724 Phil. 625

FIRST DIVISION

[G.R. No. 193986, January 15, 2014]

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

D E C I S I O N

VILLARAMA, JR., J.:

Before this Court is a petition[1] for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 88361, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC), of Makati City, Branch 138 in Civil Case No. 04-1005.

The facts follow:

On August 29, 2003, Sumitomo Corporation (Sumitomo) shipped through MV Eastern Challenger V-9-S, a vessel owned by petitioner Eastern Shipping Lines, Inc. (petitioner), 31 various steel sheets in coil weighing 271,828 kilograms from Yokohama, Japan for delivery in favor of the consignee Calamba Steel Center Inc. (Calamba Steel).[4] Thecargo had a declared value of US$125,417.26 and was insured against all risk by Sumitomo with respondent Mitsui Sumitomo Insurance Co., Ltd. (Mitsui). On or about September 6, 2003, the shipment arrived at the port of Manila. Upon unloading from the vessel, nine coils were observed to be in bad condition as evidenced by the Turn Over Survey of Bad Order Cargo No. 67327. The cargo was then turned over to Asian Terminals, Inc. (ATI) for stevedoring, storage and safekeeping pending Calamba Steel's withdrawal of the goods. When ATI delivered the cargo to Calamba Steel, the latter rejected its damaged portion,valued at US$7,751.15, for being unfit for its intended purpose.[5]

Subsequently, on September 13, 2003, a second shipment of 28 steel sheets in coil, weighing 215,817 kilograms, was made by Sumitomo through petitioner's MV Eastern Challenger V-10-S for transport and delivery again to Calamba Steel.[6] Insured by Sumitomo against all risk with Mitsui,[7] the shipment had a declared value of US$121,362.59. This second shipment arrived at the port of Manila on or about September 23,2003. However, upon unloading of the cargo from the said vessel, 11 coils were found damaged as evidenced by the Turn Over Survey of Bad Order Cargo No. 67393. The possession of the said cargo was then transferred to ATI for stevedoring, storage and safekeeping pending withdrawal thereof by Calamba Steel. When ATI delivered the goods, Calamba Steel rejected the damaged portion thereof, valued at US$7,677.12, the same being unfit for its intended purpose.[8]

Lastly, on September 29, 2003, Sumitomo again shipped 117 various steel sheets in coil weighing 930,718 kilograms through petitioner's vessel, MV Eastern Venus V-17-S,again in favor of Calamba Steel.[9] This third shipment had a declared value of US$476,416.90 and was also insured by Sumitomo with Mitsui. The same arrived at the port of Manila on or about October 11,2003. Upon its discharge, six coils were observed to be in bad condition. Thereafter, the possession of the cargo was turned over to ATI for stevedoring, storage and safekeeping pending withdrawal thereof by Calamba Steel. The damaged portion of the goods being unfit for its intended purpose, Calamba Steel rejected the damaged portion, valued at US$14,782.05, upon ATI's delivery of the third shipment.[10]

Calamba Steel filed an insurance claim with Mitsui through the latter's settling agent, respondent BPI/MS Insurance Corporation(BPI/MS), and the former was paid the sums of US$7,677.12,US$14,782.05 and US$7,751.15 for the damage suffered by all three shipments or for the total amount of US$30,210.32. Correlatively, on August 31, 2004, as insurer and subrogee of Calamba Steel, Mitsui and BPI/MS filed a Complaint for Damages against petitioner and ATI.[11]

As synthesized by the RTC in its decision, during the pre-trial conference of the case, the following facts were established, *viz:*

1. The fact that there were shipments made on or about August 29, 2003, September 13, 2003 and September 29, 2003 by Sumitomo to Calamba Steel through petitioner's vessels;
2. The declared value of the said shipments and the fact that the shipments were insured by respondents;
3. The shipments arrived at the port of Manila on or about September 6, 2003, September 23, 2003 and October 11, 2003 respectively;
4. Respondents paid Calamba Steel's total claim in the amount of US$30,210.32. [12]

Trial on the merits ensued.

On September 17, 2006, the RTC rendered its Decision,[13] the dispositive portion of which provides:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants Eastern Shipping Lines, Inc. and Asian Terminals, Inc., jointly and severally, ordering the latter to pay plaintiffs the following:
>
> 1. Actual damages amounting to US$30,210.32 plus 6% legal interest thereon commencing from the filing of this complaint, until the same is fully paid;
> 2. Attorney's fees in a sum equivalent to 25% of the amount claimed;
> 3. Costs of suit.
>
> The defendants' counterclaims and ATI's cross claim are DISMISSED for lack of merit.

SO ORDERED.[14]

Aggrieved, petitioner and ATI appealed to the CA. On July 9, 2010, the CA in its assailed Decision affirmed with modification the RTC's findings and ruling, holding, among others, that both petitioner and ATI were very negligent in the handling of the subject cargoes. Pointing to the affidavit of Mario Manuel, Cargo Surveyor, the CA found that "*during the unloading operations, the steel coils were lifted from the vessel but were not carefully laid on the ground. Some were even 'dropped' while still several inches from the ground while other coils bumped or hit one another at the pier while being arranged by the stevedores and forklift operators of ATI and [petitioner].*" The CA added that such finding coincides with the factual findings of the RTC that both petitioner and ATI were both negligent in handling the goods. However, for failure of the RTC to state the justification for the award of attorney's fees in the body of its decision, the CA accordingly deleted the same.[15] Petitioner filed its Motion for Reconsideration[16] which the CA, however, denied in its Resolution[17] dated October 6, 2010.

Both petitioner and ATI filed their respective separate petitions for review on certiorari before this Court. However, ATI's petition, docketed as G.R. No. 192905, was denied by this Court in our Resolution[18] dated October 6, 2010 for failure of ATI to show any reversible error in the assailed CA decision and for failure of ATI to submit proper verification.Said resolution had become final and executory on March 22, 2011.[19] Nevertheless, this Court in its Resolution[20] dated September 3, 2012, gave due course to this petition and directed the parties to file their respective memoranda.

In its Memorandum,[21] petitioner essentially avers that the CA erred in affirming the decision of the RTC because the survey reports submitted by respondents themselves as their own evidence and the pieces of evidence submitted by petitioner clearly show that the cause of the damage was the rough handling of the goods by ATI during the discharging operations. Petitioner attests that it had no participation whatsoever in the discharging operations and that petitioner did not have a choice in selecting the stevedore since ATI is the only arrastre operator mandated to conduct discharging operations in the South Harbor. Thus, petitioner prays that it be absolved from any liability relative to the damage incurred by the goods.

On the other hand, respondents counter, among others, that as found by both the RTC and the CA, the goods suffered damage while still in the possession of petitioner as evidenced by various Turn Over Surveys of Bad Order Cargoes which were unqualifiedly executed by petitioner's own surveyor, Rodrigo Victoria, together with the representative of ATI. Respondents assert that petitioner would not have executed such documents if the goods, as it claims, did not suffer any damage prior to their turn-over to ATI. Lastly, respondents aver that petitioner, being a common carrier is required by law to observe extraordinary diligence in the vigilance over the goods it carries.[22]

Simply put, the core issue in this case is whether the CA committed any reversible

error in finding that petitioner is solidarily liable with ATI on account of the damage incurred by the goods.

The Court resolves the issue in the negative.

Well entrenched in this jurisdiction is the rule that factual questions may not be raised before this Court in a petition for review on certiorari as this Court is not a trier of facts.This is clearly stated in Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, which provides:

> SECTION 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Thus, it is settled that in petitions for review on certiorari, only questions of law may be put in issue. Questions of fact cannot be entertained.[23]

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[24]

In this petition, the resolution of the question as to who between petitioner and ATI should be liable for the damage to the goods is indubitably factual, and would clearly impose upon this Court the task of reviewing, examining and evaluating or weighing all over again the probative value of the evidence presented[25] – something which is not, as a rule, within the functions of this Court and within the office of a petition for review on certiorari.

While it is true that the aforementioned rule admits of certain exceptions,[26] this Court finds that none are applicable in this case. This Court finds no cogent reason to disturb the factual findings of the RTC which were duly affirmed by the CA. Unanimous with the CA, this Court gives credence and accords respect to the factual findings of the RTC – a special commercial court[27] which has expertise and specialized knowledge on the subject matter[28] of maritime and admiralty– highlighting the solidary liability of both petitioner and ATI. The RTC judiciously found:

> x x x **The Turn Over Survey of Bad Order Cargoes (TOSBOC, for brevity) No. 67393 and Request for Bad Order Survey No. 57692 show that prior to the turn over of the first shipment to the**