

SECOND DIVISION

[G.R. No. 127897, November 15, 2001]

**DELSAN TRANSPORT LINES, INC., PETITIONER, VS. THE HON.
COURT OF APPEALS AND AMERICAN HOME ASSURANCE
CORPORATION, RESPONDENTS.**

DECISION

DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 39836 promulgated on June 17, 1996, reversing the decision of the Regional Trial Court of Makati City, Branch 137, ordering petitioner to pay private respondent the sum of Five Million Ninety-Six Thousand Six Hundred Thirty-Five Pesos and Fifty-Seven Centavos (P5,096,635.57) and costs and the Resolution^[2] dated January 21, 1997 which denied the subsequent motion for reconsideration.

The facts show that Caltex Philippines (Caltex for brevity) entered into a contract of affreightment with the petitioner, Delsan Transport Lines, Inc., for a period of one year whereby the said common carrier agreed to transport Caltex's industrial fuel oil from the Batangas-Bataan Refinery to different parts of the country. Under the contract, petitioner took on board its vessel, MT Maysun, 2,277.314 kiloliters of industrial fuel oil of Caltex to be delivered to the Caltex Oil Terminal in Zamboanga City. The shipment was insured with the private respondent, American Home Assurance Corporation.

On August 14, 1986, MT Maysun set sail from Batangas for Zamboanga City. Unfortunately, the vessel sank in the early morning of August 16, 1986 near Panay Gulf in the Visayas taking with it the entire cargo of fuel oil.

Subsequently, private respondent paid Caltex the sum of Five Million Ninety-Six Thousand Six Hundred Thirty-Five Pesos and Fifty-Seven Centavos (P5,096,635.57) representing the insured value of the lost cargo. Exercising its right of subrogation under Article 2207 of the New Civil Code, the private respondent demanded of the petitioner the same amount it paid to Caltex.

Due to its failure to collect from the petitioner despite prior demand, private respondent filed a complaint with the Regional Trial Court of Makati City, Branch 137, for collection of a sum of money. After the trial and upon analyzing the evidence adduced, the trial court rendered a decision on November 29, 1990 dismissing the complaint against herein petitioner without pronouncement as to cost. The trial court found that the vessel, MT Maysun, was seaworthy to undertake the voyage as determined by the Philippine Coast Guard per Survey Certificate Report No. M5-016-MH upon inspection during its annual dry-docking and that the incident was caused by unexpected inclement weather condition or *force majeure*,

thus exempting the common carrier (herein petitioner) from liability for the loss of its cargo.^[3]

The decision of the trial court, however, was reversed, on appeal, by the Court of Appeals. The appellate court gave credence to the weather report issued by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA for brevity) which showed that from 2:00 o'clock to 8:00 o'clock in the morning on August 16, 1986, the wind speed remained at 10 to 20 knots per hour while the waves measured from .7 to two (2) meters in height only in the vicinity of the Panay Gulf where the subject vessel sank, in contrast to herein petitioner's allegation that the waves were twenty (20) feet high. In the absence of any explanation as to what may have caused the sinking of the vessel coupled with the finding that the same was improperly manned, the appellate court ruled that the petitioner is liable on its obligation as common carrier^[4] to herein private respondent insurance company as subrogee of Caltex. The subsequent motion for reconsideration of herein petitioner was denied by the appellate court.

Petitioner raised the following assignments of error in support of the instant petition,^[5] to wit:

I

THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT.

II

THE COURT OF APPEALS ERRED AND WAS NOT JUSTIFIED IN REBUTTING THE LEGAL PRESUMPTION THAT THE VESSEL MT "MAYSUN" WAS SEAWORTHY.

III

THE COURT OF APPEALS ERRED IN NOT APPLYING THE DOCTRINE OF THE SUPREME COURT IN THE CASE OF HOME INSURANCE CORPORATION V. COURT OF APPEALS.

Petitioner Delsan Transport Lines, Inc. invokes the provision of Section 113 of the Insurance Code of the Philippines, which states that in every marine insurance upon a ship or freight, or freightage, or upon any thing which is the subject of marine insurance there is an implied warranty by the shipper that the ship is seaworthy. Consequently, the insurer will not be liable to the assured for any loss under the policy in case the vessel would later on be found as not seaworthy at the inception of the insurance. It theorized that when private respondent paid Caltex the value of its lost cargo, the act of the private respondent is equivalent to a tacit recognition that the ill-fated vessel was seaworthy; otherwise, private respondent was not legally liable to Caltex due to the latter's breach of implied warranty under the marine insurance policy that the vessel was seaworthy.

The petitioner also alleges that the Court of Appeals erred in ruling that MT Maysun was not seaworthy on the ground that the marine officer who served as the chief mate of the vessel, Francisco Berina, was allegedly not qualified. Under Section 116

of the Insurance Code of the Philippines, the implied warranty of seaworthiness of the vessel, which the private respondent admitted as having been fulfilled by its payment of the insurance proceeds to Caltex of its lost cargo, extends to the vessel's complement. Besides, petitioner avers that although Berina had merely a 2nd officer's license, he was qualified to act as the vessel's chief officer under Chapter IV(403), Category III(a)(3)(ii)(aa) of the Philippine Merchant Marine Rules and Regulations. In fact, all the crew and officers of MT Maysun were exonerated in the administrative investigation conducted by the Board of Marine Inquiry after the subject accident.^[6]

In any event, petitioner further avers that private respondent failed, for unknown reason, to present in evidence during the trial of the instant case the subject marine cargo insurance policy it entered into with Caltex. By virtue of the doctrine laid down in the case of *Home Insurance Corporation vs. CA*,^[7] the failure of the private respondent to present the insurance policy in evidence is allegedly fatal to its claim inasmuch as there is no way to determine the rights of the parties thereto.

Hence, the legal issues posed before the Court are:

I

Whether or not the payment made by the private respondent to Caltex for the insured value of the lost cargo amounted to an admission that the vessel was seaworthy, thus precluding any action for recovery against the petitioner.

II

Whether or not the non-presentation of the marine insurance policy bars the complaint for recovery of sum of money for lack of cause of action.

We rule in the negative on both issues.

The payment made by the private respondent for the insured value of the lost cargo operates as waiver of its (private respondent) right to enforce the term of the implied warranty against Caltex under the marine insurance policy. However, the same cannot be validly interpreted as an automatic admission of the vessel's seaworthiness by the private respondent as to foreclose recourse against the petitioner for any liability under its contractual obligation as a common carrier. The fact of payment grants the private respondent subrogatory right which enables it to exercise legal remedies that would otherwise be available to Caltex as owner of the lost cargo against the petitioner common carrier.^[8] Article 2207 of the New Civil Code provides that:

Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.