358 Phil. 129

SECOND DIVISION

[G.R. No. 122494, October 08, 1998]

EVERETT STEAMSHIP CORPORATION, PETITIONER, VS. COURT OF APPEALS AND HERNANDEZ TRADING CO. INC., RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

Petitioner Everett Steamship Corporation, through this petition for review, seeks the reversal of the decision[1] of the Court of Appeals, dated June 14, 1995, in CA-G.R. No. 428093, which affirmed the decision of the Regional Trial Court of Kalookan City, Branch 126, in Civil Case No. C-15532, finding petitioner liable to private respondent Hernandez Trading Co., Inc. for the value of the lost cargo.

Private respondent imported three crates of bus spare parts marked as MARCO C/No. 12, MARCO C/No. 13 and MARCO C/No. 14, from its supplier, Maruman Trading Company, Ltd. (Maruman Trading), a foreign corporation based in Inazawa, Aichi, Japan. The crates were shipped from Nagoya, Japan to Manila on board "ADELFAEVERETTE," a vessel owned by petitioner's principal, Everett Orient Lines. The said crates were covered by Bill of Lading No. NGO53MN.

Upon arrival at the port of Manila, it was discovered that the crate marked MARCO C/No. 14 was missing. This was confirmed and admitted by petitioner in its letter of January 13, 1992 addressed to private respondent, which thereafter made a formal claim upon petitioner for the value of the lost cargo amounting to One Million Five Hundred Fifty Two Thousand Five Hundred (Y1,552,500.00) Yen, the amount shown in an Invoice No. MTM-941, dated November 14, 1991. However, petitioner offered to pay only One Hundred Thousand (Y100,000.00) Yen, the maximum amount stipulated under Clause 18 of the covering bill of lading which limits the liability of petitioner.

Private respondent rejected the offer and thereafter instituted a suit for collection docketed as Civil Case No. C-15532, against petitioner before the Regional Trial Court of Caloocan City, Branch 126.

At the pre-trial conference, both parties manifested that they have no testimonial evidence to offer and agreed instead to file their respective memoranda.

On July 16, 1993, the trial court rendered judgment[2] in favor of private respondent, ordering petitioner to pay: (a) Y1,552,500.00; (b) Y20,000.00 or its peso equivalent representing the actual value of the lost cargo and the material and packaging cost; (c) 10% of the total amount as an award for and as contingent attorney's fees; and (d) to pay the cost of the suit. The trial court ruled:

"Considering defendant's categorical admission of loss and its failure to overcome the presumption of negligence and fault, the Court conclusively finds defendant liable to the plaintiff. The next point of inquiry the Court wants to resolve is the extent of the liability of the defendant. As stated earlier, plaintiff contends that defendant should be held liable for the whole value for the loss of the goods in the amount of Y1,552,500.00 because the terms appearing at the back of the bill of lading was so written in fine prints and that the same was not signed by plaintiff or shipper thus, they are not bound by the clause stated in paragraph 18 of the bill of lading. On the other hand, defendant merely admitted that it lost the shipment but shall be liable only up to the amount of Y100,000.00.

"The Court subscribes to the provisions of Article 1750 of the New Civil Code -

Art. 1750. 'A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.'

"It is required, however, that the contract must be reasonable and just under the circumstances and has been fairly and freely agreed upon. The requirements provided in Art. 1750 of the New Civil Code must be complied with before a common carrier can claim a limitation of its pecuniary liability in case of loss, destruction or deterioration of the goods it has undertaken to transport.

"In the case at bar, the Court is of the view that the requirements of said article have not been met. The fact that those conditions are printed at the back of the bill of lading in letters so small that they are hard to read would not warrant the presumption that the plaintiff or its supplier was aware of these conditions such that he had "fairly and freely agreed" to these conditions. It can not be said that the plaintiff had actually entered into a contract with the defendant, embodying the conditions as printed at the back of the bill of lading that was issued by the defendant to plaintiff."

On appeal, the Court of Appeals deleted the award of attorney's fees but affirmed the trial court's findings with the additional observation that private respondent can not be bound by the terms and conditions of the bill of lading because it was not privy to the contract of carriage. It said:

"As to the amount of liability, no evidence appears on record to show that the appellee (Hernandez Trading Co.) consented to the terms of the Bill of Lading. The shipper named in the Bill of Lading is Maruman Trading Co., Ltd. whom the appellant (Everett Steamship Corp.) contracted with for the transportation of the lost goods.

"Even assuming arguendo that the shipper Maruman Trading Co., Ltd. accepted the terms of the bill of lading when it delivered the cargo to the appellant, still it does not necessarily follow that appellee Hernandez

> Trading Company as consignee is bound thereby considering that the latter was never privy to the shipping contract.
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> "Never having entered into a contract with the appellant, appellee should therefore not be bound by any of the terms and conditions in the bill of lading.
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> "Hence, it follows that the appellee may recover the full value of the shipment lost, the basis of which is not the breach of contract as appellee was never a privy to the any contract with the appellant, but is based on Article 1735 of the New Civil Code, there being no evidence to prove satisfactorily that the appellant has overcome the presumption of negligence provided for in the law."

Petitioner now comes to us arguing that the Court of Appeals erred (1) in ruling that the consent of the consignee to the terms and conditions of the bill of lading is necessary to make such stipulations binding upon it; (2) in holding that the carrier's limited package liability as stipulated in the bill of lading does not apply in the instant case; and (3) in allowing private respondent to fully recover the full alleged value of its lost cargo.

We shall first resolve the validity of the limited liability clause in the bill of lading.

A stipulation in the bill of lading limiting the common carrier's liability for loss or destruction of a cargo to a certain sum, unless the shipper or owner declares a greater value, is sanctioned by law, particularly Articles 1749 and 1750 of the Civil Code which provide:

> "ART. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding."
>
> "ART. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been freely and fairly agreed upon."

Such limited-liability clause has also been consistently upheld by this Court in a number of cases.[3] Thus, in ***Sea Land Service, Inc. vs Intermediate Appellate Court***[4], we ruled:

> "It seems clear that even if said section 4 (5) of the Carriage of Goods by Sea Act did not exist, the validity and binding effect of the liability limitation clause in the bill of lading here are nevertheless fully sustainable on the basis alone of the cited Civil Code Provisions. That said stipulation is just and reasonable is arguable from the fact that it echoes Art. 1750 itself in providing a limit to liability only if a greater value is not declared for the shipment in the bill of lading. To hold otherwise would amount to questioning the justness and fairness of the law itself, and this the private respondent does not pretend to do. But over and above that consideration, the just and reasonable character of

> such stipulation is implicit in it giving the shipper or owner the option of avoiding accrual of liability limitation by the simple and surely far from onerous expedient of declaring the nature and value of the shipment in the bill of lading.."

Pursuant to the afore-quoted provisions of law, it is required that the stipulation limiting the common carrier's liability for loss must be "reasonable and just under the circumstances, and has been freely and fairly agreed upon."

The bill of lading subject of the present controversy specifically provides, among others:

> "18. All claims for which the carrier may be liable shall be adjusted and settled on the basis of the shipper's net invoice cost plus freight and insurance premiums, if paid, and in no event shall the carrier be liable for any loss of possible profits or any consequential loss.
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> "The carrier shall not be liable for any loss of or any damage to or in any connection with, goods in an amount exceeding One Hundred Thousand Yen in Japanese Currency (Y100,000.00) or its equivalent in any other currency per package or customary freight unit (whichever is least) unless the value of the goods higher than this amount is declared in writing by the shipper before receipt of the goods by the carrier and inserted in the Bill of Lading and extra freight is paid as required." (Emphasis supplied)

The above stipulations are, to our mind, reasonable and just. In the bill of lading, the carrier made it clear that its liability would only be up to One Hundred Thousand (Y100,000.00) Yen. However, the shipper, Maruman Trading, **had the option to declare a higher valuation if the value of its cargo was higher than the limited liability of the carrier. Considering that the shipper did not declare a higher valuation, it had itself to blame for not complying with the stipulations.**

The trial court's ratiocination that private respondent could not have "fairly and freely" agreed to the limited liability clause in the bill of lading because the said conditions were printed in small letters does not make the bill of lading invalid.

We ruled in ***PAL, Inc. vs. Court of Appeals***[5] that the "jurisprudence on the matter reveals the consistent holding of the court that contracts of adhesion are not invalid per se and that it has on numerous occasions upheld the binding effect thereof." Also, in ***Philippine American General Insurance Co., Inc. vs. Sweet Lines , Inc.***[6] this Court , speaking through the learned Justice Florenz D. Regalado, held:

> "x x x *Ong Yiu vs. Court of Appeals, et.al.,* instructs us that 'contracts of adhesion wherein one party imposes a ready-made form of contract on the other x x x are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres he gives his consent.' In the present case, not even an allegation of ignorance of a party excuses non-compliance with the contractual stipulations since the responsibility for ensuring full comprehension of the