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[G.R. No. 181300, September 18, 2009]

MALAYAN INSURANCE CO., INC., PETITIONER, VS. JARDINE DAVIES TRANSPORT SERVICES, INC. AND ASIAN TERMINALS, INC., RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

On July 23, 1994, Petrosul International (Petrosul) shipped on board the vessel "MV Hoegh Merchant" (*MV Hoegh*) from Vancouver, Canada yellow crude sulphur "said to weigh 6,599.23 metric tons as per draft survey" for transportation to Manila, consigned to LMG Chemicals Corporation (LMG).[1]

Upon arrival of the *MV Hoegh* in Manila on September 5, 1994, the stevedores of respondent Asian Terminals, Inc. (ATI) undertook discharging operations of the shipment or cargo from the vessel directly onto the steel barges of Creed Customs Brokerage, Inc. (CCBI), which barges were later towed upriver and arrived at the consignee LMG's storage area in Pasig, Manila.

The consignee's hired workers thereupon received and unloaded the cargo with the use of an overhead crane and clamshell grab.

During the discharge of the cargo "ex vessel" onto CCBI's barges, SMS Average Surveyors and Adjusters, Inc. (SMS), LMG's appointed surveyors, reported the Outturn Quantity/Weight of the cargo at **6,247.199 Metric Tons (MT)**,[2] hence, given that as indicated in the Bill of Lading the weight was **6,599.23 MT**, there was a shortage of 352.031 MT.

Once on board the barges, the weight of the cargo was again taken and recorded at **6,122.023 MT**,[3] thus reflecting a shortage of 477.207 MT.

The weight of the cargo, taken a third time upon discharge at LMG's storage area, was recorded at **6,206.748 MT**[4] to thus reflect a shortage of 392.482 MT.

The cargo having been insured, LMG filed a claim for the value of shortage of cargo with its insurer Malayan Insurance Co., Inc., (petitioner) which paid LMG the sum of P1,144,108.43 in February 1995[5] and was accordingly subrogated to the rights of LMG.

For failing to heed demands to pay for the value of the cargo loss and on the basis of Marine Risk Note RN-0001-17551[6] and Marine Insurance Policy No. 001-0343, [7] petitioner as subrogee[8] filed on September 5, 1995 a Complaint[9] against herein respondents ATI and Jardine Davies Transport Services, Inc. (Jardine Davies), as alleged shipagent of MV Hoegh, together with CCBI and the "Unknown Owner and Unknown Shipagent" of the *MV Hoegh*, before the Regional Trial Court (RTC) of

Manila, for recovery of the amount it paid to LMG. As the identities and addresses of CCBI and the "Unknown Owner and Unknown Shipagent" could not be ascertained, only Jardine Davies and ATI were served with summons.[10]

ATI filed its Answer with Compulsory Counterclaim and Crossclaim[11] denying any liability for the value of the loss of part of the cargo, claiming that it had exercised due care and diligence in the discharge of the cargo from the vessel onto CCBI's barges; that its participation was limited to supplying the stevedores who undertook the discharging operations from the vessel to the barges; and that any loss to the cargo was sustained either prior to its discharge from the vessel or due to the negligence of CCBI.

Jardine Davies likewise filed its Answer with Compulsory Counterclaim and Crossclaim[12] claiming that it was not the shipagent of the *MV Hoegh* but a mere commercial agent; that any loss sustained by the cargo was due to the inherent vice or defect of the goods and unrecovered spillages, among other things; and that the complaint failed to state a cause of action as there was no valid subrogation.

By Decision of September 9, 2004, Branch 52 of the Manila RTC found for petitioner, disposing as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff ordering the defendants Jardine Davies Transport Services, Inc. and Asian Terminals, Inc. to pay in solidum the former, the following:
>
> (a) P1,144,108.43 representing the unpaid principal obligation plus legal interest thereon from the time of demand until fully paid;
>
> (b) 25% of the amount due as and by way of attorney's fees;
>
> (c) costs of suit; and
>
> (d) Defendant Creed Customs Brokerage, Inc. and the unknown Owner and Unknown Shipagent of M/V "Hoegh Merchant" are ordered DROPPED from the complaint as the court has not acquired jurisdiction over their persons.
>
> SO ORDERED.[13] (Underscoring supplied)

Discussing in two paragraphs the basis for holding herein respondents Jardine Davies and ATI solidarily liable for the loss, the trial court stated:

> It must be emphasized that the loss occurred while the cargo was in the possession, custody and control of the defendants. Absent any proof of exercise of due diligence required by law in the vigilance over the cargo, defendants are presumed to be at fault or to have acted negligently. Such presumption, the defendants failed to overturn to the satisfaction of this court.

> Moreover, defendants cannot escape liability by raising as a defense any defect in the contract of insurance as they are not privies thereto. Besides, whatever defect found therein is deemed to have been waived by the subsequent payment made by the plaintiff of consignee's claim (Compania Maritima v. Insurance Co. of North America, 12 SCRA 213).
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> x x x x[14] (Underscoring supplied)

On respondents' appeal, the Court of Appeals, by Decision of January 14, 2008,[15] vacated the trial court's decision and dismissed the complaint. It, however, upheld the dropping from the complaint of CCBI and the "Unknown Owner and Unknown Shipagent" of *M/V Hoegh*.

Thus the appellate court disposed:

> WHEREFORE, the assailed Decision is MODIFIED, in that portions (a), (b), and (c) of the same are VACATED and SET ASIDE. Accordingly, judgment is hereby rendered DISMISSING the complaint against Asian Terminals, Inc. and Jardine Davies Transport Services, Inc. in Civil Case No. 95-75224. Costs against Malayan Insurance Corp., Inc.
>
> SO ORDERED.[16]

In sustaining respondents' appeal, the appellate court held that petitioner failed to establish the fact of shortage in the cargo, doubts having arisen from the disparity in quantity as stated the bill of lading (6,559.23 MT) and the shipment invoice[17] (6,477.81 MT), as well as the discrepancy in quantity as reflected in SMS's Report of Survey[18] and the Comparison of Outturns[19] incorporated therein; that the same Report shows that inaccuracies or errors in the manner of/or equipment used in measuring the weight of the cargo might have resulted in variances in the outturn quantity; and that the testimonies of petitioner's witnesses, Eutiquiano Patiag[20] and Emmanuel Gotladera,[21] relative to the contents of the bill of lading may not be credited since they were not present at the actual weighing and loading of the cargo.

In fine, the appellate court held that the presumption accorded to a bill of lading - as *prima facie* evidence of the goods described therein, had been sufficiently rebutted.

Since the right of subrogation in favor of an insurer arises only upon payment of a valid insurance claim, the appellate court held that petitioner was not entitled to restitution, the insurance policy between LMG and petitioner having already expired on December 31, 1993[22] or seven (7) months *prior* to the loading of the shipment on July 23, 1994; and that the premium for Marine Risk Note RN-0001-17551 and/or the Endorsements[23] which purportedly extended the effectivity of the policy was paid only on October 6, 1994 or a month *after* the arrival of the cargo.[24]

The appellate court went on to note that petitioner also failed to prove that respondent Jardine Davies was the local shipagent of the *MV Hoegh* given that such vessel was sub-chartered by LMG's shipper Petrosul from Jardine Davies' principal Pacific Commerce Line (PCL), thereby making Petrosul the carrier which undertook to transport LMG's cargo.

The appellate court thus concluded that liability could not be imputed to Jardine Davies, its principal PCL not being the carrier of the cargo and no privity of contract existed between it (Jardine Davies) and Petrosul.

Respecting ATI, the appellate court held that no evidence that any shortage occurred since neither LMG nor its surveyors lodged any protest on the manner by which ATI's stevedores carried out the discharging operations.[25]

Hence, the present petition raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT (THE) PRESUMPTION ACCORDED ON THE BILL OF LADING HAS BEEN REBUTTED.

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT MALAYAN IS NOT ENTITLED TO REIMBURSEMENT SINCE THERE WAS NO VALID SUBROGATION.

III

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT DEFENDANT ASIAN TERMINALS, INC. IS NOT SOLIDARILY LIABLE WITH DEFENDANT JARDINE DAVIES.

IV

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PLAINTIFF DID NOT CONSIDER JARDINE DAVIES AS "M/V HOEGH'S" LOCAL SHIPAGENT.[26]

The issue boils down to whether petitioner discharged its burden of proving by clear, competent and convincing evidence that there was shortage in the shipment of yellow crude sulphur to the consignee LMG.

The Court holds not.

Before proceeding to the substantive issues, the Court deems it fit to first resolve a procedural issue raised by respondents in their respective Comments[27] - that the present petition seeks to pass upon questions of fact which is not allowed in a certiorari petition whose province is confined to questions of law.

While it is settled that the Court's jurisdiction in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to a review of errors of law and does not, as a rule, involve the re-examination of the evidence presented by the parties, the Court has recognized several exceptions, *viz*:

> The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) **the findings of fact are conflicting;** (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) **the findings of the CA are contrary to those of the trial court**; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[28] (Emphasis supplied)

Given the bold-faced exceptions in the immediately-quoted ruling of the Court, which are present in the case at bar, not to mention the fact that the trial court's conclusion "that the loss occurred while the cargo was in the possession, custody and control of the defendants" is bereft of any reference to specific evidence on record upon which it was based, the Court takes a second, hard look at the evidence.[29]

Petitioner argues, in the main, that the appellate court erred in failing to consider the bill of lading as a binding contract between the carrier and shipper or consignee insofar as the accuracy of the weight of the cargo is concerned. It insists:

> x x x [T]here is no need to confirm the correctness of its contents by other evidence outside the Bill of Lading as it is already conclusive upon the parties. To argue otherwise would be to allow an anomalous situation since defendant carrier can opt not to honor the terms and conditions of the bill of lading which they themselves [*sic*] prepared by simply questioning the disparity of the quantity between the bill of lading and the invoice. x x x[30]

The presumption that the bill of lading, which petitioner relies upon to support its claim for restitution, constitutes *prima facie* evidence of the goods therein described was correctly deemed by the appellate court to have been rebutted in light of abundant evidence casting doubts on its veracity.

That *MV Hoegh* undertook, under the bill of lading, to transport 6,599.23 MT of yellow crude sulphur on a "said to weigh" basis is not disputed. Under such clause,