

FIRST DIVISION

[G.R. No. 145044, June 12, 2008]

**PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER,
VS. NEPTUNE ORIENT LINES/OVERSEAS AGENCY SERVICES,
INC., RESPONDENTS.**

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari*^[1] of the Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 52855 promulgated on April 13, 2000 granting respondents' motion for reconsideration dated March 9, 2000. The Resolution held respondents liable for damages to petitioner subject to the limited-liability provision in the bill of lading.

The facts are as follows:

On September 30, 1993, L.T. Garments Manufacturing Corp. Ltd. shipped from Hong Kong three sets of warp yarn on returnable beams aboard respondent Neptune Orient Lines' vessel, M/V Baltimar Orion, for transport and delivery to Fukuyama Manufacturing Corporation (Fukuyama) of No. 7 Jasmin Street, AUV Subdivision, Metro Manila.

The said cargoes were loaded in Container No. IEAU-4592750 in good condition under Bill of Lading No. HKG-0396180. Fukuyama insured the shipment against all risks with petitioner Philippine Charter Insurance Corporation (PCIC) under Marine Cargo Policy No. RN55581 in the amount of P228,085.

During the course of the voyage, the container with the cargoes fell overboard and was lost.

Thus, Fukuyama wrote a letter to respondent Overseas Agency Services, Inc. (Overseas Agency), the agent of Neptune Orient Lines in Manila, and claimed for the value of the lost cargoes. However, Overseas Agency ignored the claim. Hence, Fukuyama sought payment from its insurer, PCIC, for the insured value of the cargoes in the amount of P228,085, which claim was fully satisfied by PCIC.

On February 17, 1994, Fukuyama issued a Subrogation Receipt to petitioner PCIC for the latter to be subrogated in its right to recover its losses from respondents.

PCIC demanded from respondents reimbursement of the entire amount it paid to Fukuyama, but respondents refused payment.

On March 21, 1994, PCIC filed a complaint for damages against respondents with the Regional Trial Court (RTC) of Manila, Branch 35.

Respondents filed an Answer with Compulsory Counterclaim denying liability. They alleged that during the voyage, the vessel encountered strong winds and heavy seas making the vessel pitch and roll, which caused the subject container with the cargoes to fall overboard. Respondents contended that the occurrence was a fortuitous event which exempted them from any liability, and that their liability, if any, should not exceed US\$500 or the limit of liability in the bill of lading, whichever is lower.

In a Decision dated January 12, 1996, the RTC held that respondents, as common carrier,^[2] failed to prove that they observed the required extraordinary diligence to prevent loss of the subject cargoes in accordance with the pertinent provisions of the Civil Code.^[3] The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered ordering the defendants, jointly and severally, to pay the plaintiff the Peso equivalent as of February 17, 1994 of HK\$55,000.00 or the sum of P228,085.00, whichever is lower, with costs against the defendants.^[4]

Respondents' motion for reconsideration was denied by the RTC in an Order dated February 19, 1996.

Respondents appealed the RTC Decision to the CA.

In a Decision promulgated on February 15, 2000, the CA affirmed the RTC Decision with modification, thus:

WHEREFORE, the assailed decision is hereby MODIFIED. Appellants Neptune and Overseas are hereby ordered to pay jointly and severally appellee PCIC P228,085.00, representing the amount it paid Fukuyama. Costs against the appellants.^[5]

Respondents moved for reconsideration of the Decision of the CA arguing, among others, that their liability was only US\$1,500 or US\$500 per package under the limited liability provision of the Carriage of Goods by Sea Act (COGSA).

In its Resolution dated April 13, 2000, the CA found the said argument of respondents to be meritorious. The dispositive portion of the Resolution reads:

WHEREFORE, the motion is partly granted in the sense that appellants shall be liable to pay appellee PCIC the value of the three packages lost computed at the rate of US\$500 per package or a total of US\$1,500.00.
^[6]

Hence, this petition raising this lone issue:

THE COURT OF APPEALS ERRED IN AWARDING RESPONDENTS DAMAGES SUBJECT TO THE US\$500 PER PACKAGE LIMITATION.

Petitioner contends that the CA erred in awarding damages to respondents subject to the US\$500 per package limitation since the vessel committed a "quasi deviation" which is a breach of the contract of carriage when it **intentionally** threw overboard the container with the subject shipment during the voyage to Manila for its own

benefit or preservation based on a Survey Report^[7] conducted by Mariner's Adjustment Corporation, which firm was tasked by petitioner to investigate the loss of the subject cargoes. According to petitioner, the breach of contract resulted in the abrogation of respondents' rights under the contract and COGSA including the US\$500 per package limitation. Hence, respondents cannot invoke the benefit of the US\$500 per package limitation and the CA erred in considering the limitation and modifying its decision accordingly.

The contention lacks merit.

The facts as found by the RTC do not support the new allegation of facts by petitioner regarding the intentional throwing overboard of the subject cargoes and quasi deviation. The Court notes that in petitioner's Complaint before the RTC, petitioner alleged as follows:

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2.03 In the course of the maritime voyage from Hongkong to Manila **subject shipment fell overboard** while in the custody of the defendants and were never recovered; it was part of the LCL cargoes packed by defendants in container IEAU-4592750 that fell overboard during the voyage.^[8]

Moreover, the same Survey Report cited by petitioner stated:

From the investigation conducted, we noted that Capt. S.L. Halloway, Master of MV "BALTIMAR ORION" filed a Note of Protest in the City of Manila, and was notarized on 06 October 1993.

Based on Note of Protest, copy attached hereto for your reference, carrier vessel sailed from Hongkong on 1st October 1993 carrying containers bound for Manila.

Apparently, at the time the vessel [was] sailing at about 2400 hours of 2nd October 1993, she encountered winds and seas such as to cause occasional moderate to heavy pitching and rolling deeply at times. At 0154 hours, same day, while in position Lat. 20 degrees, 29 minutes North, Long. 115 degrees, 49 minutes East, four (4) x 40 ft. **containers were lost/fell overboard**. The numbers of these containers are NUSU-3100789, TPHU -5262138, IEAU-4592750, NUSU-4515404.

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Furthermore, during the course of voyage, high winds and heavy seas were encountered causing the ship to roll and pitch heavily. The course and speed was altered to ease motion of the vessel, causing delay and loss of time on the voyage.

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SURVEYORS REMARKS: