goods placed in their stead, it is but reasonable to conclude that the issue of negligence must first be addressed before the proper provisions of the Code of Commerce on the extent of liability may be applied.

The records show that upon delivery of the shipment in question at Mayleen's warehouse in Manila, 122 bales were found to be damaged/lost with straps cut or loose, calculated by the so-called "percentage method" at 4,360 kilograms and amounting to P61,263.41 (Rollo, p. 68). Instead of presenting proof of the exercise of extraordinary diligence as required by law, National Marine Corporation (NMC) filed its Motion to Dismiss dated August 7, 1989, hypothetically admitting the truth of the facts alleged in the complaint to the effect that the loss or damage to the 122 bales was due to the negligence or fault of NMC (Rollo, p. 179). As ruled by this Court, the filing of a motion to dismiss on the ground of lack of cause of action carries with it the admission of the material facts pleaded in the complaint (*Sunbeam Convenience Foods, Inc. v. C.A.*, 181 SCRA 443 [1990]). Such being the case, it is evident that the Code of Commerce provisions on averages cannot apply.

On the other hand, Article 1734 of the Civil Code provides that common carriers are responsible for loss, destruction or deterioration of the goods, unless due to any of the causes enumerated therein. It is obvious that the case at bar does not fall under any of the exceptions. Thus, American Home Assurance Company is entitled to reimbursement of what it paid to Mayleen Paper, Inc. as insurer.

Accordingly, it is evident that the findings of respondent Court of Appeals, affirming the findings and conclusions of the court a quo are not supported by law and jurisprudence.

PREMISES CONSIDERED, (1) the decisions of both the Court of Appeals and the Regional Trial Court of Manila, Branch 41, appealed from are REVERSED; and (2) private respondent National Marine Corporation is hereby ordered to reimburse the subrogee, petitioner American Home Assurance Company, the amount of P31,506.75.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

---

[1] Penned by Associate Justice Vicente V. Mendoza and concurred in by Associate Justices Segundino G. Chua and Cezar D. Francisco.

[2] Penned by Associate Justice Vicente V. Mendoza and concurred in by Associate Justices Segundino G. Chua and Cezar D. Francisco.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.