

MAERSK LINE, PETITIONER, VS. COURT OF APPEALS AND EFREN V. CASTILLO, DOING BUSINESS UNDER THE NAME AND STYLE OF ETHEGAL LABORATORIES, RESPONDENTS.

G.R. No. 94761. May 17, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

Petitioner Maersk Line is engaged in the transportation of goods by sea, doing business in the Philippines through its general agent Compania General de Tabacos de Filipinas.

Private respondent Efren Castillo, on the other hand, is the proprietor of Ethegal Laboratories, a firm engaged in the manufacture of pharmaceutical products.

On November 12, 1976, private respondent ordered from Eli Lilly, Inc. of Puerto Rico through its (Eli Lilly, Inc.'s) agent in the Philippines, Elanco Products, 600,000 empty gelatin capsules for the manufacture of his pharmaceutical products. The capsules were placed in six (6) drums of 100,000 capsules each valued at US \$1,668.71.

Through a Memorandum of Shipment (Exh. 'B'; AC GR CV No. 10340, Folder of Exhibits, pp. 5-6), the shipper Eli Lilly, Inc. of Puerto Rico advised private respondent as consignee that the 600,000 empty gelatin capsules in six (6) drums of 100,000 capsules each, were already shipped on board MV "Anders Maerskline" under Voyage No. 7703 for shipment to the Philippines via Oakland, California. In said Memorandum, shipper Eli Lilly, Inc. specified the date of arrival to be April 3, 1977.

For reasons unknown, said cargo of capsules were mishipped and diverted to Richmond, Virginia, USA and then transported back to Oakland, California. The goods finally arrived in the Philippines on June 10, 1977 or after two (2) months from the date specified in the memorandum. As a consequence, private respondent as consignee refused to take delivery of the goods on account of its failure to arrive on time.

Private respondent alleging gross negligence and undue delay in the delivery of the goods, filed an action before the court a quo for rescission of contract with damages against petitioner and Eli Lilly, Inc. as defendants.

Denying that it committed breach of contract, petitioner alleged in its answer that the subject shipment was transported in accordance with the provisions of the covering bill of lading and that its liability under the law on transportation of goods attaches only in case of loss, destruction or deterioration of the goods as provided for in Article 1734 of the Civil Code (Rollo, p. 16).

Defendant Eli Lilly, Inc., on the other hand, filed its answer with compulsory counterclaim and cross-claim. In its cross-claim, it alleged that the delay in the arrival of the the subject merchandise was due solely to the gross negligence of petitioner Maersk Line.

The issues having been joined, private respondent moved for the dismissal of the complaint against Eli Lilly, Inc.

on the ground that the evidence on record shows that the delay in the delivery of the shipment was attributable solely to petitioner.

Acting on private respondent's motion, the trial court dismissed the complaint against Eli Lilly, Inc. Correspondingly, the latter withdrew its cross-claim against petitioner in a joint motion dated December 3, 1979.

After trial held between respondent and petitioner, the court a quo rendered judgment dated January 8, 1982 in favor of respondent Castillo, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, this Court believe (sic) and so hold (sic) that there was a breach in the performance of their obligation by the defendant Maersk Line consisting of their negligence to ship the 6 drums of empty Gelatin Capsules which under their own memorandum shipment would arrive in the Philippines on April 3, 1977 which under Art. 1170 of the New Civil Code, they stood liable for damages.

"Considering that the only evidence presented by the defendant Maersk line thru its agent the Compania de Tabacos de Filipinas is the testimony of Rolando Ramirez who testified on Exhs. '1' to '5' which this Court believe (sic) did not change the findings of this Court in its decision rendered on September 4, 1980, this Court hereby renders judgment in favor of the plaintiff Efren Castillo as against the defendant Maersk Line thru its agent, the COMPANIA GENERAL DE TABACOS DE FILIPINAS and ordering:

"(a) Defendant to pay the plaintiff Efren V. Castillo the amount of THREE HUNDRED SIXTY NINE THOUSAND PESOS, (P369,000.00) as unrealized profit;

"(b) Defendant to pay plaintiff the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00), as moral damages;

"(c) Defendant to pay plaintiff the sum of TEN THOUSAND PESOS (P10,000.00) as exemplary damages;

"(d) Defendant to pay plaintiff the sum of ELEVEN THOUSAND SIX HUNDRED EIGHTY PESOS AND NINETY SEVEN CENTAVOS (P11,680.97) as cost of credit line; and

"(e) Defendant to pay plaintiff the sum of FIFTY THOUSAND PESOS (P50,000.00), as attorney's fees and to pay the costs of suit.

"That the above sums due to the plaintiff will bear the legal rate of interest until they are fully paid from the time the case was filed.

"SO ORDERED." (AC-GR CV No. 10340, Rollo, p. 15)

On appeal, respondent court rendered its decision dated August 1, 1990 affirming with modifications the lower court's decision as follows:

"WHEREFORE, the decision appealed from is affirmed with a modification, and, as modified, the judgment in this case should read as follows:

"Judgment is hereby rendered ordering defendant-appellant Maersk Line to pay plaintiff?appellee (1) compensatory damages of P11,680.97 at 6% annual interest from filing of the complaint until fully paid, (2) moral damages of P50,000.00, (3) exemplary damages of P20,000.00, (3) attorney's fees, per appearance fees, and litigation expenses of P30,000.00, (4) 30% of the total damages awarded except item (3) above, and the costs of suit.

"SO ORDERED." (Rollo, p. 50)

In its Memorandum, petitioner submits the following "issues" for resolution of the court:

I

"Whether or not the respondent Court of Appeals committed an error when it ruled that a defendant's cross-claim against a co-defendant survives or subsists even after the dismissal of the complaint against defendant-crossclaimant.

II

"Whether or not respondent Castillo is entitled to damages resulting from delay in the delivery of the shipment in the absence in the bill of lading of a stipulation on the period of delivery.

III

"Whether or not the respondent appellate court erred in awarding actual, moral and exemplary damages and attorney's fees despite the absence of factual findings and/or legal bases in the text of the decision as support for such awards.

IV

"Whether or not the respondent Court of Appeals committed an error when it rendered an ambiguous and unexplained award in the dispositive portion of the decision which is not supported by the body or the text of the decision." (Rollo, pp. 94-95).

With regard to the first issue raised by petitioner on whether or not a defendant's cross-claim against co-defendant (petitioner herein) survives or subsists even after the dismissal of the complaint against defendant-cross-claimant (petitioner herein), we rule in the negative.

Apparently this issue was raised by reason of the declaration made by respondent court in its questioned decision, as follows:

"Re the first assigned error: What should be rescinded in this case is not the "Memorandum of Shipment" but the contract between appellee and defendant Eli Lilly (embodied in three documents, namely: Exhs. A, A-1 and A-2) whereby the former agreed to buy and the latter to sell those six drums of gelatin capsules. It is by virtue of the cross-claim by appellant Eli Lilly against defendant Maersk Line for the latter's gross negligence in diverting the shipment thus causing the delay and damage to appellee that the trial court found appellant Maersk Line liable. x x x"

x x x

"Re the fourth assigned error: Appellant Maersk Line's insistence that appellee has no cause of action against it and appellant Eli Lilly because the shipment was delivered in good order and condition, and the bill of lading in question contains "stipulations, exceptions and conditions" printed on its reverse side that limit appellant Maersk Line's liability only to "the loss, destruction or deterioration," indeed, this issue of lack of cause of action has already been considered in our foregoing discussion on the second assigned error, and our resolution here is still that appellee has a cause of action against appellant Eli Lilly. Since the latter had filed a cross-claim against appellant Maersk Line, the trial court committed no error, therefore, in holding the latter appellant ultimately liable to appellee." (Rollo, pp. 47-50; Underscoring supplied)

Reacting to the foregoing declaration, petitioner submits that since its liability is predicated on the cross-claim filed by its co-defendant Eli Lilly, Inc. which cross-claim has been dismissed, the original complaint against it should likewise be dismissed. We disagree. It should be recalled that the complaint was filed originally against Eli Lilly, Inc. as shipper-supplier and petitioner as carrier. Petitioner being an original party defendant upon whom the delayed shipment is imputed cannot claim that the dismissal of the complaint against Eli Lilly, Inc. inured to

its benefit.

Respondent court, therefore, erred in declaring that the trial court based petitioner's liability on the cross-claim of Eli Lilly, Inc. As borne out by the record, the trial court anchored its decision on petitioner's delay or negligence to deliver the six (6) drums of gelatin capsules within a reasonable time on the basis of which petitioner was held liable for damages under Article 1170 of the New Civil Code which provides that those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.

Nonetheless, petitioner maintains that it cannot be held liable for damages for the alleged delay in the delivery of the 600,000 empty gelatin capsules since it acted in good faith and there was no special contract under which the carrier undertook to deliver the shipment on or before a specific date (Rollo, p. 103).

On the other hand, private respondent claims that during the period before the specified date of arrival of the goods, he had made several commitments and contracts with his customers for the production of drugs, all of which were cancelled due to the delayed arrival of the subject shipment. Private respondent further claimed that the provision in fine print at the back of the bill of lading issued by petitioner is void, it being a contract of adhesion. Therefore, petitioner can be held liable for the damages suffered by private respondent for the cancellation of the contracts he entered into.

We have carefully reviewed the decisions of respondent court and the trial court and both of them show that, in finding petitioner liable for damages for the delay in the delivery of goods, reliance was made on the rule that contracts of adhesion are void. Added to this, the lower court stated that the exemption against liability for delay is against public policy and is thus, void. Besides, private respondent's action is anchored on Article 1170 of the New Civil Code and not under the law on Admiralty (AC-GR CV No. 10340, Rollo, p. 14).

The bill of lading covering the subject shipment among others, reads:

"6. GENERAL

"(1) The Carrier does not undertake that the Goods shall arrive at the port of discharge or the place of delivery at any particular time or to meet any particular market or use and save as is provided in clause 4 the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay. If the Carrier should nevertheless be held legally liable for any such direct or indirect or consequential loss or damage caused by delay, such liability shall in no event exceed the freight paid for the transport covered by this Bill of Lading." (Exh. '1-A'; AC-G.R. CV No. 10340, Folder of Exhibits, p. 41)

It is not disputed that the aforequoted provision at the back of the bill of lading, in fine print, is a contract of adhesion. Generally, contracts of adhesion are considered void since almost all the provisions of these types of contracts are prepared and drafted only by one party, usually the carrier (*Sweet Lines v. Teves*, 83 SCRA 361 [1978]). The only participation left of the other party in such a contract is the affixing of his signature thereto, hence the term "adhesion" (*BPI Credit Corporation v. Court of Appeals*, 204 SCRA 601 [1991]; *Angeles v. Calasanz*, 135 SCRA 323 [1985]).

Nonetheless, settled is the rule that bills of lading are contracts not entirely prohibited (*Ong Yiu v. Court of Appeals, et al.*, 91 SCRA 223 [1979]; *Servando, et al. v. Philippine Steam Navigation Co.*, 117 SCRA 832 [1982]). One who adheres to the contract is in reality free to reject it in its entirety; if he adheres, he gives his consent (*Magellan Manufacturing Marketing Corporation v. Court of Appeals, et al.*, 201 SCRA 102 [1991]).

In *Magellan*, (*supra*), we ruled:

"It is a long standing jurisprudential rule that a bill of lading operates both as a receipt and as a contract. It is a

receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a contract, it names the parties, which includes the consignee, fixes the route, destination, and freight rates or charges, and stipulates the rights and obligations assumed by the parties. Being a contract, it is the law between the parties who are bound by its terms and conditions provided that these are not contrary to law, morals, good customs, public order and public policy. A bill of lading usually becomes effective upon its delivery to and acceptance by the shipper. It is presumed that the stipulations of the bill were, in the absence of fraud, concealment or improper conduct, known to the shipper, and he is generally bound by his acceptance whether he reads the bill or not." (Underscoring supplied)

However, the aforequoted ruling applies only if such contracts will not create an absurd situation as in the case at bar. The questioned provision in the subject bill of lading has the effect of practically leaving the date of arrival of the subject shipment on the sole determination and will of the carrier.

While it is true that common carriers are not obligated by law to carry and to deliver merchandise, and persons are not vested with the right to prompt delivery, unless such common carriers previously assume the obligation to deliver at a given date or time (*Mendoza v. Philippine Air Lines, Inc.*, 90 Phil. 836 [1952]), delivery of shipment or cargo should at least be made within a reasonable time.

In *Saludo, Jr. v. Court of Appeals* (207 SCRA 498 [1992]) this Court held:

"The oft-repeated rule regarding a carrier's liability for delay is that in the absence of a special contract, a carrier is not an insurer against delay in transportation of goods. When a common carrier undertakes to convey goods, the law implies a contract that they shall be delivered at destination within a reasonable time, in the absence, of any agreement as to the time of delivery. But where a carrier has made an express contract to transport and deliver property within a specified time, it is bound to fulfill its contract and is liable for any delay, no matter from what cause it may have arisen. This result logically follows from the well-settled rule that where the law creates a duty or charge, and the party is disabled from performing it without any default in himself, and has no remedy over, then the law will excuse him, but where the party by his own contract creates a duty or charge upon himself, he is bound to make it good notwithstanding any accident or delay by inevitable necessity because he might have provided against it by contract. Whether or not there has been such an undertaking on the part of the carrier is to be determined from the circumstances surrounding the case and by application of the ordinary rules for the interpretation of contracts."

An examination of the subject bill of lading (Exh. '1'; AC GR CV No. 10340, Folder of Exhibits, p. 41) shows that the subject shipment was estimated to arrive in Manila on April 3, 1977. While there was no special contract entered into by the parties indicating the date of arrival of the subject shipment, petitioner nevertheless, was very well aware of the specific date when the goods were expected to arrive as indicated in the bill of lading itself. In this regard, there arises no need to execute another contract for the purpose as it would be a mere superfluity.

In the case before us, we find that a delay in the delivery of the goods spanning a period of two (2) months and seven (7) days falls way beyond the realm of reasonableness. Described as gelatin capsules for use in pharmaceutical products, subject shipment was delivered to, and left in, the possession and custody of petitioner-carrier for transport to Manila via Oakland, California. But through petitioner's negligence was mishipped to Richmond, Virginia. Petitioner's insistence that it cannot be held liable for the delay finds no merit.

Petitioner maintains that the award of actual, moral and exemplary damages and attorney's fees are not valid since there are no factual findings or legal bases stated in the text of the trial court's decision to support the award thereof.

Indeed, it is settled that actual and compensatory damages require substantial proof (*Capco v. Macasaet*, 189 SCRA 561 [1990]). In the case at bar, private respondent was able to sufficiently prove through an invoice (Exh.

'A-1'), certification from the issuer of the letter of credit (Exh. 'A-2') and the Memorandum of Shipment (Exh. 'B'), the amount he paid as costs of the credit line for the subject goods. Therefore, respondent court acted correctly in affirming the award of eleven thousand six hundred eighty pesos and ninety seven centavos (P11,680.97) as costs of said credit line.

As to the propriety of the award of moral damages, Article 2220 of the Civil Code provides that moral damages may be awarded in "breaches of contract where the defendant acted fraudulently or in bad faith" (Pan American World Airways v. Intermediate Appellate Court, 186 SCRA 687 [1990]).

In the case before us, we find that the only evidence presented by petitioner was the testimony of Mr. Rolando Ramirez, a claims manager of its agent Compania General de Tabacos de Filipinas, who merely testified on Exhs. '1' to '5' (AC-GR CV No. 10340, p. 2) and nothing else. Petitioner never even bothered to explain the cause for the delay, i.e. more than two (2) months, in the delivery of the subject shipment. Under the circumstances of the case, we hold that petitioner is liable for breach of contract of carriage through gross negligence amounting to bad faith. Thus, the award of moral damages is therefore proper in this case.

In line with this pronouncement, we hold that exemplary damages may be awarded to the private respondent. In contracts, exemplary damages may be awarded if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. There was gross negligence on the part of the petitioner in mishipping the subject goods destined for Manila but was inexplicably shipped to Richmond, Virginia, U.S.A. Gross carelessness or negligence constitutes wanton misconduct, hence, exemplary damages may be awarded to the aggrieved party (Radio Communications of the Phils., Inc. v. Court of Appeals, 195 SCRA 147 [1991]).

Although attorney's fees are generally not recoverable, a party can be held liable for such if exemplary damages are awarded (Article 2208, New Civil Code). In the case at bar, we hold that private respondent is entitled to reasonable attorney's fees since petitioner acted with gross negligence amounting to bad faith.

However, we find item 4 in the dispositive portion of respondent court's decision which awarded thirty (30) percent of the total damages awarded except item 3 regarding attorney's fees and litigation expenses in favor of private respondent, to be unconscionable, the same should be deleted.

WHEREFORE, with the modification regarding the deletion of item 4 of respondent court's decision, the appealed decision is hereby AFFIRMED in all other respects.

SO ORDERED.

Feliciano, (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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