

EASTERN SHIPPING LINES, INC., PETITIONER, VS. THE COURT OF APPEALS AND THE FIRST NATIONWIDE ASSURANCE CORPORATION, RESPONDENTS.

G.R. No. 94151. April 30, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The extent of the liability of the common carrier and its insurer for damage to the cargo upon its delivery to the arrastre operator is the center of this controversy.

The findings of fact of the trial court which were adopted by the appellate court and which are not disputed are as follows:

"On September 4, 1978, thirteen coils of uncoated 7-wire stress relieved wire strand for prestressed concrete were shipped on board the vessel 'Japri Venture,' owned and operated by the defendant Eastern Shipping Lines, Inc., at Kobe, Japan, for delivery to Stresstek Post-Tensioning Phils., Inc. in Manila, as evidenced by the bill of lading, commercial invoice, packing list and commercial invoice marked Exhibits A, B, C, D; 3, 4, 5 and 6-Razon which were insured by the plaintiff First Nationwide Assurance Corporation for P171,923 (Exhibit E).

"On September 16, 1978, the carrying vessel arrived in Manila and discharged the cargo to the custody of the defendant E. Razon, Inc. (Exhibits 1, 2, 3, 4, and 5-ESL), from whom the consignee's customs broker received it for delivery to the consignee's warehouse.

"On February 19, 1979, the plaintiff indemnified the consignee in the amount of P171,923.00 for damage and loss to the insured cargo, whereupon the former was subrogated for the latter (Exhibit I).

"The plaintiff now seeks to recover from the defendants what it has indemnified the consignee, less P48,293.70, the salvage value of the cargo, or the total amount of P123,629.30.

"It appears that while enroute from Kobe to Manila, the carrying vessel 'encountered very rough seas and stormy weather' for three days, more or less, which caused it to roll and pound heavily, moving its master to execute a marine note of protest upon arrival at the port of Manila on September 15, 1978 (Exhibit 1-Razon); that the coils wrapped in burlap cloth and cardboard paper were stored in the lower hold of the hatch of the vessel which was flooded with water about one foot deep; that the water entered the hatch when the vessel encountered heavy weather enroute to Manila (Exhibits G, 2, 2A, 2B-Razon); that upon request, a survey of bad order cargo was conducted at the pier in the presence of the representatives of the consignee and the defendant E. Razon, Inc. and it was found that seven coils were rusty on one side each (Exhibits F and 10-Razon); that upon survey conducted at the consignee's warehouse it was found that the 'wetting (of the cargo) was caused by fresh water' that entered the hatch when the vessel encountered heavy weather enroute to Manila (p. 3, Exhibit G); and that all thirteen coils were extremely rusty and totally unsuitable for the intended purpose' (p. 3, Exhibit G).' (pp. 217-218, orig. rec.)"[1]

The complaint that was filed by the First Nationwide Assurance Corporation (insurer) against Eastern Shipping

Lines, Inc. and E. Razon, Inc., in the Regional Trial Court, Manila, was dismissed in a decision dated November 25, 1985. An appeal therefrom was interposed by the insurer to the Court of Appeals wherein in due course a decision was rendered on April 27, 1990, the dispositive part of which reads as follows:

"WHEREFORE, the judgment appealed from is hereby SET ASIDE. The appellees are ordered to pay the appellant the sum of P123,629.30, with legal rate of interest from July 24, 1979 until fully paid, Eastern Shipping Lines, Inc. to assume 8/13 thereof, and E. Razon, Inc. to assume 5/13 thereof. No pronouncement as to costs.

SO ORDERED."[2]

Only Eastern Shipping Lines, Inc. filed this petition for review by certiorari based on the following assigned errors:

"I.

IT REFUSED TO CONSIDER THE COUNTER-ASSIGNMENT OF ERRORS OF PETITIONER AS CONTAINED IN ITS BRIEF FOR THE DEFENDANT-APPELLEE EASTERN SHIPPING LINES, INC. AND WHICH ARE ONLY MEANT TO SUSTAIN THE DECISION OF DISMISSAL OF THE TRIAL COURT;

II.

AGAINST ITS OWN FINDINGS OF FACT THAT THE CARGO WAS DISCHARGED AND DELIVERED COMPLETE UNTO THE CUSTODY OF THE ARRASTRE OPERATOR UNDER CLEAN TALLY SHEETS, IT NEVERTHELESS ARBITRARILY CONCLUDED PETITIONER AS LIABLE FOR THE CLAIMED DAMAGES;

III.

IT FAILED TO HOLD PETITIONER RELIEVED OF ANY LIABILITY OVER THE CARGO NOTWITHSTANDING IT FOUND THAT THE SAME WAS DISCHARGED AND DELIVERED UNTO THE CUSTODY OF THE ARRASTRE OPERATOR UNDER CLEAN TALLY SHEETS AND ERGO TO BE CONSIDERED GOOD ORDER CARGO WHEN DELIVERED; and,

IV.

IT ARBITRARILY AWARDED INTEREST AT THE LEGAL RATE TO COMMENCE FROM THE DATE OF THE COMPLAINT IN VIOLATION OF THE DOCTRINAL RULE THAT IN CASE OF UNLIQUIDATED CLAIMS SUCH AS THE CLAIM IN QUESTION, INTEREST SHOULD ONLY COMMENCE FROM THE DATE OF THE DECISION OF THE TRIAL COURT."[3]

Under the first assigned error, petitioner contends that the appellate court did not consider its counter-assignment of errors which was only meant to sustain the decision of dismissal of the trial court. An examination of the questioned decision shows that the appellate court did not consider the counter-assignment of errors of petitioner as it did not appeal the decision of the trial court.

Nevertheless, when such counter-assignments are intended to sustain the judgment appealed from on other grounds, but not to seek modification or reversal thereof, the appellate court should consider the same in the

determination of the case but no affirmative relief can be granted thereby other than what had been obtained from the lower court.[4] The contention of petitioner on this aspect is, thus, well-taken.

Be that as it may, under the second and third assigned errors, petitioner claims it should not be held liable as the shipment was discharged and delivered complete into the custody of the arrastre operator under clean tally sheets.

While it is true the cargo was delivered to the arrastre operator in apparent good order condition, it is also undisputed that while en route from Kobe to Manila, the vessel encountered "very rough seas and stormy weather", the coils wrapped in burlap cloth and cardboard paper were stored in the lower hatch of the vessel which was flooded with water about one foot deep; that the water entered the hatch; that a survey of bad order cargo which was conducted in the pier in the presence of representatives of the consignee and E. Razon, Inc., showed that seven coils were rusty on one side (Exhibits F and 10-Razon); that a survey conducted at the consignee's warehouse also showed that the "wetting (of the cargo) was caused by fresh water" that entered the hatch when the vessel encountered heavy rain en route to Manila (Exhibit G); and that all thirteen coils were extremely rusty and totally unsuitable for the intended purpose.[5]

Consequently, based on these facts, the appellate court made the following findings and conclusions:

"Plainly, the heavy seas and rains referred to in the master's report were not *caso fortuito*, but normal occurrences that an ocean-going vessel, particularly in the month of September which, in our area, is a month of rains and heavy seas would encounter as a matter of routine. They are not unforeseen nor unforeseeable. These are conditions that ocean-going vessels would encounter and provide for, in the ordinary course of a voyage. That rain water (not sea water) found its way into the holds of the *Jupri Venture* is a clear indication that care and foresight did not attend the closing of the ship's hatches so that rain water would not find its way into the cargo holds of the ship.

Moreover, under Article 1733 of the Civil Code, common carriers are bound to observe 'extra-ordinary vigilance over goods xx xx xx according to all circumstances of each case,' and Article 1735 of the same Code states, to wit:

'ART. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, 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.'

Since the carrier has failed to establish any *caso fortuito*, the presumption by law of fault or negligence on the part of the carrier applies; and the carrier must present evidence that it has observed the extraordinary diligence required by Article 1733 of the Civil Code in order to escape liability for damage or destruction to the goods that it had admittedly carried in this case. No such evidence exists of record. Thus, the carrier cannot escape liability."

The Court agrees with and is bound by the foregoing findings of fact made by the appellate court. The presumption, therefore, that the cargo was in apparent good condition when it was delivered by the vessel to the arrastre operator by the clean tally sheets has been overturned and traversed. The evidence is clear to the effect that the damage to the cargo was suffered while aboard petitioner's vessel.

The last assigned error is untenable. The interest due on the amount of the judgment should commence from the date of judicial demand.[6]

WHEREFORE, the petition is DISMISSED, with costs against petitioner.

SO ORDERED.

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

[1] Pages 43 to 44, Rollo.

[2] Page 53, Rollo.

[3] Page 9, Rollo.

[4] De Lima vs. Laguna Tayabas Co., 160 SCRA 70 (1988).

[5] Exhibit G; pages 217 to 218, Original Record.

[6] Articles 2212 and 2213 of the Civil Code.

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