722 Phil. 38

FIRST DIVISION

[G.R. No. 200289, November 25, 2013]

WESTWIND SHIPPING CORPORATION, PETITIONER, VS. UCPB GENERAL INSURANCE CO., INC. AND ASIAN TERMINALS, INC., RESPONDENTS.

[G.R. NO. 200314]

ORIENT FREIGHT INTERNATIONAL, INC., PETITIONER, VS. UCPB GENERAL INSURANCE CO., INC. AND ASIAN TERMINALS, INC., RESPONDENTS.

D E C I S I O N

PERALTA, J.:

These two consolidated cases challenge, by way of petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, the September 13, 2011 Decision[1] and January 19, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86752, which reversed and set aside the January 27, 2006 Decision[3] of the Manila City Regional Trial Court Branch (RTC) 30.

The facts, as established by the records, are as follows:

On August 23, 1993, Kinsho-Mataichi Corporation shipped from the port of Kobe, Japan, 197 metal containers/skids of tin-free steel for delivery to the consignee, San Miguel Corporation (SMC). The shipment, covered by Bill of Lading No. KBMA-1074, [4] was loaded and received clean on board M/V Golden Harvest Voyage No. 66, a vessel owned and operated by Westwind Shipping Corporation (Westwind).

SMC insured the cargoes against all risks with UCPB General Insurance Co., Inc. (UCPB) for US Dollars: One Hundred Eighty-Four Thousand Seven Hundred Ninety-Eight and Ninety-Seven Centavos (US$184,798.97), which, at the time, was equivalent to Philippine Pesos: Six Million Two Hundred Nine Thousand Two Hundred Forty-Five and Twenty-Eight Centavos (P6,209,245.28).

The shipment arrived in Manila, Philippines on August 31, 1993 and was discharged in the custody of the arrastre operator, Asian Terminals, Inc. (ATI), formerly Marina Port Services, Inc.[5] During the unloading operation, however, six containers/skids worth Philippine Pesos: One Hundred Seventeen Thousand Ninety-Three and Twelve Centavos (P117,093.12) sustained dents and punctures from the forklift used by the stevedores of Ocean Terminal Services, Inc. (OTSI) in centering and shuttling the containers/skids. As a consequence, the local ship agent of the vessel, Baliwag Shipping Agency, Inc., issued two Bad Order Cargo Receipt dated September 1, 1993.

On September 7, 1993, Orient Freight International, Inc. (OFII), the customs broker of SMC, withdrew from ATI the 197 containers/skids, including the six in damaged condition, and delivered the same at SMC's warehouse in Calamba, Laguna through J.B. Limcaoco Trucking (JBL). It was discovered upon discharge that additional nine containers/skids valued at Philippine Pesos: One Hundred Seventy-Five Thousand Six Hundred Thirty-Nine and Sixty-Eight Centavos (P175,639.68) were also damaged due to the forklift operations; thus, making the total number of 15 containers/skids in bad order.

Almost a year after, on August 15, 1994, SMC filed a claim against UCPB, Westwind, ATI, and OFII to recover the amount corresponding to the damaged 15 containers/skids. When UCPB paid the total sum of Philippine Pesos: Two Hundred Ninety-Two Thousand Seven Hundred Thirty-Two and Eighty Centavos (P292,732.80), SMC signed the subrogation receipt. Thereafter, in the exercise of its right of subrogation, UCPB instituted on August 30, 1994 a complaint for damages against Westwind, ATI, and OFII.[6]

After trial, the RTC dismissed UCPB's complaint and the counterclaims of Westwind, ATI, and OFII. It ruled that the right, if any, against ATI already prescribed based on the stipulation in the 16 Cargo Gate Passes issued, as well as the doctrine laid down in *International Container Terminal Services, Inc. v. Prudential Guarantee & Assurance Co. Inc*.[7] that a claim for reimbursement for damaged goods must be filed within 15 days from the date of consignee's knowledge. With respect to Westwind, even if the action against it is not yet barred by prescription, conformably with Section 3 (6) of the Carriage of Goods by Sea Act (COGSA) and Our rulings in *E.E. Elser, Inc., et al. v. Court of Appeals, et al.*[8] and *Belgian Overseas Chartering and Shipping N.V. v. Phil. First Insurance Co., Inc.*,[9] the court a quo still opined that Westwind is not liable, since the discharging of the cargoes were done by ATI personnel using forklifts and that there was no allegation that it (Westwind) had a hand in the conduct of the stevedoring operations. Finally, the trial court likewise absolved OFII from any liability, reasoning that it never undertook the operation of the forklifts which caused the dents and punctures, and that it merely facilitated the release and delivery of the shipment as the customs broker and representative of SMC.

On appeal by UCPB, the CA reversed and set aside the trial court. The fallo of its September 13, 2011 Decision directed:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The Decision dated January 27, 2006 rendered by the court a quo is REVERSED AND SET ASIDE. Appellee Westwind Shipping Corporation is hereby ordered to pay to the appellant UCPB General Insurance Co., Inc., the amount of One Hundred Seventeen Thousand and Ninety-Three Pesos and Twelve Centavos (Php117,093.12), while Orient Freight International, Inc. is hereby ordered to pay to UCPB the sum of One Hundred Seventy-Five Thousand Six Hundred Thirty-Nine Pesos and Sixty-Eight Centavos (Php175,639.68). Both sums shall bear interest at the rate of six (6%) percent per annum, from the filing of the complaint on August 30, 1994 until the judgment becomes final and

executory. Thereafter, an interest rate of twelve (12%) percent per annum shall be imposed from the time this decision becomes final and executory until full payment of said amounts.

SO ORDERED.[10]

While the CA sustained the RTC judgment that the claim against ATI already prescribed, it rendered a contrary view as regards the liability of Westwind and OFII. For the appellate court, Westwind, not ATI, is responsible for the six damaged containers/skids at the time of its unloading. In its rationale, which substantially followed Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.,[11] it concluded that the common carrier, not the arrastre operator, is responsible during the unloading of the cargoes from the vessel and that it is not relieved from liability and is still bound to exercise extraordinary diligence at the time in order to see to it that the cargoes under its possession remain in good order and condition. The CA also considered that OFII is liable for the additional nine damaged containers/skids, agreeing with UCPB's contention that OFII is a common carrier bound to observe extraordinary diligence and is presumed to be at fault or have acted negligently for such damage. Noting the testimony of OFII's own witness that the delivery of the shipment to the consignee is part of OFII's job as a cargo forwarder, the appellate court ruled that Article 1732 of the New Civil Code (NCC) does not distinguish between one whose principal business activity is the carrying of persons or goods or both and one who does so as an ancillary activity. The appellate court further ruled that OFII cannot excuse itself from liability by insisting that JBL undertook the delivery of the cargoes to SMC's warehouse. It opined that the delivery receipts signed by the inspector of SMC showed that the containers/skids were received from OFII, not JBL. At the most, the CA said, JBL was engaged by OFII to supply the trucks necessary to deliver the shipment, under its supervision, to SMC.

Only Westwind and OFII filed their respective motions for reconsideration, which the CA denied; hence, they elevated the case before Us via petitions docketed as G.R. Nos. 200289 and 200314, respectively.

Westwind argues that it no longer had actual or constructive custody of the containers/skids at the time they were damaged by ATI's forklift operator during the unloading operations. In accordance with the stipulation of the bill of lading, which allegedly conforms to Article 1736 of the NCC, it contends that its responsibility already ceased from the moment the cargoes were delivered to ATI, which is reckoned from the moment the goods were taken into the latter's custody. Westwind adds that ATI, which is a completely independent entity that had the right to receive the goods as exclusive operator of stevedoring and arrastre functions in South Harbor, Manila, had full control over its employees and stevedores as well as the manner and procedure of the discharging operations.

As for OFII, it maintains that it is not a common carrier, but only a customs broker whose participation is limited to facilitating withdrawal of the shipment in the custody of ATI by overseeing and documenting the turnover and counterchecking if the quantity of the shipments were in tally with the shipping documents at hand, but without participating in the physical withdrawal and loading of the shipments into the delivery trucks of JBL. Assuming that it is a common carrier, OFII insists that there is no need to rely on the presumption of the law – that, as a common

carrier, it is presumed to have been at fault or have acted negligently in case of damaged goods – considering the undisputed fact that the damages to the containers/skids were caused by the forklift blades, and that there is no evidence presented to show that OFII and Westwind were the owners/operators of the forklifts. It asserts that the loading to the trucks were made by way of forklifts owned and operated by ATI and the unloading from the trucks at the SMC warehouse was done by way of forklifts owned and operated by SMC employees. Lastly, OFII avers that neither the undertaking to deliver nor the acknowledgment by the consignee of the fact of delivery makes a person or entity a common carrier, since delivery alone is not the controlling factor in order to be considered as such.

Both petitions lack merit.

The case of *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*[12] applies, as it settled the query on which between a common carrier and an arrastre operator should be responsible for damage or loss incurred by the shipment during its unloading. We elucidated at length:

> Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.
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> For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo*, the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the shipowner.
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> Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
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> On the other hand, the functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of

the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.

In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*, the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote:

> The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. **Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.** (Emphasis supplied) (Citations omitted)

The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals* with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

Thus, in this case, the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The aforementioned Section 3 (2) of the COGSA states that among the carriers' responsibilities are to properly and carefully load, care for and discharge the goods carried. The bill of lading covering the subject shipment likewise stipulates that the carrier's liability for loss or damage to the goods ceases after its discharge from the vessel. Article 619 of the Code of Commerce holds a ship captain liable for the cargo from the time it is turned over to him until its delivery at the port of unloading.

In a case decided by a U.S. Circuit Court, *Nichimen Company v. M/V Farland*, it was ruled that like the duty of seaworthiness, the duty of care of the cargo is non-delegable, and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo