578 Phil. 751

THIRD DIVISION

[G.R. No. 161539, June 27, 2008]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., PETITIONER, VS. FGU INSURANCE CORPORATION, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

In a Decision dated July 1, 1999 in Civil Case No. 95-73532, the Regional Trial Court (RTC) of Manila, Branch 30, ordered International Container Terminal Services, Inc. (petitioner) to pay FGU Insurance Corporation (respondent) the following sums: (1) P1,875,068.88 with 12% interest per annum from January 3, 1995 until fully paid; (2) P50,000.00 as attorney's fees; and (3) P10,000.00 as litigation expenses.[1]

Petitioner's liability arose from a lost shipment of "14 Cardboards 400 kgs. of Silver Nitrate 63.53 FCT Analytically Pure (purity 99.98 PCT)," shipped by Hapag-Lloyd AG through the vessel Hannover Express from Hamburg, Germany on July 10, 1994, with Manila, Philippines as the port of discharge, and Republic Asahi Glass Corporation (RAGC) as consignee. Said shipment was insured by FGU Insurance Corporation (FGU). When RAGC's customs broker, Desma Cargo Handlers, Inc., was claiming the shipment, petitioner, which was the arrastre contractor, could not find it in its storage area. At the behest of petitioner, the National Bureau of Investigation (NBI) conducted an investigation. The AAREMA Marine and Cargo Surveyors, Inc. also conducted an inquiry. Both found that the shipment was lost while in the custody and responsibility of petitioner.

As insurer, FGU paid RAGC the amount of P1,835,068.88 on January 3, 1995.[2] In turn, FGU sought reimbursement from petitioner, but the latter refused. This constrained FGU to file with the RTC of Manila Civil Case No. 95-73532 for a sum of money.

After trial, the RTC rendered its Decision dated July 1, 1999 finding petitioner liable.

Petitioner appealed to the Court of Appeals (CA), which, in the assailed Decision[3] dated October 22, 2003, affirmed the RTC Decision. Petitioner filed a motion for reconsideration which the CA denied in its Resolution dated January 8, 2004.[4]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court, with the following assignment of errors:

1. THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO APPLY THE LIMITATION OF LIABILITY OF P3,5000 PER PACKAGE WHICH LIMITS PETITIONER'S LIABILITY, IF ANY, TO A TOTAL OF ONLY P49,000.00 PURSUANT

TO PPA ADMINISTRATIVE ORDER NO. 10-81.

2. THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE MARINE OPEN POLICY DESPITE THE FACT THAT THE SAME WAS NO LONGER IN FORCE AT THE TIME THE SHIPMENT WAS LOADED ON BOARD THE CARRYING VESSEL.

3. THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO DISMISS THE COMPLAINT ON THE GROUND OF RESPONDENT'S FAILURE TO OFFER THE INSURANCE POLICY IN EVIDENCE PURSUANT TO THIS HONORABLE COURT'S DECISION IN HOME INSURANCE CORPORATION VS. COURT OF APPEALS (225 SCRA 411) AND THE FAIRLY RECENT DECISION IN WALLEM PHILIPPINES SHIPPING, INC. AND SEACOAST MARITIME CORP. VS. PRUDENTIAL GUARANTEE AND ASSURANCE, INC. AND COURT OF APPEALS, G.R. NO. 152158, 07 FEBRUARY 2003.

4. ASSUMING ARGUENDO THAT PETITIONER IS LIABLE, THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE AWARD OF 12% INTEREST DESPITE THE FACT THAT THE OBLIGATION PURPORTEDLY BREACHED DOES NOT CONSTITUTE A LOAN OF FORBEARANCE OF MONEY AND DESPITE THE CLEAR GUIDELINES SET FORTH BY THIS HONORABLE COURT IN EASTERN SHIPPING LINES, INC. VS. COURT OF APPEALS. (234 SCRA 78).[5]

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.[6] In the present case, there is nothing on record which will show that it falls within the exceptions. Hence, the petition must be denied.

Petitioner posits that its liability for the lost shipment should be limited to P3,500.00 per package as provided in Philippine Ports Authority Administrative Order No. 10-81 (PPA AO 10-81), under Article VI, Section 6.01 of which provides:

> Section 6.01. Responsibility and Liability for Losses and Damages; Exceptions - The CONTRACTOR shall at its own expense handle all merchandise in all work undertaken by it hereunder deligently [sic] and in a skillful, workman-like and efficient manner; that the CONTRACTOR shall be solely responsible as an independent CONTRACTOR, and hereby agrees to accept liability and to promptly pay to the shipping company consignees, consignors or other interested party or parties for the loss, damage, or non-delivery of cargoes to the extent of the actual invoice value of each package which in no case shall be more than THREE THOUSAND FIVE HUNDRED PESOS (P3,500.00) (for import cargo) x x x

> for each package **unless the value of the cargo importation is otherwise specified or manifested or communicated in writing together with the declared bill of lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge x x x of the goods,** as well as all damage that may be suffered on account of loss, damage, or destruction of any merchandise while in custody or under the control of the CONTRACTOR in any pier, shed, warehouse facility or other designated place under the supervision of the AUTHORITY x x x.[7] (Emphasis supplied)

The CA summarily ruled that PPA AO 10-81 is not applicable to this case without laying out the reasons therefor.

PPA AO 10-81 is the management contract between by the Philippine Ports Authority and the cargo handling services providers. In *Summa Insurance Corporation v. Court of Appeals*,[8] the Court ruled that:

> In the performance of its job, an arrastre operator is bound by the management contract it had executed with the Bureau of Customs. However, a management contract, which is a sort of a stipulation *pour autrui* within the meaning of Article 1311 of the Civil Code, is also binding on a consignee because it is incorporated in the gate pass and delivery receipt which must be presented by the consignee before delivery can be effected to it. The insurer, as successor-in-interest of the consignee, is likewise bound by the management contract. Indeed, upon taking delivery of the cargo, a consignee (and necessarily its successor-in-interest) tacitly accepts the provisions of the management contract, including those which are intended to limit the liability of one of the contracting parties, the arrastre operator.
>
> However, a consignee who does not avail of the services of the arrastre operator is not bound by the management contract. Such an exception to the rule does not obtain here as the consignee did in fact accept delivery of the cargo from the arrastre operator.[9]

While it appears in the present case that the RAGC availed itself of petitioner's services and therefore, PPA AO 10-81 should apply, the Court finds that the extent of petitioner's liability should cover the actual value of the lost shipment and not the P3,500.00 limit per package as provided in said Order.

It is borne by the records that when Desma Cargo Handlers was negotiating for the discharge of the shipment, it presented Hapag-Lloyd's Bill of Lading,[10] Degussa's Commercial Invoice, which indicates that value of the shipment, including seafreight charges, was DM94.960,00 (CFR Manila),[11] and Degussa's Packing List, which likewise notes that the value of the shipment was DM94.960,00. [12] It is highly unlikely that petitioner was not made aware of the actual value of the shipment, since it had to examine the pertinent documents for stripping purposes and, later on, for the discharge of the shipment to the consignee or its representative. In fact, the NBI Report dated September 26, 1994 on the investigation conducted by it regarding the loss of the shipment shows that petitioner's Admeasurer Rosco