815 Phil. 681

SECOND DIVISION

[G.R. No. 223592, August 07, 2017]

EQUITABLE INSURANCE CORPORATION, PETITIONER, VS. TRANSMODAL INTERNATIONAL, INC., RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 11, 2016, of petitioner Equitable Insurance Corporation that seeks to reverse and set aside the Decision[1] dated September 15, 2015 and Resolution[2] dated March 17, 2016 of the Court of Appeals (*CA*) reversing the Decision[3] dated June 18, 2013 of the Regional Trial Court (*RTC*), Branch 26, Manila in a civil case for actual damages.

The facts follow.

Sytengco Enterprises Corporation (*Sytengco*) hired respondent Transmodal International, Inc. (*Transmodal*) to clear from the customs authorities and withdraw, transport, and deliver to its warehouse, cargoes consisting of 200 cartons of gum Arabic with a total weight of 5,000 kilograms valued at US21,750.00.

The said cargoes arrived in Manila on August 14, 2004 and were brought to Ocean Links Container Terminal Center, Inc. pending their release by the Bureau of Customs (*BOC*) and on September 2, 2004, respondent Transmodal withdrew the same cargoes and delivered them to Sytengco's warehouse. It was noted in the delivery receipt that all the containers were wet.

In a preliminary survey conducted by Elite Adjusters and Surveyors, Inc. (*Elite Surveyors*), it was found that 187 cartons had water marks and the contents of the 13 wet cartons were partly hardened. On October 13, 2004, a re-inspection was conducted and it was found that the contents of the randomly opened 20 cartons were about 40% to 60% hardened, while 8 cartons had marks of previous wetting. In its final report dated October 27, 2004, Elite Surveyor fixed the computed loss payable at P728,712.00 after adjustment of 50% loss allowance.

Thus, on November 2, 2004, Sytengco demanded from respondent Transmodal the payment of P1,457,424.00 as compensation for total loss of shipment. On that same date, petitioner Equitable Insurance, as insurer of the cargoes per Marine Open Policy No. MN-MRN-HO-000549 paid Sytengco's claim for P728,712.00. On October 4, 2004, Sytengco then signed a subrogation receipt and loss receipt in favor of petitioner Equitable Insurance. As such, petitioner Equitable Insurance demanded from respondent Transmodal reimbursement of the payment given to Sytengco.

Thereafter, petitioner Equitable Insurance filed a complaint for damages invoking its

right as subrogee after paying Sytengco's insurance claim and averred that respondent Transmodal's fault and gross negligence were the causes of the damages sustained by Sytengco's shipment. Petitioner Equitable Insurance prayed for the payment of P728,712.00 actual damages with 6% interest from the date of the filing of the complaint until full payment, plus attorney's fees and cost of suit.

Respondent Transmodal denied knowledge of an insurance policy and claimed that petitioner Equitable Insurance has no cause of action against it because the damages to the cargoes were not due to its fault or gross negligence. According to the same respondent, the cargoes arrived at Sytengco's warehouse around 11:30 in the morning of September 1, 2004, however, Sytengco did not immediately receive the said cargoes and as a result, the cargoes got wet due to the rain that occurred on the night of September 1, 2004. Respondent Transmodal also questioned the timeliness of Sytengco's formal claim for payment which was allegedly made more than 14 days from the time the cargoes were placed at its disposal in contravention of the stipulations in the delivery receipts.

The RTC, in its Decision dated June 18, 2013, found in favor of petitioner Equitable Insurance, thus, the following dispositive portion of said decision:

> WHEREFORE, based on the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the following:
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> > (1) Actual damages in the amount of Php728,712.00 plus 6% interest from judicial demand until full payment;
> >
> > (2) Attorney's fees in the amount equivalent to 10% of the amount claimed;
> >
> > (3) Costs of suit. SO ORDERED.[4]

According to the RTC, petitioner Equitable Insurance was able to prove by substantial evidence its right to institute an action as subrogee of Sytengco. It also ruled that petitioner Equitable Insurance's non-presentation of the insurance policy and non-compliance with Section 7, Rule 8 of the Rules of Court on actionable document were raised for the first time in respondent Transmodal's memorandum and also noted that petitioner Equitable Insurance had, in fact, submitted a copy of the insurance contract.

Respondent Transmodal appealed the RTC's decision to the CA. The CA, on September 15, 2015, promulgated its decision reversing the RTC's decision. It disposed of the appeal as follows:

> WHEREFORE, the appeal is hereby GRANTED. The June 18,2013 Decision of the Regional Trial Court, Branch 26, Manila in Civil Case No. 06-114861 is REVERSED and SET ASIDE. Accordingly, Equitable Insurance Corp.'s complaint is DISMISSED for failure to prove cause of action.
>
> SO ORDERED.[5]

The CA ruled that there was no proof of insurance of the cargoes at the time of the loss and that the subrogation was improper. According to the CA, the insurance

contract was neither attached in the complaint nor offered in evidence for the perusal and appreciation of the RTC, and what was presented was just the marine risk note.

Hence, the present petition after the CA denied petitioner Equitable Insurance's motion for reconsideration.

Petitioner Equitable Insurance enumerates the following assignment of errors:

> 1. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE CASE OF MALAYAN INSURANCE CO., INC. V. REGIS BROKERAGE CORP. (G.R. NO. 172156, NOVEMBER 23, 2007) IS NOT APPLICABLE IN THE INSTANT CASE;
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> 2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE FACTS SURROUNDING THE CASE OF MALAYAN INSURANCE CO., INC. V. REGIS BROKERAGE CORP. (G.R. NO. 172156, NOVEMBER 23, 2007) IS DIFFERENT FROM THE FACTS ATTENDING THE INSTANT CASE;
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> 3. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF TISON V. COURT OF APPEALS, 276 SCRA 582;
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> 4. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF COMPAÑA MARITIMA V. INSURANCE COMPANY OF NORTH AMERICA, 12 SCRA 213;
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> 5. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF DELSAN TRANSPORT LINES, INC. V. COURT OF APPEALS, 273 SCRA 262;
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> 6. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE STATUTORY PRESUMPTION OF FAULT AND NEGLIGENCE.[6]

It is the contention of petitioner Equitable Insurance that the CA erred in not applying certain jurisprudence on this case which it deemed applicable. It also argues that the present case is not a suit between the insured Sytengco and the insurer but one between the consignee Sytengco and the respondent common carrier since petitioner Equitable Insurance merely stepped into the shoes of the said insured who has a direct cause of action against respondent Transmodal on account of the damage sustained by the subject cargo, thus, the carrier cannot set up as defense any defect in the insurance policy because it cannot avoid its liability to the consignee under the contract of carriage which binds it to pay any loss or damage that may be caused to the cargo involved therein.

In its Comment[7] dated July 25, 2016, respondent Transmodal avers that the CA did not err in not applying certain jurisprudence in the latter's decision. Respondent Transmodal further refutes all the assigned errors that petitioner Equitable Insurance enumerated in its petition.

A closer look at the arguments raised in the petition would show that petitioner is indeed asking this Court to review the factual findings of the CA which is not within

the scope of a petition for review under Rule 45 of the Rules of Court. However, this Court has recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[8] Considering that the findings of facts of the RTC and the CA are glaringly in contrast, this Court deems it proper to review the present case.

In ruling that petitioner's subrogation right is improper, the CA stated that it found no proof of insurance of the cargoes at the time of their loss. It also found that what was presented in court was the marine risk note and not the insurance contract or policy, thus:

> A perusal of the complaint and the other documentary evidence submitted by Equitable Insurance such as the preliminary and final report clearly shows that the claims for damages and subrogation were based on Policy No. MN-MRN-HO-0005479. However, said insurance contract was neither attached in the complaint nor offered in evidence for the perusal and

appreciation of the court *a quo*. Instead, Equitable Insurance presented the marine risk note. For clarity, We quote the pertinent portions of the marine risk note, *viz*.:

> Line & Subline
> MARINE CARGO
> RISK NOTE
> Policy No.:
> MN-MRN-HO-0005479
> Issue date Sep. 08, 2004
> Invoice No. 59298 V
>
> Assured: SYTENGCO ENTERPRISES CORPORATION
> Address: 10 RESTHAVEN ST.
> SAN FRANCISCO DEL MONTE SUBDIVISION,
> QUEZON CITY, METRO MANILA
>
> We have this day noted the undermentioned risk in your favor and hereby guarantee that this document has all the force and effect of the terms and conditions of EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099.

L/C AMOUNT: USD 21,750.00 MARK-UP: 20%
SUM INSURED: PHP 1,457,424.00 EXCHANGE RATE: 55.8400

CARGO: 200 CTNS. GUM ARABIC POWDER KB-120

Supplier: JUMBO TRADING CO., LTD.
Vessel: ASIAN ZEPHYR VOYAGE No.: 062N
BL#:MNL04086310
ETD: 09-AUG-04 ETA: 13-AUG-04
From: THAILAND To: Manila, Philippines[9]

As such, according to the CA, the case of *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance, Inc.*[10] is applicable, wherein this Court held that a marine risk note is not an insurance policy. The CA also found applicable this Court's ruling in *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*,[11] stating that a marine policy is constitutive of the insurer-insured relationship, thus, such document should have been attached to the complaint as mandated by Section 7,[12] Rule 8 of the Rules of Court.

Petitioner, however, insists that the CA erred in applying the case of *Malayan* because the plaintiff therein did not present the marine insurance policy whereas in the present case, petitioner has presented not only the marine risk note but also Marine Open Policy No. MN-MOP-HO-0000099[13] which were all admitted in evidence.

Indeed, a perusal of the records would show that petitioner is correct in its claim that the marine insurance policy was offered as evidence. In fact, in the questioned decision of the CA, the latter, mentioned such policy, thus:

> Contrary to the ruling of the RTC, the marine policy was not at all presented. **As borne by the records, only the marine risk note and EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099 were offered in evidence.** These pieces of evidence are immaterial to Equitable Insurance's cause of action. We have earlier pointed out that a marine risk note is insufficient to prove the insurer's claim. Although the marine risk note provided that it "has all the force and effect of the terms and conditions of EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099," there is nothing in the records showing that the said policy is related to Policy No. MN-MRN-HO-005479 which was the basis of Equitable Insurance's complaint. It did not escape our attention that the second page of the marine risk note explicitly stated that it was "attached to and forming part of the Policy No. MN-MRN-005479." Thus, without the presentation of Policy No. MN-MRN-005479, We cannot simply assume that the terms and conditions, including the period of coverage, of such policy are similar to Marine Policy No. MN-MOP-HO-0000099.[14]

As such, respondent had the opportunity to examine the said documents or to object to its presentation as pieces of evidence. The records also show that respondent was able to cross-examine petitioner's witness regarding the said documents. Thus, it was well established that petitioner has the right to step into