

THIRD DIVISION

[G.R. No. 143133, June 05, 2002]

**BELGIAN OVERSEAS CHARTERING AND SHIPPING N.V. AND
JARDINE DAVIES TRANSPORT SERVICES, INC., PETITIONERS,
VS. PHILIPPINE FIRST INSURANCE CO., INC., RESPONDENT.**

DECISION

PANGANIBAN, J.:

Proof of the delivery of goods in good order to a common carrier and of their arrival in bad order at their destination constitutes prima facie fault or negligence on the part of the carrier. If no adequate explanation is given as to how the loss, the destruction or the deterioration of the goods happened, the carrier shall be held liable therefor.

Statement of the Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the July 15, 1998 Decision^[1] and the May 2, 2000 Resolution^[2] of the Court of Appeals^[3] (CA) in CA-GR CV No. 53571. The decretal portion of the Decision reads as follows:

"WHEREFORE, in the light of the foregoing disquisition, the decision appealed from is hereby REVERSED and SET ASIDE. Defendants-appellees are ORDERED to jointly and severally pay plaintiffs-appellants the following:

'1) FOUR Hundred Fifty One Thousand Twenty-Seven Pesos and 32/100 (P451,027.32) as actual damages, representing the value of the damaged cargo, plus interest at the legal rate from the time of filing of the complaint on July 25, 1991, until fully paid;

'2) Attorney's fees amounting to 20% of the claim; and

'3) Costs of suit.'"^[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The CA reversed the Decision of the Regional Trial Court (RTC) of Makati City (Branch 134), which had disposed as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered, dismissing the complaint, as well as defendant's counterclaim."^[5]

The Facts

The factual antecedents of the case are summarized by the Court of Appeals in this wise:

"On June 13, 1990, CMC Trading A.G. shipped on board the MN 'Anangel Sky' at Hamburg, Germany 242 coils of various Prime Cold Rolled Steel sheets for transportation to Manila consigned to the Philippine Steel Trading Corporation. On July 28, 1990, MN Anangel Sky arrived at the port of Manila and, within the subsequent days, discharged the subject cargo. Four (4) coils were found to be in bad order B.O. Tally sheet No. 154974. Finding the four (4) coils in their damaged state to be unfit for the intended purpose, the consignee Philippine Steel Trading Corporation declared the same as total loss.

"Despite receipt of a formal demand, defendants-appellees refused to submit to the consignee's claim. Consequently, plaintiff-appellant paid the consignee five hundred six thousand eighty six & 50/100 pesos (P506,086.50), and was subrogated to the latter's rights and causes of action against defendants-appellees. Subsequently, plaintiff-appellant instituted this complaint for recovery of the amount paid by them, to the consignee as insured.

"Impugning the propriety of the suit against them, defendants-appellees imputed that the damage and/or loss was due to pre-shipment damage, to the inherent nature, vice or defect of the goods, or to perils, danger and accidents of the sea, or to insufficiency of packing thereof, or to the act or omission of the shipper of the goods or their representatives. In addition thereto, defendants-appellees argued that their liability, if there be any, should not exceed the limitations of liability provided for in the bill of lading and other pertinent laws. Finally, defendants-appellees averred that, in any event, they exercised due diligence and foresight required by law to prevent any damage/loss to said shipment."^[6]

Ruling of the Trial Court

The RTC dismissed the Complaint because respondent had failed to prove its claims with the quantum of proof required by law.^[7]

It likewise debunked petitioners' counterclaim, because respondent's suit was not manifestly frivolous or primarily intended to harass them.^[8]

Ruling of the Court of Appeals

In reversing the trial court, the CA ruled that petitioners were liable for the loss or the damage of the goods shipped, because they had failed to overcome the presumption of negligence imposed on common carriers.

The CA further held as inadequately proven petitioners' claim that the loss or the deterioration of the goods was due to pre-shipment damage.^[9] It likewise opined that the notation "metal envelopes rust stained and slightly dented" placed on the Bill of Lading had not been the proximate cause of the damage to the four (4) coils.

^[10]

As to the extent of petitioners' liability, the CA held that the package limitation under COGSA was not applicable, because the words "L/C No. 90/02447" indicated that a higher valuation of the cargo had been declared by the shipper. The CA, however, affirmed the award of attorney's fees.

Hence, this Petition.^[11]

Issues

In their Memorandum, petitioners raise the following issues for the Court's consideration:

I

"Whether or not plaintiff by presenting only one witness who has never seen the subject shipment and whose testimony is purely hearsay is sufficient to pave the way for the applicability of Article 1735 of the Civil Code;

II

"Whether or not the consignee/plaintiff filed the required notice of loss within the time required by law;

III

"Whether or not a notation in the bill of lading at the time of loading is sufficient to show pre-shipment damage and to exempt herein defendants from liability;

IV

"Whether or not the "PACKAGE LIMITATION" of liability under Section 4 (5) of COGSA is applicable to the case at bar."^[12]

In sum, the issues boil down to three:

1. Whether petitioners have overcome the presumption of negligence of a common carrier
2. Whether the notice of loss was timely filed
3. Whether the package limitation of liability is applicable

This Court's Ruling

The Petition is partly meritorious.

First Issue: **Proof of Negligence**

Petitioners contend that the presumption of fault imposed on common carriers

should not be applied on the basis of the lone testimony offered by private respondent. The contention is untenable.

Well-settled is the rule that common carriers, from the nature of their business and for reasons of public policy, are bound to observe *extraordinary diligence* and vigilance with respect to the safety of the goods and the passengers they transport.

[13] Thus, common carriers are required to render service with the greatest skill and foresight and "to use all reason[a]ble means to ascertain the nature and characteristics of the goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires." [14] The extraordinary responsibility lasts from the time the goods are unconditionally placed in the possession of and received for transportation by the carrier until they are delivered, actually or constructively, to the consignee or to the person who has a right to receive them. [15]

This strict requirement is justified by the fact that, without a hand or a voice in the preparation of such contract, the riding public enters into a contract of transportation with common carriers. [16] Even if it wants to, it cannot submit its own stipulations for their approval. [17] Hence, it merely adheres to the agreement prepared by them.

Owing to this high degree of diligence required of them, common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. [18] That is, unless they prove that they exercised extraordinary diligence in transporting the goods. [19] In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such diligence. [20]

However, the presumption of fault or negligence will not arise [21] if the loss is due to any of the following causes: (1) flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) an act of the public enemy in war, whether international or civil; (3) an act or omission of the shipper or owner of the goods; (4) the character of the goods or defects in the packing or the container; or (5) an order or act of competent public authority. [22] This is a closed list. If the cause of destruction, loss or deterioration is other than the enumerated circumstances, then the carrier is liable therefor. [23]

Corollary to the foregoing, mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a *prima facie* case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, the loss or the destruction of the goods happened, the transporter shall be held responsible. [24]

That petitioners failed to rebut the *prima facie* presumption of negligence is revealed in the case at bar by a review of the records and more so by the evidence adduced by respondent. [25]

First, as stated in the Bill of Lading, petitioners received the subject shipment in good order and condition in Hamburg, Germany. [26]

Second, prior to the unloading of the cargo, an Inspection Report^[27] prepared and signed by representatives of both parties showed the steel bands broken, the metal envelopes rust-stained and heavily buckled, and the contents thereof exposed and rusty.

Third, Bad Order Tally Sheet No. 154979^[28] issued by Jardine Davies Transport Services, Inc., stated that the four coils were in bad order and condition. Normally, a request for a bad order survey is made in case there is an apparent or a presumed loss or damage.^[29]

Fourth, the Certificate of Analysis^[30] stated that, based on the sample submitted and tested, the steel sheets found in bad order were wet with fresh water.

Fifth, petitioners -- in a letter^[31] addressed to the Philippine Steel Coating Corporation and dated October 12, 1990 -- admitted that they were aware of the condition of the four coils found in bad order and condition.

These facts were confirmed by Ruperto Esmerio, head checker of BM Santos Checkers Agency. Pertinent portions of his testimony are reproduce hereunder:

“Q. Mr. Esmerio, you mentioned that you are a Head Checker. Will you inform the Honorable Court with what company you are connected?

A. BM Santos Checkers Agency, sir.

Q. How is BM Santos Checkers Agency related or connected with defendant Jardine Davies Transport Services?

A. It is the company who contracts the checkers, sir.

Q. You mentioned that you are a Head Checker, will you inform this Honorable Court your duties and responsibilities?

A. I am the representative of BM Santos on board the vessel, sir, to supervise the discharge of cargoes.

x x x

x x x

x x x

Q. On or about August 1, 1990, were you still connected or employed with BM Santos as a Head Checker?

A. Yes, sir.

Q. And, on or about that date, do you recall having attended the discharging and inspection of cold steel sheets in coil on board the MV/AN ANGEL SKY?

A. Yes, sir, I was there.

x x x

x x x

x x x