464 Phil. 604

FIRST DIVISION

[G.R. No. 118030, January 15, 2004]

PROVIDENT INSURANCE CORP., PETITIONER, VS. HONORABLE COURT OF APPEALS AND AZUCAR SHIPPING CORP., RESPONDENTS.

DECISION

YNARES-SATIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals dated November 15, 1994, which affirmed the appealed Orders dated August 12, 1991 and February 4, 1992 issued by the Regional Trial Court of Manila, Branch 51, in Civil Case No. 91-56167.

The pertinent facts as culled from the stipulation of facts submitted by the parties are as follows:

On or about June 5, 1989, the vessel MV "Eduardo II" took and received on board at Sangi, Toledo City a shipment of 32,000 plastic woven bags of various fertilizer in good order and condition for transportation to Cagayan de Oro City. The subject shipment was consigned to Atlas Fertilizer Corporation, and covered by Bill of Lading No. 01 and Marine Insurance Policy No. CMI-211/89-CB.

Upon its arrival at General Santos City on June 7, 1989, the vessel MV "Eduardo II" was instructed by the consignee's representative to proceed to Davao City and deliver the shipment to its Davao Branch in Tabigao.

On June 10, 1989, the MV "Eduardo II" arrived in Davao City where the subject shipment was unloaded. In the process of unloading the shipment, three bags of fertilizer fell overboard and 281 bags were considered to be unrecovered spillages. Because of the mishandling of the cargo, it was determined that the consignee incurred actual damages in the amount of P68,196.16.

As the claims were not paid, petitioner Provident Insurance Corporation indemnified the consignee Atlas Fertilizer Corporation for its damages. Thereafter, petitioner, as subrogee of the consignee, filed on June 3, 1991 a complaint against respondent carrier seeking reimbursement for the value of the losses/damages to the cargo.

Respondent carrier moved to dismiss the complaint on the ground that the claim or demand by petitioner has been waived, abandoned or otherwise extinguished for failure of the consignee to comply with the required claim for damages set forth in the first sentence of Stipulation No. 7 of the bill of lading, the full text of which reads –

> 7. *All claims for damages to the goods must be made to the carrier at the time of delivery to the consignee or his agent if the package or*

> *containers show exterior sign of damage, otherwise to be made in writing to the carrier within twenty-four hours from the time of delivery.* Notice of loss due to delay must be given in writing to the carrier within 30 days from the time the goods were ready for delivery, *or in case of non-delivery or misdelivery of shipment the written notice must be given within 30 days after the arrival at the port of discharge of the vessels on which the goods were received in* case of the failure of the vessel on which the goods were shipped to arrived at the port of discharge, misdelivery must be presented in writing to the carrier within two months after the arrival of the vessel of the port of discharge or in case of the failure of the vessel in which the goods were shipped to arrive at the port of discharge written claims shall be made within 30 days of the time the vessel should have arrived. The giving of notice and the filing of claims as above provided shall be conditions precedent to the securing of the right of actions against the carrier for losses due to delay, non-delivery, or misdelivery. *In the case of damage to goods, the filing of the suit based upon claims arising from damage, delay, non-delivery or mis-delivery shall be instituted within one year from the date of the accrual of the right of action. Failure to institute judicial proceedings as herein provided shall constitute a waiver of the claim or right of action, and no agent nor employee of the carrier shall have authority to waive any of the provisions or requirements of this bill of lading. Any action by the ship owner or its agents or attorneys in considering or dealing with claims where the provisions or requirements of this bill of lading have not been complied with shall not be considered a waiver of such requirements and they shall not be considered as waived except by an express waiver*.[1] (Italics Supplied)

The trial court, in an Order dated August 12, 1991, found the motion to dismiss well taken and accordingly, dismissed the complaint.[2]

Petitioner filed a motion for reconsideration which the trial court, in an Order dated February 4, 1992, denied.[3]

Aggrieved by the lower court's decision, petitioner appealed to the Court of Appeals. On November 15, 1994, the Court of Appeals rendered the assailed decision which affirmed the lower court's Orders dated August 12, 1991 and February 4, 1992.[4] Hence, this petition raising the lone error that –

> THE HONORABLE COURT OF APPEALS HAS DECIDED THE QUESTION IN ISSUE NOT IN ACCORDANCE WITH THE PURPOSE FOR WHICH THE LAW WAS ESTABLISHED AND CONTRARY TO THE EXISTING JURISPRUDENCE. [5]

In support of its petition, petitioner contends that it is unreasonable for the consignee Atlas Fertilizer Corporation to be required to abide by the provisions of Stipulation No. 7 of the bill of lading. According to petitioner, since the place of delivery was remote and inaccessible, the consignee cannot be expected to have been able to immediately inform its main office and make the necessary claim for damages for the losses and unrecovered spillages in the subject cargo.