

## SECOND DIVISION

[ G.R. No. 109090, August 07, 1996 ]

**BRILLO HANDICRAFTS, INC., PETITIONER, VS. COURT OF APPEALS, AND DAILY OVERLAND EXPRESS, INC., RESPONDENTS.**

### DECISION

**TORRES, JR., J.:**

This petition for review filed by petitioner Brillo Handicrafts, Inc., assails the decision of the Court of Appeals dated January 22, 1993, the dispositive portion of which reads as follows:

"WHEREFORE, with the modification (a) reducing to only P2,500.00 the reimbursement to plaintiff of the commissioner's fees; and (b) deleting the amount of P10,000.00 as attorney's fees, the challenged decision is hereby AFFIRMED in all other respects.

SO ORDERED."<sup>[1]</sup>

The records reveal that Daily Overland Express, Inc., (Daily, for brevity) was engaged in the forwarding business, charging freight for the conveyance of goods from Legazpi City to Manila and vice-versa. Brillo Handicrafts, Inc., (Brillo, for brevity) was one of its regular customers. As of June 15, 1990, Brillo had an outstanding balance for freight services in the amount of P153,204.10 and this account refers to the shipping charges covering the period of February 1, 1990 to April 30, 1990. Demands for payment were made but Brillo was able to pay only the amount of P20,000.00 in October 1990. Hence, in December 1990, Daily filed a complaint for the balance of P130,204.10, plus reimbursement of 15% attorney's fees, P10,000.00 litigation expenses, and costs of suit.

In its answer, Brillo alleged that the balance sought to be collected was exorbitant and overstated. It also alleged that it never refused to pay but it merely suspended its payments when plaintiff Daily failed to render proper accounting in accordance with the prescribed rate of freightage at the rate of P2.20 per ton for every kilometer.

During the pre-trial conference, it was agreed that the only issue for resolution was merely accounting and therefore, the matter was referred to a commissioner who was a certified public accountant.

The commissioner's report was composed of two sets. The first computation was based on the rate of the plaintiff's and defendant's liability would be P109,741.66 because of additional deductions on freight discount credited to the latter. The other set was based on defendant's insisted rate of P2.20 per ton per kilometer, resulting to a total liability of only P3,658.76. Both parties approved the commissioner's report. The only thing to be resolved by the trial court was to determine which of

the computations was applicable in the case at bar.

During the pendency of the case, an inquiry was made from the Regional Manager of the Land Transportation Franchising and Regulatory Board about the rate of P2.20 per ton per kilometer being insisted by the defendant Brillo Handicrafts. It appeared that it was in Philippine Federation of Petroleum Haulers Association (Case No. 84-6382), that the Board of Transportation issued the fixed rate. This rate, however, as adverted to by Daily did not apply to them because they were not parties to the case. Moreover, the price was for hauling of petroleum products only. Defendant Brillo on the other hand, maintained that the plaintiff was covered by the aforesaid ruling because it was not given any authority to charge a special rate.

Forthwith, the case was submitted for decision without any presentation of testimonial evidence since the issue was only the applicable rate. Thus, on August 29, 1991, the Regional Trial Court of Legazpi City ruled that:

"This court is inclined to believe plaintiff's claim that they are not covered by said decision. First, because Case No. 84-6382 (Philippine Federation of Petroleum Haulers Association), cannot be made to apply to plaintiff herein because plaintiff is not a party to said case. Second, plaintiff is not a petroleum hauler. This court is aware that the government is fixing a special low rate for petroleum haulers because the government controls the price of petroleum. To lower the cost of petroleum, it was necessary to control its hauling freight because hauling is one of the big factors to be considered in lowering petroleum price. Third, the aforesaid decision expressly state that it is applicable for a period of one year only from the date of issuance. The decision was issued on March 2, 1985, or six years ago. At that time, prices of commodities and transportation fees were comparatively low as compared to now.

It is the opinion of this court therefore, that the price to be followed is the price agreed upon by the parties in their contract of carriage, which under the instant case, is P32.00 from Legazpi City to Manila and P41.00 from Manila to Legazpi.

There being no fixed rate imposed on plaintiff, as the P2.20 rate insisted by defendant is not applicable to the parties, for reasons already mentioned above, parties are free to agree on the rate. In fact, defendant is estopped from denying now the rate fixed by plaintiff because they have paid such rate before. What is being collected now is merely the balance. The answer states that the original balance of P155,204.10 as of April 30, 1990, was partially paid by defendant, amounting to P30,000.00 in all, at P10,000.00 each last September 14, 1990, September 27, 1990, and October 12, 1990, respectively. By paying said partial amount, which was computed at the plaintiff's rate of P32.00, defendant cannot validly deny now that said rate is not applicable to them.

WHEREFORE, premises considered, defendant is ordered to pay plaintiff, the sum of P109,741.66 balance of freight plus interest at 12% per annum beginning August 8, 1990, plus P10,000.00 attorney's fees, and P5,000.00 reimbursement of commissioner's fees. Costs of suit against