481 Phil. 868

THIRD DIVISION

[G.R. No. 150751, September 20, 2004]

CENTRAL SHIPPING COMPANY, INC., PETITIONER, VS. INSURANCE COMPANY OF NORTH AMERICA, RESPONDENT.

DECISION

PANGANIBAN, J.:

A common carrier is presumed to be at fault or negligent. It shall be liable for the loss, destruction or deterioration of its cargo, unless it can prove that the sole and proximate cause of such event is one of the causes enumerated in Article 1734 of the Civil Code, or that it exercised extraordinary diligence to prevent or minimize the loss. In the present case, the weather condition encountered by petitioner's vessel was not a "storm" or a natural disaster comprehended in the law. Given the known weather condition prevailing during the voyage, the manner of stowage employed by the carrier was insufficient to secure the cargo from the rolling action of the sea. The carrier took a calculated risk in improperly securing the cargo. Having lost that risk, it cannot now disclaim any liability for the loss.

The Case

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the March 23, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 48915. The assailed Decision disposed as follows:

> "**WHEREFORE**, the decision of the Regional Trial Court of Makati City, Branch 148 dated August 4, 1994 is hereby **MODIFIED** in so far as the award of attorney's fees is **DELETED**. The decision is **AFFIRMED** in all other respects."[3]

The CA denied petitioner's Motion for Reconsideration in its November 7, 2001 Resolution.[4]

The Facts

The factual antecedents, summarized by the trial court and adopted by the appellate court, are as follows:

> "On July 25, 1990 at Puerto Princesa, Palawan, the [petitioner] received on board its vessel, the M/V 'Central Bohol', 376 pieces [of] Philippine Apitong Round Logs and undertook to transport said shipment to Manila for delivery to Alaska Lumber Co., Inc.
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> "The cargo was insured for ₱3,000,000.00 against total loss under [respondent's] Marine Cargo Policy No. MCPB-00170.

"On July 25, 1990, upon completion of loading of the cargo, the vessel left Palawan and commenced the voyage to Manila.

"At about 0125 hours on July 26, 1990, while enroute to Manila, the vessel listed about 10 degrees starboardside, due to the shifting of logs in the hold.

"At about 0128 hours, after the listing of the vessel had increased to 15 degrees, the ship captain ordered his men to abandon ship and at about 0130 hours of the same day the vessel completely sank. Due to the sinking of the vessel, the cargo was totally lost.

"[Respondent] alleged that the total loss of the shipment was caused by the fault and negligence of the [petitioner] and its captain and as direct consequence thereof the consignee suffered damage in the sum of ₱3,000,000.00.

"The consignee, Alaska Lumber Co. Inc., presented a claim for the value of the shipment to the [petitioner] but the latter failed and refused to settle the claim, hence [respondent], being the insurer, paid said claim and now seeks to be subrogated to all the rights and actions of the consignee as against the [petitioner].

"[Petitioner], while admitting the sinking of the vessel, interposed the defense that the vessel was fully manned, fully equipped and in all respects seaworthy; that all the logs were properly loaded and secured; that the vessel's master exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the storm.

"It raised as its main defense that the proximate and only cause of the sinking of its vessel and the loss of its cargo was a natural disaster, a tropical storm which neither [petitioner] nor the captain of its vessel could have foreseen."[5]

The RTC was unconvinced that the sinking of *M/V Central Bohol* had been caused by the weather or any other *caso fortuito*. It noted that monsoons, which were common occurrences during the months of July to December, could have been foreseen and provided for by an ocean-going vessel. Applying the rule of presumptive fault or negligence against the carrier, the trial court held petitioner liable for the loss of the cargo. Thus, the RTC deducted the salvage value of the logs in the amount of ₱200,000 from the principal claim of respondent and found that the latter was entitled to be subrogated to the rights of the insured. The court *a quo* disposed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the [respondent] and against the [petitioner] ordering the latter to pay the following:

1) the amount of ₱2,800,000.00 with legal interest thereof from the filing of this complaint up to and until the same is fully paid;
2) ₱80,000.00 as and for attorney's fees;

3) Plus costs of suit."[6]

Ruling of the Court of Appeals

The CA affirmed the trial court's finding that the southwestern monsoon encountered by the vessel was not unforeseeable. Given the season of rains and monsoons, the ship captain and his crew should have anticipated the perils of the sea. The appellate court further held that the weather disturbance was not the sole and proximate cause of the sinking of the vessel, which was also due to the concurrent shifting of the logs in the hold that could have resulted only from improper stowage. Thus, the carrier was held responsible for the consequent loss of or damage to the cargo, because its own negligence had contributed thereto.

The CA found no merit in petitioner's assertion of the vessel's seaworthiness. It held that the Certificates of Inspection and Drydocking were not conclusive proofs thereof. In order to consider a vessel to be seaworthy, it must be fit to meet the perils of the sea.

Found untenable was petitioner's insistence that the trial court should have given greater weight to the factual findings of the Board of Marine Inquiry (BMI) in the investigation of the Marine Protest filed by the ship captain, Enriquito Cahatol. The CA further observed that what petitioner had presented to the court *a quo* were mere excerpts of the testimony of Captain Cahatol given during the course of the proceedings before the BMI, not the actual findings and conclusions of the agency. Citing *Arada v. CA*,[7] it said that findings of the BMI were limited to the administrative liability of the owner/operator, officers and crew of the vessel. However, the determination of whether the carrier observed extraordinary diligence in protecting the cargo it was transporting was a function of the courts, not of the BMI.

The CA concluded that the doctrine of limited liability was not applicable, in view of petitioner's negligence -- particularly its improper stowage of the logs.

Hence, this Petition.[8]

Issues

In its Memorandum, petitioner submits the following issues for our consideration: eileen

> "(i) Whether or not the weather disturbance which caused the sinking of the vessel M/V Central Bohol was a fortuitous event.
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> "(ii) Whether or not the investigation report prepared by Claimsmen Adjustment Corporation is hearsay evidence under Section 36, Rule 130 of the Rules of Court.
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> "(iii) Whether or not the finding of the Court of Appeals that 'the logs in the hold shifted and such shifting could only be due to improper stowage' has a valid and factual basis.

"(iv) Whether or not M/V Central Bohol is seaworthy.

"(v) Whether or not the Court of Appeals erred in not giving credence to the factual finding of the Board of Marine Inquiry (BMI), an independent government agency tasked to conduct inquiries on maritime accidents.

"(vi) Whether or not the Doctrine of Limited Liability is applicable to the case at bar."[9]

The issues boil down to two: (1) whether the carrier is liable for the loss of the cargo; and (2) whether the doctrine of limited liability is applicable. These issues involve a determination of factual questions of whether the loss of the cargo was due to the occurrence of a natural disaster; and if so, whether its sole and proximate cause was such natural disaster or whether petitioner was partly to blame for failing to exercise due diligence in the prevention of that loss.

The Court's Ruling

The Petition is devoid of merit.

First Issue:
Liability for Lost Cargo

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case.[10] In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible; that is, unless they can prove that such loss, destruction or deterioration was brought about -- among others -- by "flood, storm, earthquake, lightning or other natural disaster or calamity."[11] In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.[12]

In the present case, petitioner disclaims responsibility for the loss of the cargo by claiming the occurrence of a "storm" under Article 1734(1). It attributes the sinking of its vessel solely to the weather condition between 10:00 p.m. on July 25, 1990 and 1:25 a.m. on July 26, 1990.

At the outset, it must be stressed that only questions of law[13] may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Questions of fact are not proper subjects in this mode of appeal,[14] for "[t]he Supreme Court is not a trier of facts."[15] Factual findings of the CA may be reviewed on appeal[16] only under exceptional circumstances such as, among others, when the inference is manifestly mistaken,[17] the judgment is based on a misapprehension of facts,[18] or the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion.[19]

In the present case, petitioner has not given the Court sufficient cogent reasons to disturb the conclusion of the CA that the weather encountered by the vessel was not a "storm" as contemplated by Article 1734(1). Established is the fact that between

10:00 p.m. on July 25, 1990 and 1:25 a.m. on July 26, 1990, *M/V Central Bohol* encountered a southwestern monsoon in the course of its voyage.

The Note of Marine Protest,[20] which the captain of the vessel issued under oath, stated that he and his crew encountered a southwestern monsoon about 2200 hours on July 25, 1990, and another monsoon about 2400 hours on July 26, 1990. Even petitioner admitted in its Answer that the sinking of *M/V Central Bohol* had been caused by the strong southwest monsoon.[21] Having made such factual representation, it cannot now be allowed to retreat and claim that the southwestern monsoon was a "storm."

The pieces of evidence with respect to the weather conditions encountered by the vessel showed that there was a southwestern monsoon at the time. Normally expected on sea voyages, however, were such monsoons, during which strong winds were not unusual. Rosa S. Barba, weather specialist of the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA), testified that a thunderstorm might occur in the midst of a southwest monsoon. According to her, one did occur between 8:00 p.m. on July 25, 1990, and 2 a.m. on July 26, 1990, as recorded by the PAGASA Weather Bureau.[22]

Nonetheless, to our mind it would not be sufficient to categorize the weather condition at the time as a "storm" within the absolutory causes enumerated in the law. Significantly, no typhoon was observed within the Philippine area of responsibility during that period.[23]

According to PAGASA, a storm has a wind force of 48 to 55 knots,[24] equivalent to 55 to 63 miles per hour or 10 to 11 in the Beaufort Scale. The second mate of the vessel stated that the wind was blowing around force 7 to 8 on the Beaufort Scale. [25] Consequently, the strong winds accompanying the southwestern monsoon could not be classified as a "storm." Such winds are the ordinary vicissitudes of a sea voyage.[26]

Even if the weather encountered by the ship is to be deemed a natural disaster under Article 1739 of the Civil Code, petitioner failed to show that such natural disaster or calamity was the proximate and only cause of the loss. Human agency must be entirely excluded from the cause of injury or loss. In other words, the damaging effects blamed on the event or phenomenon must not have been caused, contributed to, or worsened by the presence of human participation.[27] The defense of fortuitous event or natural disaster cannot be successfully made when the injury could have been avoided by human precaution.[28]

Hence, if a common carrier fails to exercise due diligence -- or that ordinary care that the circumstances of the particular case demand -- to prevent or minimize the loss before, during and after the occurrence of the natural disaster, the carrier shall be deemed to have been negligent. The loss or injury is not, in a legal sense, due to a natural disaster under Article 1734(1).[29]

We also find no reason to disturb the CA's finding that the loss of the vessel was caused not only by the southwestern monsoon, but also by the shifting of the logs in