

PAN MALAYAN INSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND THE FOOD AND AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS, RESPONDENTS.

G.R. No. 95070. September 05, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

This case had its origin in a shipment of 1,500 metric tons of IR-36 certified rice seeds which private respondent, The Food and Agricultural Organization of the United Nations (hereinafter referred to as FAO), an autonomous intergovernmental organization created by treaty, intended and made arrangements to send to Kampuchea to be distributed to the people for seedling purposes. Respondent court affirms the factual findings therein of the court a quo as chronologized hereunder.

On May 22, 1980, FAO received a formal offer from the Luzon Stevedoring Corporation (LUZTEVECO, for brevity) whereby the latter offered to ship the former's aforesaid cargo, consisting of 3,000 metric tons in two lots of rice seeds, to Vietnam Ocean Shipping Industry in Vaung Tau, Vietnam for freight fees of \$55.50/MT, subject to the terms and conditions indicated in the corresponding communication.[1]

On May 28, 1980, FAO wrote LUZTEVECO formally confirming its acceptance of the foregoing offer amounting to US\$83,325.92 in respect of one lot of 1,500 metric tons which is the subject of the present action.[2] The cargo was loaded on board LUZTEVECO Barge No. LC-3000 and consisted of 34,122 bags of IR-36 certified rice seeds purchased by FAO from the Bureau of Plant Industry for P4,602,270.00.[3]

On June 12, 1980, the loading was completed and LUZTEVECO issued its Bill of Lading No. 01 in favor of FAO.[4] The latter then secured insurance coverage in the amount of P5,250,000.00 from petitioner, Pan Malayan Insurance Corporation, as evidenced by the latter's Marine Cargo Policy No. B-11474A and Premium Invoice No. 78615, dated June 16, 1980.[5]

On June 16, 1980, FAO gave instructions to LUZTEVECO to leave for Vaung Tau, Vietnam to deliver the cargo which, by its nature, could not withstand delay because of the inherent risks of germination and/or spoilage. On the same date, the insurance premiums on the shipment was paid by FAO petitioner.

On June 23, 1980, FAO was informed by LUZTEVECO that the tugboat and barge carrying FAO's shipment returned to Manila after leaving on June 16, 1980 and that the shipment again left Manila for Vaung Tau, Vietnam on June 21, 1980 with the barge being towed by a different tugboat. Since this was an unauthorized deviation, FAO demanded an explanation on June 25, 1980.[6]

On June 26, 1980, FAO was advised of the sinking of the barge in the China Sea, hence it informed petitioner thereof and, later, formally filed its claim under the marine insurance policy.[7] On July 29, 1980, FAO was informed by LUZTEVECO of the recovery of the lost shipment, for which reason FAO formally filed its claim with LUZTEVECO for compensation of damage to its cargo.[8]

Thereafter, despite repeated demands to replace the same or to pay for the total insured value in the sum of P5,250,000.00, LUZTEVECO failed and refused to do so. Petitioner likewise failed to pay for the losses and damages sustained by FAO by reason of its inability to recover the value of the shipment from LUZTEVECO.[9]

Petitioner claims that on July 31, 1980 it supposedly engaged the services of Pan Asiatic Adjustment and Marine Surveying Corporation to investigate and examine the shipment. On August 4, 1980, J. A. Barroso, Jr. of said corporation reportedly conducted a survey on the shipment and found that 9,629 bags of rice seeds were in good order, 23,510 bags sustained wettagage of 10% to 15%, and 983 bags were shortlanded or missing. After the alleged survey, Barroso, Jr. made a report recommending to petitioner the denial of FAO's claim because the partial damage suffered by the shipment is not compensable under the policy. On the basis of said recommendation, petitioner denied FAO's claim.[10]

Petitioner further avers that upon the request of counsel of FAO, a survey of the shipment was conducted on September 26, 27 and 29, 1980 by Conrado Catalan, Jr. of Manila Adjusters & Surveyors Company and he found 6,200 bags in good order condition. At the time of his survey, 23,510 bags of the shipment had allegedly already been sold by LUZTEVECO. Petitioner further asserts that on September 29, 1980, FAO wrote a letter to petitioner signifying its willingness to abandon the proceeds of the sale of the 23,510 bags and the remaining good order bags, but that on October 6, 1980 petitioner rejected FAO's proposed abandonment.

FAO then instituted Civil Case No. 41716 against LUZTEVECO and/or herein petitioner, as defendants, with the Regional Trial Court of Pasig, Metro Manila which, on December 14, 1987, rendered judgment in favor of FAO with the following decretal portion:

"WHEREFORE, by virtue of preponderance of evidence and in consideration of justice and equity, this Court hereby renders judgment in favor of the plaintiff against the defendant Luzon Stevedoring Corporation and defendant Pan Malayan Insurance Corporation, ordering both the defendants, to pay jointly and severally, the plaintiff, to wit:

1. The sum of P5,250,000.00 with interest thereon, at legal rate from September 29, 1980 until fully paid;
2. The sum of P250,000.00 by way of attorney's fees and expenses of litigation; and
3. The cost of this suit."[11]

Petitioner alone appealed the said decision to respondent Court of Appeals, docketed therein as CA-G.R. CV No. 22114, and on July 20, 1990 respondent court affirmed the decision of the trial court except for the award of attorney's fees which was reduced to P25,000.00.[12] Petitioner's motion for reconsideration was denied in respondent court's resolution of September 3, 1990.[13]

The petition now before us raises the following issues: (1) Whether or not respondent court committed a reversible error in holding that the trial court is correct in holding that there is a total loss of the shipment; and (2) Whether or not respondent court committed a reversible error in affirming the decision of the trial court ordering petitioner to pay private respondent the amount of P5,250,000.00 representing the full insured value of the rice seeds.[14]

The law classifies loss into either total or partial. Total loss may be actual or absolute,[15] or it may otherwise be constructive or technical.[16] Petitioner submits that respondent court erred in ruling that there was total loss of the shipment despite the fact that only 27,922 bags of rice seeds out of 34,122 bags were rendered valueless to FAO and the shipment sustained only a loss of 78%. FAO, however, claims that, for all intents and purposes, it has practically lost its total or entire shipment in this case, inclusive of expenses, premium fees, and so forth, despite the alleged recovery by defendant LUZTEVECO.

As found by the court below and reproduced with approval by respondent court, FAO "has never been compensated for this total loss or damage, a fact which is not denied nor controverted. If there were some cargoes saved, by LUZTEVECO, private respondent abandoned it and the same was sold or used for the benefit of LUZTEVECO or Pan Malayan Corporation. Under Sections 129 and 130 of the New Insurance Code, a total loss may either be actual or constructive. In case of total loss in Marine Insurance, the assured is entitled to recover from the underwriter the whole amount of his subscription (Vol. 2, Arnould Mar. Ins. 9[th] Ed. P. 1304; Alsop vs. Commercial Insurance Co. cc Mass IF Case No. 262, summ 451)." (Emphasis in the original text.)[17]

It is a fact that on July 9, 1980, FAO formally filed its claim under the marine insurance policy issued by petitioner.[18] FAO thus claims actual loss under paragraphs (c) and (d) of Section 130 of the Insurance Code which provides:

"SEC. 130. An actual total loss is caused by:

- (a) A total destruction of the thing insured;
- (b) The irretrievable loss of the thing by sinking, or by being broken up;
- (c) Any damage to the thing which renders it valueless to the owner for the purpose for which he held it; or
- (d) Any other event which effectively deprives the owner of the possession, at the port of destination, of the thing insured."

Respondent court affirmed the ruling of the trial court to the effect that there was indeed actual total loss, painstakingly explaining therein the following grounds for holding petitioner liable for the entire amount of the insurance coverage:

"x x x The lower court was not incorrect in holding that there is a total or entire loss of shipment in the case at bar.

"First, the fact of the sinking of Barge LC-3000 as the occurrence of the risk insured against under the marine insurance was proved and borne out by the following findings of the court a quo, thus;
'Here, we should not lose sight of the fact of sinking of the barge according to the defendant LUZTEVECO, in a phone call by Mr. Emata, defendant's representative, on June 26, 1980 and (of) which fact, the defendant Pan Malayan Insurance Corporation was notified. Subsequently, there was marine protest, based on said information released by the defendant LUZTEVECO. In fine, the barge LC-3000 carrying the load in question sank. If the barge was made to refloat, it cannot be denied that it sank, otherwise, what is the use of refloating the barge? What is mentioned in the law as the risk or peril insured against is sinking. This is the risk or peril covered by the Marine Insurance.' (Decision, p. 4)

x x x x x x x x

"x x x, it is worth mentioning the following un rebutted documents, testimonies and pleadings cited by the plaintiff-appellant, viz:

‘(1)

Testimony of Mr. Keiner that he was informed by Mr. Emata, a representative of LUZTEVECO, that the barge and its cargo sank in the South China Sea on June 25, 1980 (Deposition, Q43, p. 11)

‘(2)

Letter of Capt. Ilano of Luzon Steve-doring Corporation dated June 26, 1980 confirming the sinking of Barge

LC-3000 and its cargo on June 25, 1980 (Exhibit "D-9").

'(3)

Marine protest executed on July 2, 1980 by Capt. Rudy Vencer, master of tugboat towing Barge LC-3000, attesting to said barge's sinking on June 25, 1980, 385 miles off South Vietnam, due to very strong winds and rough seas. (Exhibit "E-4").

'(4)

The answer of defendant LUZTEVECO itself which admits in no uncertain terms the sinking of Barge LC-3000 on June 25, 1980. x x x

x x x x x x x x

"Basing on the evidence on record, the factual finding of the lower court re sinking of Barge LC-3000 is not without basis but rather sufficiently supported by evidence adduced by plaintiff-appellee.

"Second, there is the direct testimony of Mr. Fritz Keiner (the UNFAO officer-in-charge in the Philippines at the time of the loss) which states as follows:

'52. CONGEN:

What eventually happened to your Or-ganization's entire shipment of rice seedlings intended for the refugees of Vietnam?

'FK:

First, I would like to point out that the rice seeds were intended for the people of Kampuchea, but for logistical reasons, the shipment had to go through Vungtan, (sic) Vietnam.

In spite of the alleged salvaging of our shipment, there was absolutely no replacement or payment made by either defendant LUZTEVECO or defendant Pan Malayan Insurance Co. on our losses and eventually FAO did not recover anything from either of the said defendants.

'53. CONGEN:

Up to the present, has any replacement or payment of the value of your lost cargo been made to your organization by either of the defendants?

'FPKEINER:

Up to the present, no replacement or payment of the value of our lost cargo was ever made to our Organization by either of the defendants in this case.' (Deposition of Fritz Keiner, pp. 13-14)

"As emphasized by said witness, the insured cargo was intended for distribution by Vietnam Ocean Shipping Agency to the people of Kampuchea for the purpose of alleviating the acute rice shortage then prevailing in that country and to improve the rice production therein. (Deposition, Q17, p. 5). The bags containing said cargo were marked 'TREATED, UNFIT FOR FOOD' (Exh. 'E-3-b'; TSN, January 15, 1985, pp. 3-5) and the seeds themselves were of such a fragile nature that they have the tendency to germinate upon mere contact with water.

"As shown, of the 34,122 bags of rice seeds shipped on board Barge LC-3000 (Exh. 'E-1'), 23,510 were determined by defendant-appellant's surveyor, the Pan Asiatic Adjustment and Marine Surveying Corporation to be bad order bags (Exh. '3'). Add to these bad order bags the shortlanded/missing bags numbering 983 per report of the same surveying corporation, the damaged/lost bags would total 24,493 thereby leaving a balance of 9,269 (sic) presumed to be good order/dry bags. Of these 9,629 good order/dry bags, an additional 2,682 bags were found damaged/wetted after sorting (Exh. 'E'). All in all, therefore, 27,175 bags were determined to be lost/damaged. Although 6,947 bags in apparent external good order and condition were presumed to be inside the LUZTEVECO warehouse, only 6,200 were actually determined to be there by Conrado Catalan on September 26, 27 and 29, 1980 (Exh. 'E', p. 2). This increases the number of lost/damaged bags to 27,922.

"Thus considered, We agree with the plaintiff-appellee that the 27,922 damaged/lost bags were rendered valueless to plaintiff-appellee for planting or seeding purposes in Kampuchea since the wetting or contact with water had definitely activated their tendency to germinate. Moreover, all of said damaged/lost bags were no longer available for reshipment to Vietnam because the same were disposed of by defendant LUZTEVECO without authorization from plaintiff-appellee, to answer for alleged salvage charges, while the others were lost/shortlanded.

"Third, the testimony of Mr. Conrado Catalan, Jr. that the shipment sustained a loss of 78% is not speculative. Uncontroverted is his testimony which is based on data corroborated by the report of defendant-appellant's adjuster/surveyor and on actual inspection of the remaining bags stored in LUZTEVECO's warehouse. Exhibit '3' of defendant--appellant states in part, thus:

Condition

No. of Bags

Good order (dry)-----

9,629

Partly wet but damage limited only

to approximately 10% to 15%
of the contents. Wet portion
germinated/sprouted.

Remaining 85% to 90% of the contents apparently dry-----

23,510

Shortlanded/missing -----

983

Total -----

34,122

Bags

"It is understandable that plaintiff-appellee's surveyor (Mr. Conrado Catalan, Jr.) no longer saw the 23,510 bad order/damaged bags as these were already sold at public auction by defendant LUZTEVECO, while 983 more were shortlanded/missing. When Mr. Catalan sought to verify on September 26, 27 and 29, 1980 the existence and condition of the 9,629 presumed to be good order bags, he discovered that 'an additional 2,629 bags were found damaged/wetted, with the estimated 6,947 bags in apparently external good order condition' (Exh. 'E'). However, out of these presumed 6,947 bags only approximately 6,200 bags were computed and counted by Mr. Catalan to the best of his ability. (Exh. 'E', p. 2). It is even more than 78% per testimony of Mr. Catalan but at least 82% if we divide 6,200 (the actual number of bags in the warehouse) by 34,122 (the actual number of bags loaded on Barge LC-3000)."[19]

Petitioner, on the other hand, claims that respondent court gravely erred in sustaining the ruling of the trial court that there was total loss of the shipment since from the evidence on record and the findings of respondent court itself, only 27,922 bags of rice seeds out of 34,122 bags were rendered valueless to FAO and the shipment sustained only a loss of 78%.[20] Thus, petitioner concludes that the findings of the court a quo, as affirmed by the Court of Appeals, are contrary to the evidence. Upon an examination, however, of the records presented before this Court, it is quite clear that there was indeed actual total loss.

While this Court is not a trier of facts, yet, when the findings of the Court of Appeals are alleged to be without citation of specific evidence on which they are based, there is sufficient reason for us to review the appellate court's decision.[21] Under the factual milieu of this case, we find that there is abundant evidence to support the conclusion of respondent court.

In his testimony on cross-examination at the trial, Conrado Catalan, Jr., declared:

"Q.

You said that you did not make an actual count but you estimated, how many bags all in all did you estimate?

A.

It is 6,200 bags if I may recall.

Q.

Out of these 6,200 bags you only opened two (2) bags?

A.

Yes, sir.

Q.

And the others, the balance you did not examine anymore?

A.

It is shown in the picture that it is stained.

Q.

You must answer the question.

A.

Yes, sir.

Q.

What was the damage of the two (2) bags that you examined?

A.

They are stained." (Italics supplied.)[22]

It will be recalled that said rice seeds were treated and would germinate upon mere contact with water. The rule is that where the cargo by the process of decomposition or other chemical agency no longer remains the same kind of thing as before, an actual total loss has been suffered.

"x x x However, the complete physical destruction of the subject matter is not essential to constitute an actual total loss. Such a loss may exist where the form and specie of the thing is destroyed, although the materials of which it consisted still exist (Great Western Ins. Co. vs. Fogarty, N.Y., 19 Wall 640, 22 L. Ed. 216), as where the cargo by the process of decomposition or other chemical agency no longer remains the same kind of thing as before (Williams vs. Cole, 16 Me. 207)."[23]

Moreover, it is undisputed that no replacement whatsoever or any payment, for that matter, of the value of said lost cargo was made to FAO by petitioner or LUZTEVECO. It is thus clear that FAO suffered actual total loss under Section 130 of the Insurance Code, specifically under paragraphs (c) and (d) thereof, recompense for which it has been denied up to the present.

In view of our aforestated holding that there was actual total loss of the goods insured in this case, it is no longer necessary to pass upon the issue of the validity of the abandonment made by FAO. Section 135 of the Insurance Code explicitly provides that "(u)pon an actual total loss, a person insured is entitled to payment without notice of abandonment." This is a statutory adoption of a long standing doctrine in maritime insurance law that in case of actual total loss, the right of the insured to claim the whole insurance is absolute, without need of a notice of abandonment.[24]

WHEREFORE, the assailed judgment and resolution of respondent Court of Appeals are hereby AFFIRMED in toto.

SO ORDERED.

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

- [1] Original Record, 11.
- [2] Ibid., 13.
- [3] Ibid., 14.
- [4] Ibid., 15.
- [5] Ibid., 16-18.
- [6] Ibid., 19.
- [7] Ibid., 21.
- [8] Ibid., 23.
- [9] Rollo, 22-23.
- [10] Ibid., 5.
- [11] Original Record, 508; per Judge Jainal D. Rasul.
- [12] Justice Luis L. Victor, ponente, with Justices Lorna S. Lombos-de la Fuente and Nicolas P. Lapena, Jr., concurring.
- [13] Rollo, 45.
- [14] Ibid., 7.
- [15] Section 130, Insurance Code.
- [16] Section 131, id.
- [17] Rollo, 25.
- [18] Exhibit "1"; Original Record, 808.
- [19] Rollo, 25-29.
- [20] Ibid., 16.
- [21] *Air France vs. Court of Appeals, et al.*, 171 SCRA 399 (1989).
- [22] TSN, January 15, 1985, 8.
- [23] 2 T.C. Martin, *Commentaries and Jurisprudence on Philippine Commercial Laws*, 173, (1981 Ed.).
- [24] *Op. cit.*, 176, citing *Gordon vs. Insurance Co.*, 2 Pick (Mass.) 249 (1824).

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