449 Phil. 223

FIRST DIVISION

[G.R. No. 149038, April 09, 2003]

PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, PETITIONER, VS. PKS SHIPPING COMPANY, RESPONDENT.

D E C I S I O N

VITUG, J.:

The petition before the Court seeks a review of the decision of the Court of Appeals in C.A. G.R. CV No. 56470, promulgated on 25 June 2001, which has affirmed *in toto* the judgment of the Regional Trial Court (RTC), Branch 65, of Makati, dismissing the complaint for damages filed by petitioner insurance corporation against respondent shipping company.

Davao Union Marketing Corporation (DUMC) contracted the services of respondent PKS Shipping Company (PKS Shipping) for the shipment to Tacloban City of seventy-five thousand (75,000) bags of cement worth Three Million Three Hundred Seventy-Five Thousand Pesos (P3,375,000.00). DUMC insured the goods for its full value with petitioner Philippine American General Insurance Company (Philamgen). The goods were loaded aboard the dumb barge *Limar I* belonging to PKS Shipping. On the evening of 22 December 1988, about nine o'clock, while *Limar I* was being towed by respondent's tugboat, *MT Iron Eagle*, the barge sank a couple of miles off the coast of Dumagasa Point, in Zamboanga del Sur, bringing down with it the entire cargo of 75,000 bags of cement.

DUMC filed a formal claim with Philamgen for the full amount of the insurance. Philamgen promptly made payment; it then sought reimbursement from PKS Shipping of the sum paid to DUMC but the shipping company refused to pay, prompting Philamgen to file suit against PKS Shipping with the Makati RTC.

The RTC dismissed the complaint after finding that the total loss of the cargo could have been caused either by a fortuitous event, in which case the ship owner was not liable, or through the negligence of the captain and crew of the vessel and that, under Article 587 of the Code of Commerce adopting the "Limited Liability Rule," the ship owner could free itself of liability by abandoning, as it apparently so did, the vessel with all her equipment and earned freightage.

Philamgen interposed an appeal to the Court of Appeals which affirmed in toto the decision of the trial court. The appellate court ruled that evidence to establish that PKS Shipping was a common carrier at the time it undertook to transport the bags of cement was wanting because the peculiar method of the shipping company's carrying goods for others was not generally held out as a business but as a casual occupation. It then concluded that PKS Shipping, not being a common carrier, was not expected to observe the stringent extraordinary diligence required of common carriers in the care of goods. The appellate court, moreover, found that the loss of

the goods was sufficiently established as having been due to fortuitous event, negating any liability on the part of PKS Shipping to the shipper.

In the instant appeal, Philamgen contends that the appellate court has committed a patent error in ruling that PKS Shipping is not a common carrier and that it is not liable for the loss of the subject cargo. The fact that respondent has a limited clientele, petitioner argues, does not militate against respondent's being a common carrier and that the only way by which such carrier can be held exempt for the loss of the cargo would be if the loss were caused by natural disaster or calamity. Petitioner avers that typhoon "APIANG" has not entered the Philippine area of responsibility and that, even if it did, respondent would not be exempt from liability because its employees, particularly the tugmaster, have failed to exercise due diligence to prevent or minimize the loss.

PKS Shipping, in its comment, urges that the petition should be denied because what Philamgen seeks is not a review on points or errors of law but a review of the undisputed factual findings of the RTC and the appellate court. In any event, PKS Shipping points out, the findings and conclusions of both courts find support from the evidence and applicable jurisprudence.

The determination of possible liability on the part of PKS Shipping boils down to the question of whether it is a private carrier or a common carrier and, in either case, to the other question of whether or not it has observed the proper diligence (ordinary, if a private carrier, or extraordinary, if a common carrier) required of it given the circumstances.

The findings of fact made by the Court of Appeals, particularly when such findings are consistent with those of the trial court, may not at liberty be reviewed by this Court in a petition for review under Rule 45 of the Rules of Court.[1] The **conclusions** derived from those factual findings, however, are not necessarily just matters of fact as when they are so linked to, or inextricably intertwined with, a requisite appreciation of the applicable law. In such instances, the conclusions made could well be raised as being appropriate issues in a petition for review before this Court. Thus, an issue whether a carrier is private or common on the basis of the facts found by a trial court or the appellate court can be a valid and reviewable question of law.

The Civil Code defines "common carriers" in the following terms:

> "Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."

Complementary to the codal definition is Section 13, paragraph (b), of the Public Service Act; it defines "public service" to be –

> "x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, *with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier*, railroad, street railway, subway motor vehicle, either for freight or passenger, or both,