

SECOND DIVISION

[G.R. No. 194121, July 11, 2016]

TORRES-MADRID BROKERAGE, INC., PETITIONER, VS. FEB MITSUI MARINE INSURANCE CO., INC. AND BENJAMIN P. MANALASTAS, DOING BUSINESS UNDER THE NAME OF BMT TRUCKING SERVICES, RESPONDENTS.

D E C I S I O N

BRION, J.:

We resolve the petition for review on *certiorari* challenging the Court of Appeals' (CA) October 14, 2010 decision in **CA-G.R. CV No. 91829**.^[1]

The CA affirmed the Regional Trial Court's (RTC) decision in **Civil Case No. 01-1596**, and found petitioner Torres-Madrid Brokerage, Inc. (TMBI) and respondent Benjamin P. Manalastas jointly and solidarily liable to respondent FEB Mitsui Marine Insurance Co., Inc. (*Mitsui*) for damages from the loss of transported cargo.

Antecedents

On October 7, 2000, a shipment of various electronic goods from Thailand and Malaysia arrived at the Port of Manila for Sony Philippines, Inc. (*Sony*). Previous to the arrival, Sony had engaged the services of TMBI to *facilitate, process, withdraw, and deliver* the shipment from the port to its warehouse in Binan, Laguna.^[2]

TMBI - who did not own any delivery trucks - subcontracted the services of Benjamin Manalastas' company, BMT Trucking Services (*BMT*), to transport the shipment from the port to the Binan warehouse.^[3] Incidentally, TMBI notified Sony who had no objections to the arrangement.^[4]

Four BMT trucks picked up the shipment from the port at about 11:00 a.m. of October 7, 2000. However, BMT could not immediately undertake the delivery because of the truck ban and because the following day was a Sunday. Thus, BMT scheduled the delivery on October 9, 2000.

In the early morning of October 9, 2000, the four trucks left BMT's garage for Laguna.^[5] However, only three trucks arrived at Sony's Binan warehouse.

At around 12:00 noon, the truck driven by Rufo Reynaldo Lapesura (*NSF-391*) was found abandoned along the Diversion Road in Filinvest, Alabang, Muntinlupa City.^[6] Both the driver and the shipment were missing.

Later that evening, BMT's Operations Manager Melchor Manalastas informed Victor Torres, TMBI's General Manager, of the development.^[7] They went to Muntinlupa

together to inspect the truck and to report the matter to the police.^[8]

Victor Torres also filed a complaint with the National Bureau of Investigation (NBI) against Lapesura for "*hijacking*."^[9] The complaint resulted in a recommendation by the NBI to the Manila City Prosecutor's Office to prosecute Lapesura for qualified theft.^[10]

TMBI notified Sony of the loss through a letter dated October 10, 2000,^[11] It also sent BMT a letter dated March 29, 2001, demanding payment for the lost shipment. BMT refused to pay, insisting that the goods were "*hijacked*."

In the meantime, Sony filed an insurance claim with the Mitsui, the insurer of the goods. After evaluating the merits of the claim, Mitsui paid Sony **PHP7,293,386.23** corresponding to the value of the lost goods.^[12]

After being subrogated to Sony's rights, Mitsui sent TMBI a demand letter dated August 30, 2001 for payment of the lost goods. TMBI refused to pay Mitsui's claim. As a result, Mitsui filed a complaint against TMBI on November 6, 2001,

TMBI, in turn, impleaded Benjamin Manalastas, the proprietor of BMT, as a third-party defendant. TMBI alleged that BMT's driver, Lapesura, was responsible for the theft/hijacking of the lost cargo and claimed BMT's negligence as the proximate cause of the loss. TMBI prayed that in the event it is held liable to Mitsui for the loss, it should be reimbursed by BMT,

At the trial, it was revealed that BMT and TMBI have been doing business with each other since the early 80's. It also came out that there had been a previous hijacking incident involving Sony's cargo in 1997, but neither Sony nor its insurer filed a complaint against BMT or TMBI.^[13]

On August 5, 2008, the RTC found TMBI and Benjamin Manalastas jointly and solidarity liable to pay Mitsui PHP 7,293,386.23 as actual damages, attorney's fees equivalent to 25% of the amount claimed, and the costs of the suit.^[14] The RTC held that TMBI and Manalastas were common carriers and had acted negligently.

Both TMBI and BMT appealed the RTC's verdict.

TMBI denied that it was a common carrier required to exercise *extraordinary* diligence. It maintains that it exercised the diligence of a good father of a family and should be absolved of liability because the truck was "*hijacked*" and this was a fortuitous event.

BMT claimed that it had exercised *extraordinary* diligence over the lost shipment, and argued as well that the loss resulted from a fortuitous event.

On October 14, 2010, the CA affirmed the RTC's decision but reduced the award of attorney's fees to PHP 200,000.

The CA held: (1) that "*hijacking*" is not necessarily a fortuitous event because the term refers to the general stealing of cargo during transit;^[15] (2) that TMBI is a

common carrier engaged in the business of transporting goods for the general public for a fee; [16] (3) even if the "*hijacking*" were a fortuitous event, TMBI's failure to observe extraordinary diligence in overseeing the cargo and adopting security measures rendered it liable for the loss; [17] and (4) even if TMBI had not been negligent in the handling, transport and the delivery of the shipment, TMBI still breached its contractual obligation to Sony when it failed to deliver the shipment. [18]

TMBI disagreed with the CA's ruling and filed the present petition on December 3, 2010.

The Arguments

TMBI's Petition

TMBI insists that the *hijacking* of the truck was a fortuitous event. It contests the CA's finding that neither force nor intimidation was used in the taking of the cargo. Considering Lapesura was never found, the Court should not discount the possibility that he was a victim rather than a perpetrator. [19]

TMBI denies being a common carrier because it does not own a single truck to transport its shipment and it does not offer transport services to the public for compensation. [20] It emphasizes that Sony knew TMBI did not have its own vehicles and would subcontract the delivery to a third-party.

Further, TMBI now insists that the service it offered was limited to the processing of paperwork attendant to the entry of Sony's goods. It denies that delivery of the shipment was a part of its obligation. [21]

TMBI solely blames BMT as it had full control and custody of the cargo when it was lost. [22] BMT, as a common carrier, is presumed negligent and should be responsible for the loss.

BhtT's Comment

BMT insists that it observed the required standard of care. [23] Like the petitioner, BMT maintains that the hijacking was a fortuitous event - a *force majeure* - that exonerates it from liability. [24] It points out that Lapesura has never been seen again and his fate remains a mystery. BMT likewise argues that the loss of the cargo necessarily showed that the taking was with the use of force or intimidation. [25]

If there was any attendant negligence, BMT points the finger on TMBI who failed to send a representative to accompany the shipment. [26] BMT further blamed TMBI for the latter's failure to adopt security measures to protect Sony's cargo. [27]

Mitsui's Comment

Mitsui counters that neither TMBI nor BMT alleged or proved during the trial that the taking of the cargo was accompanied with grave or irresistible threat, violence, or

force.^[28] Hence, the incident cannot be considered "force majeure" and TMBI remains liable for breach of contract.

Mitsui emphasizes that TMBI's theory - that force or intimidation must have been used because Lapesura was never found - was only raised for the first time before this Court.^[29] It also discredits the theory as a mere conjecture for lack of supporting evidence.

Mitsui adopts the CA's reasons to conclude that TMBI is a common carrier. It also points out Victor Torres' admission during the trial that TMBI's brokerage service includes the eventual delivery of the cargo to the consignee.^[30]

Mitsui invokes as well the legal presumption of negligence against TMBI, pointing out that TMBI simply entrusted the cargo to BMT without adopting any security measures despite: (1) a previous hijacking incident, when TMBI lost Sony's cargo; and (2) TMBI's knowledge that the cargo was worth more than 10 million pesos.^[31]

Mitsui affirms that TMBI breached the contract of carriage through its negligent handling of the cargo, resulting in its loss.

The Court's Ruling

A brokerage may be considered a common carrier if it also undertakes to deliver the goods for its customers

Common carriers are persons, corporations, firms or associations engaged in the business of transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.^[32] By the nature of their business and for reasons of public policy, they are bound to observe extraordinary diligence in the vigilance over the goods and in the safety of their passengers.^[33]

In *A.F. Sanchez Brokerage Inc. v. Court of Appeals*,^[34] we held that a customs broker - whose principal business is the preparation of the correct customs declaration and the proper shipping documents - is still considered a common carrier if it also undertakes to deliver the goods for its customers. The law does not distinguish between one whose principal business activity is the carrying of goods and one who undertakes this task only as an ancillary activity.^[35] This ruling has been reiterated in *Schmitz Transport & Brokerage Corp. v. Transport Venture, Inc.*,^[36] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation*,^[37] and *Wesrwind Shipping Corporation v. UCPB General Insurance Co., Inc.*^[38]

Despite TMBI's present denials, we find that the delivery of the goods is an integral, albeit ancillary, part of its brokerage services. TMBI admitted that it was contracted to facilitate, process, and clear the shipments from the customs authorities, withdraw them from the pier, then transport and deliver them to Sony's warehouse in Laguna.^[39]

Further, TMBI's General Manager Victor Torres described the nature of its services as

follows:

ATTY. VIRTUDAZO: Could you please tell the court what is the nature of the business of [TMBI]?

Witness MR. Victor Torres of Torres Madrid: We are engaged in customs brokerage business. We acquire the release documents from the Bureau of Customs and **eventually deliver the cargoes to the consignee's warehouse** and we are engaged in that kind of business, sir. ^[40]

That TMBI does not own trucks and has to subcontract the delivery of its clients' goods, is immaterial. As long as an entity holds itself to the public for the transport of goods as a business, it is considered a common carrier regardless of whether it owns the vehicle used or has to actually hire one. ^[41]

Lastly, TMBI's customs brokerage services - including the transport/delivery of the cargo - are available to anyone willing to pay its fees. Given these circumstances, we find it undeniable that TMBI is a common carrier.

Consequently, TMBI should be held responsible for the loss, destruction, or deterioration of the goods it transports unless it results from:

- (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act of omission of the shipper or owner of the goods;
- (4) The character of the goods or defects in the packing or in the containers;
- (5) Order or act of competent public authority. ^[42]

For all other cases - such as theft or robbery - a common carrier is presumed to have been at fault or to have acted negligently, unless it can prove that it observed *extraordinary diligence*. ^[43]

Simply put, the theft or the robbery of the goods is not considered a fortuitous event or a *force majeure*. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised *extraordinary diligence* in transporting and safekeeping the goods; ^[44] or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence. ^[45]

However, a stipulation diminishing or dispensing with the common carrier's liability for acts committed by thieves or robbers who do not act with grave or irresistible