

THIRD DIVISION

[G.R. NO. 157481, January 24, 2006]

**LOADSTAR SHIPPING CO., INC., PETITIONER, VS. PIONEER ASIA
INSURANCE CORP., RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

For review on certiorari are (1) the **Decision**^[1] dated October 15, 2002 and (2) the **Resolution**^[2] dated February 27, 2003, of the Court of Appeals in CA-G.R. CV No. 40999, which affirmed with modification the Decision^[3] dated February 15, 1993 of the Regional Trial Court of Manila, Branch 8 in Civil Case No. 86-37957.

The pertinent facts are as follows:

Petitioner Loadstar Shipping Co., Inc. (Loadstar for brevity) is the registered owner and operator of the vessel *M/V Weasel*. It holds office at 1294 Romualdez St., Paco, Manila.

On June 6, 1984, Loadstar entered into a voyage-charter with Northern Mindanao Transport Company, Inc. for the carriage of 65,000 bags of cement from Iligan City to Manila. The shipper was Iligan Cement Corporation, while the consignee in Manila was Market Developers, Inc.

On June 24, 1984, 67,500 bags of cement were loaded on board *M/V Weasel* and stowed in the cargo holds for delivery to the consignee. The shipment was covered by petitioner's Bill of Lading^[4] dated June 23, 1984.

Prior to the voyage, the consignee insured the shipment of cement with respondent Pioneer Asia Insurance Corporation for P1,400,000, for which respondent issued Marine Open Policy No. MOP-006 dated September 17, 1980, covering all shipments made on or after September 30, 1980.^[5]

At 12:50 in the afternoon of June 24, 1984, *M/V Weasel* left Iligan City for Manila in good weather. However, at 4:31 in the morning of June 25, 1984, Captain Vicente C. Montero, master of *M/V Weasel*, ordered the vessel to be forced aground. Consequently, the entire shipment of cement was good as gone due to exposure to sea water. Petitioner thus failed to deliver the goods to the consignee in Manila.

The consignee demanded from petitioner full reimbursement of the cost of the lost shipment. Petitioner, however, refused to reimburse the consignee despite repeated demands.

Nonetheless, on March 11, 1985, respondent insurance company paid the consignee

P1,400,000 plus an additional amount of P500,000, the value of the lost shipment of cement. In return, the consignee executed a Loss and Subrogation Receipt in favor of respondent concerning the latter's subrogation rights against petitioner.

Hence, on October 15, 1986, respondent filed a complaint docketed as Civil Case No. 86-37957, against petitioner with the Regional Trial Court of Manila, Branch 8. It alleged that: (1) the *M/V Weasel* was not seaworthy at the commencement of the voyage; (2) the weather and sea conditions then prevailing were usual and expected for that time of the year and as such, was an ordinary peril of the voyage for which the *M/V Weasel* should have been normally able to cope with; and (3) petitioner was negligent in the selection and supervision of its agents and employees then manning the *M/V Weasel*.

In its Answer, petitioner alleged that no fault nor negligence could be attributed to it because it exercised due diligence to make the ship seaworthy, as well as properly manned and equipped. Petitioner insisted that the failure to deliver the subject cargo to the consignee was due to *force majeure*. Petitioner claimed it could not be held liable for an act or omission not directly attributable to it.

On February 15, 1993, the RTC rendered a Decision in favor of respondent, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff and against defendant Loadstar Shipping Co., Inc. ordering the latter to pay as follows:

1. To pay plaintiff the sum of P1,900,000.00 with legal rate of interest per annum from date of complaint until fully paid;
2. To pay the sum equal to 25% of the claim as and for attorney's fees and litigation expenses; and,
3. To pay the costs of suit.

IT IS SO ORDERED.^[6]

The RTC reasoned that petitioner, as a common carrier, bears the burden of proving that it exercised extraordinary diligence in its vigilance over the goods it transported. The trial court explained that in case of loss or destruction of the goods, a statutory presumption arises that the common carrier was negligent unless it could prove that it had observed extraordinary diligence.

Petitioner's defense of *force majeure* was found bereft of factual basis. The RTC called attention to the PAG-ASA report that at the time of the incident, tropical storm "*Asiang*" had moved away from the Philippines. Further, records showed that the sea and weather conditions in the area of Hinubaan, Negros Occidental from 8:00 p.m. of June 24, 1984 to 8:00 a.m. the next day were slight and smooth. Thus, the trial court concluded that the cause of the loss was not tropical storm "*Asiang*" or any other *force majeure*, but gross negligence of petitioner.

Petitioner appealed to the Court of Appeals.

In its Decision dated October 15, 2002, the Court of Appeals affirmed the RTC

Decision with modification that Loadstar shall only pay the sum of 10% of the total claim for attorney's fees and litigation expenses. It ruled,

WHEREFORE, premises considered, the Decision dated February 15, 1993, of the Regional Trial Court of Manila, National Capital Judicial Region, Branch 8, in Civil Case No. 86-37957 is hereby AFFIRMED with the MODIFICATION that the appellant shall only pay the sum of 10% of the total claim as and for attorney's fees and litigation expenses. Costs against the appellant.

SO ORDERED.^[7]

Petitioner's Motion for Reconsideration was denied.^[8]

The instant petition is anchored now on the following assignments of error:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS A COMMON CARRIER UNDER ARTICLE 1732 OF THE CIVIL CODE.

II

ASSUMING ARGUENDO THAT PETITIONER IS A COMMON CARRIER, THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PROXIMATE CAUSE OF THE LOSS OF CARGO WAS NOT A FORTUITOUS EVENT BUT WAS ALLEGEDLY DUE TO THE FAILURE OF PETITIONER TO EXERCISE EXTRAORDINARY DILIGENCE.

III

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD BY THE TRIAL COURT OF ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF HEREIN RESPONDENT.^[9]

On the first and second issues, petitioner contends that at the time of the voyage the carrier's voyage-charter with the shipper converted it into a private carrier. Thus, the presumption of negligence against common carriers could not apply. Petitioner further avers that the stipulation in the voyage-charter holding it free from liability is valid and binds the respondent. In any event, petitioner insists that it had exercised extraordinary diligence and that the proximate cause of the loss of the cargo was a fortuitous event.

With regard to the third issue, petitioner points out that the award of attorney's fees and litigation expenses appeared only in the dispositive portion of the RTC Decision with nary a justification. Petitioner maintains that the Court of Appeals thus erred in affirming the award.

For its part, respondent dismisses as factual issues the inquiry on (1) whether the loss of the cargo was due to *force majeure* or due to petitioner's failure to exercise extraordinary diligence; and (2) whether respondent is entitled to recover attorney's