

FIRST DIVISION

[G.R. No. 182864, January 12, 2015]

**EASTERN SHIPPING LINES, INC., PETITIONER, VS. BPI/MS
INSURANCE CORP., & MITSUI SUMITOMO INSURANCE CO., LTD.,
RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] of the Decision^[2] of the Second Division of the Court of Appeals in CA-G.R. CV No. 88744 dated 31 January 2008, modifying the Decision of the Regional Trial Court (RTC) by upholding the liability of Eastern Shipping Lines, Inc. (ESLI) but absolving Asian Terminals, Inc. (ATI) from liability and deleting the award of attorney's fees.

The facts gathered from the records follow:

On 29 December 2004, BPI/MS Insurance Corporation (BPI/MS) and Mitsui Sumitomo Insurance Company Limited (Mitsui) filed a Complaint^[3] before the RTC of Makati City against ESLI and ATI to recover actual damages amounting to US\$17,560.48 with legal interest, attorney's fees and costs of suit.

In their complaint, BPI/MS and Mitsui alleged that on 2 February 2004 at Yokohama, Japan, Sumitomo Corporation shipped on board ESLI's vessel M/V "Eastern Venus 22" 22 coils of various Steel Sheet weighing 159,534 kilograms in good order and condition for transportation to and delivery at the port of Manila, Philippines in favor of consignee Calamba Steel Center, Inc. (Calamba Steel) located in Saimsim, Calamba, Laguna as evidenced by a Bill of Lading with Nos. ESLIYMA001. The declared value of the shipment was US\$83,857.59 as shown by an Invoice with Nos. KJGE-03-1228-NT/KE3. The shipment was insured with the respondents BPI/MS and Mitsui against all risks under Marine Policy No. 103-GG03448834.

On 11 February 2004, the complaint alleged that the shipment arrived at the port of Manila in an unknown condition and was turned over to ATI for safekeeping. Upon withdrawal of the shipment by the Calamba Steel's representative, it was found out that part of the shipment was damaged and was in bad order condition such that there was a Request for Bad Order Survey. It was found out that the damage amounted to US\$4,598.85 prompting Calamba Steel to reject the damaged shipment for being unfit for the intended purpose.

On 12 May 2004 at Kashima, Japan, Sumitomo Corporation again shipped on board ESLI's vessel M/V "Eastern Venus 25" 50 coils in various Steel Sheet weighing 383,532 kilograms in good order and condition for transportation to and delivery at the port of Manila, Philippines in favor of the same consignee Calamba Steel as evidenced by a Bill of Lading with Nos. ESLIKSMA002. The declared value of the

shipment was US\$221,455.58 as evidenced by Invoice Nos. KJGE-04-1327-NT/KE2. The shipment was insured with the respondents BPI/MS and Mitsui against all risks under Marine Policy No. 104-GG04457785.

On 21 May 2004, ESLI's vessel with the second shipment arrived at the port of Manila partly damaged and in bad order. The coils sustained further damage during the discharge from vessel to shore until its turnover to ATI's custody for safekeeping.

Upon withdrawal from ATI and delivery to Calamba Steel, it was found out that the damage amounted to US\$12,961.63. As it did before, Calamba Steel rejected the damaged shipment for being unfit for the intended purpose.

Calamba Steel attributed the damages on both shipments to ESLI as the carrier and ATI as the *arrastre* operator in charge of the handling and discharge of the coils and filed a claim against them. When ESLI and ATI refused to pay, Calamba Steel filed an insurance claim for the total amount of the cargo against BPI/MS and Mitsui as cargo insurers. As a result, BPI/MS and Mitsui became subrogated in place of and with all the rights and defenses accorded by law in favor of Calamba Steel.

Opposing the complaint, ATI, in its Answer, denied the allegations and insisted that the coils in two shipments were already damaged upon receipt from ESLI's vessels. It likewise insisted that it exercised due diligence in the handling of the shipments and invoked that in case of adverse decision, its liability should not exceed P5,000.00 pursuant to Section 7.01, Article VII^[4] of the Contract for Cargo Handling Services between Philippine Ports Authority (PPA) and ATI.^[5] A cross-claim was also filed against ESLI.

On its part, ESLI denied the allegations of the complainants and averred that the damage to both shipments was incurred while the same were in the possession and custody of ATI and/or of the consignee or its representatives. It also filed a cross-claim against ATI for indemnification in case of liability.^[6]

To expedite settlement, the case was referred to mediation but it was returned to the trial court for further proceedings due to the parties' failure to resolve the legal issues as noted in the Mediator's Report dated 28 June 2005.^[7]

On 10 January 2006, the court issued a Pre-Trial Order wherein the following stipulations were agreed upon by the parties:

1. Parties admitted the capacity of the parties to sue and be sued;
2. Parties likewise admitted the existence and due execution of the Bill of Lading covering various steel sheets in coil attached to the Complaint as Annex A;
3. Parties admitted the existence of the Invoice issued by Sumitomo Corporation, a true and faithful copy of which was attached to the Complaint as Annex B;

4. Parties likewise admitted the existence of the Marine Cargo Policy issued by the Mitsui Sumitomo Insurance Company, Limited, copy of which was attached to the Complaint as Annex C;
5. [ATI] admitted the existence and due execution of the Request for Bad Order Survey dated February 13, 2004, attached to the Complaint as Annex D;
6. Insofar as the second cause of action, [ESLI] admitted the existence and due execution of the document [Bill of Lading Nos. ESLIKSMA002, Invoice with Nos. KJGE-04-1327-NT/KE2 and Marine Cargo Policy against all risks on the second shipment] attached to the Complaint as Annexes E, F and G;
7. [ATI] admitted the existence of the Bill of Lading together with the Invoices and Marine Cargo Policy. [It] likewise admitted by [ATI] are the Turn Over Survey of Bad Order Cargoes attached to the Complaint as Annexes H, H-1 and J.^[8]

The parties agreed that the procedural issue was whether there was a valid subrogation in favor of BPI/MS and Mitsui; and that the substantive issues were, whether the shipments suffered damages, the cause of damage, and the entity liable for reparation of the damages caused.^[9]

Due to the limited factual matters of the case, the parties were required to present their evidence through affidavits and documents. Upon submission of these evidence, the case was submitted for resolution.^[10]

BPI/MS and Mitsui, to substantiate their claims, submitted the Affidavits of (1) Mario A. Manuel (Manuel),^[11] the Cargo Surveyor of Philippine Japan Marine Surveyors and Sworn Measurers Corporation who personally examined and conducted the surveys on the two shipments; (2) Richatto P. Almeda,^[12] the General Manager of Calamba Steel who oversaw and examined the condition, quantity, and quality of the shipped steel coils, and who thereafter filed formal notices and claims against ESLI and ATI; and (3) Virgilio G. Tiangco, Jr.,^[13] the Marine Claims Supervisor of BPI/MS who processed the insurance claims of Calamba Steel. Along with the Affidavits were the Bills of Lading^[14] covering the two shipments, Invoices,^[15] Notices of Loss of Calamba Steel,^[16] Subrogation Form,^[17] Insurance Claims,^[18] Survey Reports,^[19] Turn Over Survey of Bad Order Cargoes^[20] and Request for Bad Order Survey.^[21]

ESLI, in turn, submitted the Affidavits of Captain Hermelo M. Eduarte,^[22] Manager of the Operations Department of ESLI, who monitored in coordination with ATI the discharge of the two shipments, and Rodrigo Victoria (Rodrigo),^[23] the Cargo Surveyor of R & R Industrial and Marine Services, Inc., who personally surveyed the subject cargoes on board the vessel as well as the manner the ATI employees discharged the coils. The documents presented were the Bills of Lading, Secretary's Certificate^[24] of PPA, granting ATI the duty and privilege to provide *arrastre* and

stevedoring services at South Harbor, Port of Manila, Contract for Cargo Handling Services,^[25] Damage Report^[26] and Turn Over Report made by Rodrigo.^[27] ESLI also adopted the Survey Reports submitted by BPI/MS and Mitsui.^[28]

Lastly, ATI submitted the Affidavits of its Bad Order Inspector Ramon Garcia (Garcia)^[29] and Claims Officer Ramiro De Vera.^[30] The documents attached to the submissions were the Turn Over Surveys of Bad Cargo Order,^[31] Requests for Bad Order Survey,^[32] Cargo Gatepasses issued by ATI,^[33] Notices of Loss/Claims of Calamba Steel^[34] and Contract for Cargo Handling Services.^[35]

On 17 September 2006, RTC Makati City rendered a decision finding both the ESLI and ATI liable for the damages sustained by the two shipments. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered in favor of [BPI/MS and Mitsui] and against [ESLI Inc.] and [ATI], jointly and severally ordering the latter to pay [BPI/MS and Mitsui] the following:

1. Actual damages amounting to US\$17,560.48 plus 6% legal interest per annum commencing from the filing of this complaint, until the same is fully paid;
2. Attorney's fees in a sum equivalent to 20% of the amount claimed;
3. Costs of suit.^[36]

Aggrieved, ESLI and ATI filed their respective appeals before the Court of Appeals on both questions of fact and law.^[37]

Before the appellate court, ESLI argued that the trial court erred when it found BPI/MS has the capacity to sue and when it assumed jurisdiction over the case. It also questioned the ruling on its liability since the Survey Reports indicated that the cause of loss and damage was due to the "*rough handling of ATI's stevedores during discharge from vessel to shore and during loading operation onto the trucks.*" It invoked the limitation of liability of US\$500.00 per package as provided in Commonwealth Act No. 65 or the Carriage of Goods by Sea Act (COGSA).^[38]

On the other hand, ATI questioned the capacity to sue of BPI/MS and Mitsui and the award of attorney's fees despite its lack of justification in the body of the decision. ATI also imputed error on the part of the trial court when it ruled that ATI's employees were negligent in the ruling of the shipments. It also insisted on the applicability of the provision of COGSA on limitation of liability.^[39]

In its Decision,^[40] the Court of Appeals absolved ATI from liability thereby modifying the decision of the trial court. The dispositive portions reads:

WHEREFORE, the appeal of ESLI is **DENIED**, while that of ATI is **GRANTED**. The assailed Judgment dated September 17, 2006 of Branch 138, RTC of Makati City in Civil Case No. 05-108 is hereby MODIFIED

absolving ATI from liability and deleting the award of attorney's fees. The rest of the decision is affirmed.^[41]

Before this Court, ESLI seeks the reversal of the ruling on its liability.

At the outset, and notably, ESLI included among its arguments the attribution of liability to ATI but it failed to implead the latter as a party to the present petition. This non-inclusion was raised by BPI/MS and Mitsui as an issue^[42] in its Comment/Opposition^[43] and Memorandum:^[44]

For reasons known only to [ESLI], it did not implead ATI as a party respondent in this case when it could have easily done so. Considering the nature of the arguments raised by petitioner pointing to ATI as solely responsible for the damages sustained by the subject shipments, it is respectfully submitted that ATI is an indispensable party in this case. Without ATI being impleaded, the issue of whether ATI is solely responsible for the damages could not be determined with finality by this Honorable Court. ATI certainly deserves to be heard on the issue but it could not defend itself because it was not impleaded before this Court. Perhaps, this is the reason why [ESLI] left out ATI in this case so that it could not rebut while petitioner puts it at fault.^[45]

ESLI in its Reply^[46] put the blame for the non-exclusion of ATI to BPI/MS and Mitsui:

[BPI/MS and Mitsui] claim that herein [ESLI] did not implead [ATI] as a party respondent in the Petition for Review on Certiorari it had filed. Herein Petitioner submits that it is not the obligation of [ESLI] to implead ATI as the same is already the look out of [BPI/MS and Mitsui]. If [BPI/MS and Mitsui] believe that ATI should be made liable, they should have filed a Motion for Reconsideration with the Honorable Court of Appeals. The fact that [BPI/MS and Mitsui] did not even lift a finger to question the decision of the Honorable Court of Appeals goes to show that [BPI/MS and Mitsui] are not interested as to whether or not ATI is indeed liable.^[47]

It is clear from the exchange that both [ESLI] and [BPI/MS and Mitsui] are aware of the non-inclusion of ATI, the *arrastre* operator, as a party to this review of the Decision of the Court of Appeals. By blaming each other for the exclusion of ATI, [ESLI] and [BPI/MS and Mitsui] impliedly agree that the absolution of ATI from liability is final and beyond review. Clearly, [ESLI] is the consequential loser. It alone must bear the proven liability for the loss of the shipment. It cannot shift the blame to ATI, the *arrastre* operator, which has been cleared by the Court of Appeals. Neither can it argue that the consignee should bear the loss.

Thus confined, we go to the merits of the arguments of ESLI.