

FIRST DIVISION

[G.R. NO. 153563, February 07, 2005]

**NATIONAL TRUCKING AND FORWARDING CORPORATION,
PETITIONER, VS. LORENZO SHIPPING CORPORATION,
RESPONDENT.**

DECISION

QUISUMBING, J.:

For review on certiorari are the **Decision**^[1] dated January 16, 2002, of the Court of Appeals, in CA-G.R. CV No. 48349, and its **Resolution**,^[2] of May 13, 2002, denying the motion for reconsideration of herein petitioner National Trucking and Forwarding Corporation (NTFC). The impugned decision affirmed *in toto* the judgment^[3] dated November 14, 1994 of the Regional Trial Court (RTC) of Manila, Branch 53, in Civil Case No. 90-52102.

The undisputed facts, as summarized by the appellate court, are as follows:

On June 5, 1987, the Republic of the Philippines, through the Department of Health (DOH), and the Cooperative for American Relief Everywhere, Inc. (CARE) signed an agreement wherein CARE would acquire from the United States government donations of non-fat dried milk and other food products from January 1, 1987 to December 31, 1989. In turn, the Philippines would transport and distribute the donated commodities to the intended beneficiaries in the country.

The government entered into a contract of carriage of goods with herein petitioner National Trucking and Forwarding Corporation (NTFC). Thus, the latter shipped 4,868 bags of non-fat dried milk through herein respondent Lorenzo Shipping Corporation (LSC) from September to December 1988. The consignee named in the bills of lading issued by the respondent was Abdurahman Jama, petitioner's branch supervisor in Zamboanga City.

On reaching the port of Zamboanga City, respondent's agent, Efren Ruste^[4] Shipping Agency, unloaded the 4,868 bags of non-fat dried milk and delivered the goods to petitioner's warehouse. Before each delivery, Rogelio Rizada and Ismael Zamora, both delivery checkers of Efren Ruste Shipping Agency, requested Abdurahman to surrender the original bills of lading, but the latter merely presented certified true copies thereof. Upon completion of each delivery, Rogelio and Ismael asked Abdurahman to sign the delivery receipts. However, at times when Abdurahman had to attend to other business before a delivery was completed, he instructed his subordinates to sign the delivery receipts for him.

Notwithstanding the precautions taken, the petitioner allegedly did not receive the subject goods. Thus, in a letter dated March 11, 1989, petitioner NTFC filed a formal claim for non-delivery of the goods shipped through respondent.

In its letter of April 26, 1989, the respondent explained that the cargo had already been delivered to Abdurahman Jama. The petitioner then decided to investigate the loss of the goods. But before the investigation was over, Abdurahman Jama resigned as branch supervisor of petitioner.

Noting but disbelieving respondent's insistence that the goods were delivered, the government through the DOH, CARE, and NTFC as plaintiffs filed an action for breach of contract of carriage, against respondent as defendant, with the RTC of Manila.

After trial, the RTC resolved the case as follows:

WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiffs, dismissing the latter's complaint, and ordering the plaintiffs, pursuant to the defendant's counterclaim, to pay, jointly and solidarily, to the defendant, actual damages in the amount of P50,000.00, and attorney's fees in the amount of P70,000.00, plus the costs of suit.

SO ORDERED. ^[5]

Dissatisfied with the foregoing ruling, herein petitioner appealed to the Court of Appeals. It faulted the lower court for not holding that respondent failed to deliver the cargo, and that respondent failed to exercise the extraordinary diligence required of common carriers. Petitioner also assailed the lower court for denying its claims for actual, moral, and exemplary damages, and for awarding actual damages and attorney's fees to the respondent. ^[6]

The Court of Appeals found that the trial court did not commit any reversible error. It dismissed the appeal, and affirmed the assailed decision *in toto*.

Undaunted, petitioner now comes to us, assigning the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO APPRECIATE AND APPLY THE LEGAL STANDARD OF EXTRAORDINARY DILIGENCE IN THE SHIPMENT AND DELIVERY OF GOODS TO THE RESPONDENT AS A COMMON CARRIER, AS WELL AS THE ACCOMPANYING LEGAL PRESUMPTION OF FAULT OR NEGLIGENCE ON THE PART OF THE COMMON CARRIER, IF THE GOODS ARE LOST, DESTROYED OR DETERIORATED, AS REQUIRED UNDER THE CIVIL CODE.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT SUSTAINED THE BASELESS AND ARBITRARY AWARD OF ACTUAL DAMAGES AND ATTORNEY'S FEES INASMUCH AS THE ORIGINAL COMPLAINT WAS FILED IN GOOD FAITH, WITHOUT MALICE AND WITH THE BEST INTENTION OF PROTECTING THE INTEREST AND INTEGRITY OF THE GOVERNMENT AND

ITS CREDIBILITY AND RELATIONSHIP WITH INTERNATIONAL RELIEF
AGENCIES AND DONOR STATES AND ORGANIZATION.^[7]

The issues for our resolution are: (1) Is respondent presumed at fault or negligent as common carrier for the loss or deterioration of the goods? and (2) Are damages and attorney's fees due respondent?

Anent the *first issue*, petitioner contends that the respondent is presumed negligent and liable for failure to abide by the terms and conditions of the bills of lading; that Abdurahman Jama's failure to testify should not be held against petitioner; and that the testimonies of Rogelio Rizada and Ismael Zamora, as employees of respondent's agent, Efren Ruste Shipping Agency, were biased and could not overturn the legal presumption of respondent's fault or negligence.

For its part, the respondent avers that it observed extraordinary diligence in the delivery of the goods. Prior to releasing the goods to Abdurahman, Rogelio and Ismael required the surrender of the original bills of lading, and in their absence, the certified true copies showing that Abdurahman was indeed the consignee of the goods. In addition, they required Abdurahman or his designated subordinates to sign the delivery receipts upon completion of each delivery.

We rule for respondent.

Article 1733^[8] of the Civil Code demands that a common carrier observe extraordinary diligence over the goods transported by it. Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights.^[9] This exacting standard imposed on common carriers in a contract of carriage of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for shipment. Hence, in case of loss of goods in transit, the common carrier is presumed under the law to have been at fault or negligent.^[10] However, the presumption of fault or negligence, may be overturned by competent evidence showing that the common carrier has observed extraordinary diligence over the goods.

In the instant case, we agree with the court *a quo* that the respondent adequately proved that it exercised extraordinary diligence. Although the original bills of lading remained with petitioner, respondent's agents demanded from Abdurahman the certified true copies of the bills of lading. They also asked the latter and in his absence, his designated subordinates, to sign the cargo delivery receipts.

This practice, which respondent's agents testified to be their standard operating procedure, finds support in Article 353 of the Code of Commerce:

ART. 353. . . .

After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled,

In case the consignee, upon receiving the goods, cannot return