

SECOND DIVISION

[G.R. No. 117434, February 09, 2001]

BENGUET EXPLORATION, INC., PETITIONER, VS. COURT OF APPEALS, SWITZERLAND GENERAL INSURANCE, CO., LTD., AND SEAWOOD SHIPPING, INC., RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated June 30, 1994, and resolution, dated September 29, 1994, of the Court of Appeals^[1] which affirmed the decision of the Regional Trial Court, Branch 149, Makati, dismissing the complaints filed by petitioner against herein private respondents, and denied petitioner's motion for reconsideration, respectively.

The background of this case is as follows:

On November 29, 1985, petitioner Benguet Exploration, Inc. (Benguet) filed a complaint for damages against Seawood Shipping, Inc. (Seawood Shipping) with the Regional Trial Court of Makati, which was docketed as Civil Case No. 12394 and assigned to Branch 149.^[2] On March 4, 1986, petitioner Benguet filed another complaint for damages against respondent Switzerland General Insurance, Co., Ltd. (Switzerland Insurance), which was docketed as Civil Case No. 13085^[3] and assigned to Branch 148 of the court.

The two cases were consolidated. Switzerland Insurance filed a third-party complaint against Seawood Shipping, praying that the latter be ordered to indemnify it for whatever might be adjudged against it in favor of petitioner.^[4] Thereafter, the cases were jointly tried, during which petitioner Benguet presented its employees, Rogelio Lumibao and Ernesto Cayabyab, as witnesses.

Rogelio Lumibao, marketing assistant of Benguet, was in charge of exportation. His responsibilities included the documentation of export products, presentations with banks, and other duties connected with the export of products. He explained that private respondent Seawood Shipping was chartered by petitioner Benguet to transport copper concentrates. The bill of lading (Exh. A) stated that the cargo, consisting of 2,243.496 wet metric tons of copper concentrates, was loaded on board *Sangkulirang No. 3* at Poro Point, San Fernando, La Union. It was insured by Switzerland Insurance (marine insurance policy was marked Exh. C). When the cargo was unloaded in Japan, however, Rogelio Lumibao received a report (Exh. B), dated August 19, 1985, from a surveyor in Japan stating that the cargo was 355 metric tons short of the amount stated in the bill of lading. For this reason, petitioner Benguet made a claim of the loss to Seawood Shipping and Switzerland Insurance. In its letter, dated August 21, 1985 (Exh. D), petitioner Benguet made a formal demand for the value of the alleged shortage. As both Seawood Shipping and

Switzerland Insurance refused the demand, petitioner Benguet brought these cases against Seawood Shipping and Switzerland Insurance.^[5]

On cross-examination, Lumibao admitted that he did not see the actual loading of the cargo at Poro Point and that his knowledge was limited to what was contained in the bill of lading which he received about two days after the loading. Lumibao testified that at Camp 6, Kennon Road, Baguio, the copper concentrates were weighed prior to being transported to Poro Point, where they were once more weighed before being loaded on the vessel. But again he admitted that he had not seen the actual weighing and loading of the copper concentrates because he was not the one in charge of the operation. Nor was he in Japan when the cargo was unloaded. He also did not know how to perform the procedure for weighing cargo. Thus, he could not determine the truth or falsity of the contents of the draft survey. He only knew that there was in fact a shortage based on his reading of the draft report.^[6] Further, Lumibao testified that, although he prepared the export declaration, he did not prepare the bill of lading. The bill of lading was made on the basis of the draft survey conducted by the Overseas Merchandise Inspection Co., Ltd. or OMIC.^[7] Some other person undertook the weighing of the cargo, and Lumibao was only informed by telephone of the cargo's weight during its loading and unloading.

Lumibao had nothing to do with the preparation of the bill of lading, the weighing of the copper concentrates, and the shipment of the cargo. He did not accompany the trucks which transferred the cargo from Baguio to Poro Point. He was not on the ship when the cargo was loaded at Poro Point. Nor did he know if spillage occurred during the loading or unloading of the copper concentrates.

Lumibao said that the buyer of the copper concentrates was the Brandeis Intsel Co., Inc. Upon receipt of the cargo, Brandeis Intsel Co., Inc. paid for the cargo based on its weight in dry metric tons, or 90 percent more or less of the price of 2,243.496 tons, the weight of the cargo in wet metric tons. With regard to the insurance policy, he testified that petitioner Benguet made no objection to any of the terms stated on the face of the policy.^[8]

Ernesto Cayabyab next testified for petitioner. He had been with Benguet for 13 years and, at the time of his testimony, he was secretary of Nil Alejandre, manager of Benguet. According to Cayabyab, on July 28, 1985, he was sent to the warehouse (*bodega*) at Poro Point, La Union to assist in the loading of the copper concentrates. These copper concentrates were to be loaded on the ship *Sangkulirang No. 3*. Cayabyab said he was present when the cargo was loaded on the ship, as evidenced by the Certificate of Loading (Exh. E), Certificate of Weight (Exh. F), and the Mate's Receipt (Exh. G), all dated July 28, 1985. According to Cayabyab, the Marine Surveyor and the Chief Mate would go around the boat to determine how much was loaded on the ship. Cayabyab stated that he saw petitioner Benguet's representative and his immediate superior, Mr. Alejandre, and the Inspector of Customs, Mr. Cardenas, sign the Certificate of Weight. Cayabyab also witnessed the ship captain sign the Certificate of Weight,^[9] which stated therein that 2,243.496 wet metric tons of copper concentrates were loaded on the ship.^[10] Cayabyab likewise confirmed the authenticity of the Mate's Receipt, saying that he witnessed the Chief Mate sign the document.^[11]

When cross-examined, Cayabyab said that, as a secretary, his duties included computing the company's daily main production in the mine site and accompanying his superior, Mr. Alejandre, during shipments. He explained that the copper concentrates were transported by dump trucks from the mining site to Poro Point for over a month, possibly even three to six months. Cayabyab went to Poro Point on July 27, 1985 to witness the loading of the copper concentrates on the vessel *Sangkulirang No. 3*. But the copper concentrates had already been delivered and stored in a *bodega* when he arrived. These concentrates were placed on the cemented ground inside the *bodega* after their weight was recorded. Describing the procedure for weighing, he said that the trucks, without the copper concentrates, were weighed. Then, after they had been loaded with copper concentrates, the trucks were placed in the *bodega* and weighed again. To determine the weight of the copper concentrates, the weight of the trucks was deducted from the weight of the trucks loaded with copper concentrates. The copper concentrates were then loaded on the ship by means of a conveyor at the average rate of 400 tons an hour. Cayabyab did not know, however, how many trucks were used to load the entire cargo of the copper concentrates nor did he know exactly how many hours were spent loading the copper concentrates to the ship. He could only remember that he reported for work in the morning and that he worked overtime because he had to wait until the loading of the cargo was finished before he could leave. During the loading, he moved from place to place, and his attention was sometimes distracted. Thus, he could not tell with certainty that no spillage took place during the loading. The figure of 2,243.496 wet metric tons was computed by the Marine Surveyor and the Chief Mate.^[12]

Respondent Switzerland Insurance then presented its evidence. Three witnesses, Eduardo Pantoja, Anastacio Fabian, and Edgardo Diño, testified for it.

Eduardo Pantoja, assistant branch manager of respondent Switzerland Insurance in the Philippines, testified that he prepared the data and conditions of the marine insurance policy of petitioner Benguet using information furnished by the latter, although some of the conditions attached to the policy were conditions Switzerland Insurance attached to all the marine policies issued by it. Pantoja stated that the figure of 2,243.496 wet metric tons contained in the policy of Benguet was taken from the latter's declaration. Switzerland Insurance relied on the value of the cargo declared by the insured on the basis of the principle of *uberrimae fidei*, i.e., the insured must act in the utmost good faith.^[13] One of the conditions set forth in the marine policy (Exh. 8) was that the "[w]arranted vessel is equipped with steel centerline bulk head." According to Pantoja, this condition was specifically included in the policy because the nature of the cargo warranted the same, and Switzerland Insurance would not have accepted the policy had such condition not been attached. The purpose of the centerline bulkhead was to prevent the copper concentrates from shifting while being transported on the ship. Upon verification by Certified Adjusters, Inc., adjusters of Switzerland Insurance, it was found that the vessel *Sangkulirang No. 3* did not have a steel centerline bulkhead. Pantoja identified a letter, dated February 13, 1986, sent by his company to petitioner Benguet canceling its insurance contract because the carrying vessel was not equipped with a steel centerline bulkhead as warranted under the policy (Exh. 7-a). Enclosed was Check No. HSBC 419463 for P98,174.43 representing the refund by Switzerland Insurance of the premium payments, documentary stamps, and premium taxes paid by

petitioner Benguet (Exh. 7). He testified that Switzerland Insurance paid its legal counsel P40,000.00 as attorney's fees plus appearance fees.^[14]

On cross-examination, Pantoja explained that the company had its own system of determining various rates of insurance. Several factors were taken into consideration, such as the nature of the goods, the manner by which they were packed, and the destination of the cargo. For example, Switzerland Insurance would anticipate pilferages if the cargo involved household goods or, in the case of chemicals, it would consider the possibility of spillage. Pantoja, however, stated that he did not make any investigation in this case but used only his previous experience and project knowledge in dealing with similar cases. He admitted that Switzerland Insurance checked whether the ship had a steel centerline bulkhead only after a claim had been made by petitioner Benguet. He explained, however, that it was impossible for them to make the investigation before the execution of the marine policy because they had only one day to check whether the ship had a steel centerline bulkhead and the ship at that time was not in Manila but in Poro Point. He reiterated that good faith dealing with the insured included relying on the truth of the latter's representations. There was little risk involved in relying on the insured's representations because the company would not have accepted the risk if it found that the conditions in the policy had not been complied with. Switzerland Insurance refused Benguet's demand because non-compliance with the condition that the ship be equipped with a steel centerline bulkhead rendered the marine insurance policy null and void from the beginning. This is why Switzerland Insurance refunded the premium paid by petitioner Benguet. Pantoja stated that petitioner Benguet did not claim that the loss was caused by the shipping of the cargo because it did not know the cause of the shortage.^[15]

Another witness for Switzerland Insurance was Anastacio Fabian, the marine manager of Certified Adjusters, Inc. He testified that he went to Poro Point where the shipment was loaded for transport to Japan. It took him almost two months to finish his investigation and to come up with a written report (Exh. 12). He prepared a letter, dated January 31, 1986, seeking a certification from Capt. Jae Jang of *Sangkulirang No. 3* on whether the ship was equipped with a steel centerline bulkhead (Exh. 5). In response thereto, respondent Seawood Shipping sent a letter, dated February 1, 1986, stating therein that the vessel was not equipped with a steel centerline bulkhead (Exh. 6). This steel centerline bulkhead was a steel separation of a vessel for the purpose of preventing the vessel from sinking, especially in heavy weather. Pictures of the ship were taken by Wise Insurance showing that the vessel did not have a steel centerline bulkhead (Exhs. 15 to 15-H).

Fabian also identified petitioner Benguet's export declaration (Exh. 11) which provides therein that the cargo loaded on the ship weighed 2,050 wet metric tons or 1,845 dry metric tons.^[16] On further direct examination, he testified that Certified Adjusters, Inc.'s president, Mr. Edgardo Diño, wrote a letter, dated January 13, 1986, to the shipping company inquiring as to the circumstances surrounding the loss of the cargo (Exh. 17). Seawood Shipping responded to Certified Adjusters, Inc. in a letter, dated January 16, 1986, explaining that the weight of the cargo might have been increased by the rains which occurred during the loading, and that the shortage upon unloading might be due to the moisture which evaporated during the voyage from the Philippines to Japan. Fabian testified that the moisture on the copper concentrates increased the weight of the cargo.

Fabian said that during his investigation he asked how and when the shipment was loaded in the vessel and where it was loaded. He also checked records of the loading of the cargo. Although he admitted that the records show that a shortage of the copper concentrates had occurred when these reached Japan, he attributed it to the rains which occurred during the loading of the copper concentrates which increased their weight, although he conceded that it was not possible that the rains would cause a shortage of around 300 metric tons. He did not know what could have caused the shortage.^[17]

The last witness to testify for the defense was Edgardo Diño, president and general manager of Certified Adjusters, Inc. He testified that his company conducted an investigation and found that the vessel *Sangkulirang No. 3* was not equipped with a steel centerline bulkhead. The main function of the steel centerline bulkhead was to prevent shifting of the copper concentrates during transport. If there was no steel centerline bulkhead, the vessel was liable to sink. He stated that the ship had two holds, one of which was loaded with petitioner Benguet's copper concentrates and the other with a Lepanto shipment. Diño identified photographs showing that only a wooden partition separated the two cargoes on both holds (Exhs. 15-A to 15-G). He testified that his company wrote a letter to the shipping company inquiring about the shortage which occurred on petitioner Benguet's copper concentrates. He expressed doubt that the loss of moisture of the copper concentrates caused the shortage because these were actually mixed with some water to keep them from heating up or to prevent spontaneous combustion. According to Diño, it was possible that some shifting of the cargo occurred as indicated by the photographs of the ship.^[18]

Based on the evidence presented, the trial court rendered its decision on July 2, 1990 dismissing petitioner's complaint as well as Switzerland Insurance's third-party complaint against Seawood Shipping.

On appeal, its decision was affirmed by the Court of Appeals.^[19] Petitioner Benguet moved for reconsideration, but its motion was denied.^[20] Hence this petition.

Petitioner Benguet contends that the Court of Appeals gravely erred in ruling that it failed to establish the loss or shortage of the subject cargo because such loss was sufficiently established by documentary and testimonial evidence, as well as the admissions of private respondents.^[21] Petitioner argues that documents regarding the tonnage of the copper concentrates have been properly identified and that the bill of lading (Exh. A), the Certificate of Weight (Exh. F), and the Mate's Receipt (Exh. G), all of which stated that 2,243.496 wet metric tons of copper concentrates were loaded on the ship, create a prima facie presumption that such amount was indeed what was loaded on the vessel. Petitioner asserts that the Draft Survey Report of OMIC (Exh. B) was sufficient evidence to prove that the cargo which arrived in Japan had a shortage of 355 wet metric tons.

We find petitioner's contentions to be without merit.

First. It is settled that only questions of law may be raised on appeal by certiorari under Rule 45. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of