

THIRD DIVISION

[G.R. No. 182208, October 14, 2015]

**ASIAN TERMINALS, INC., PETITIONER, VS. ALLIED GUARANTEE
INSURANCE, CO., INC., RESPONDENT.**

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Court of Appeals Decision^[1] dated November 9, 2007 and Resolution^[2] dated March 26, 2008 in CA-G.R. CV. No. 48661, which affirmed the trial court's finding that petitioner is liable for the damage to certain goods within its custody.

The facts of the case follow.

Marina Port Services, Inc. (*Marina*), the predecessor of herein petitioner Asian Terminals, Inc. (*petitioner ATP*), is an arrastre operator based in the South Harbor, Port Area, Manila.^[3] On February 5, 1989, a shipment was made of 72,322 lbs. of kraft linear board (a type of paperboard) loaded and received from the ports of Lake Charles, LA, and Mobile, AL, U.S.A., for transport and delivery to San Miguel Corporation (*San Miguel*) in Manila, Philippines.^[4] The vessel used was the M/V Nicole, operated by Transocean Marine, Inc. (*Transocean*), a foreign corporation, whose Philippine representative is Philippine Transmarine Carrier, Inc. (*Philippine Transmarine*).^[5]

The M/V Nicole arrived in Manila on April 8, 1989 and, shortly thereafter, the subject shipment was offloaded from the vessel to the arrastre Marina until April 13, 1989.^[6] Thereafter, it was assessed that a total of 158 rolls of the goods were "damaged" during shipping.^[7] Further, upon the goods' withdrawal from the arrastre and their delivery, first, to San Miguel's customs broker, Dynamic Brokerage Co. Inc. (*Dynamic*), and, eventually, to the consignee San Miguel, another 54 rolls were found to have been damaged, for a total of 212 rolls of damaged shipment worth P755,666.84.^[8]

Herein respondent Allied Guarantee Insurance, Co., Inc., (*respondent Allied*), was the insurer of the shipment. Thus, it paid San Miguel P755,666.84 and was subrogated in the latter's rights.^[9]

On March 8, 1990, Allied filed a Complaint^[10] (and later, an Amended Complaint) for maritime damages against Transocean, Philippine Transmarine, Dynamic and Marina seeking to be indemnified for the P755,666.84 it lost in paying the consignee San Miguel. The suit alleged that the shipment was loaded from the ports of origin

"in good and complete order condition," and all losses were due to the fault of the named defendants.^[11] In addition, the suit sought legal interest, 25% of the indemnity as attorney's fees, and costs of the suit.^[12]

In its Amended Answer with Compulsory Counterclaim and Crossclaim,^[13] Marina denied the complaint's allegations and maintained that 158 rolls in the shipment were already in "bad order condition" when it turned over the same to the consignee's representative/broker. It claimed due care and diligence in the handling of the goods and that no damage was sustained by the same while in its custody or care.^[14] It alleged that whatever damage incurred was attributable to its co-defendants who should reimburse it for whatever amount the latter may be adjudged liable.^[15]

The other co-defendants Transocean and Philippine Transmarine also denied most of the complaint's allegations and counter-alleged that a large portion of "the shipment was already in torn/scuffed condition prior to loading" in their vessel.^[16] In addition, they attributed the damage to the nature, vice or defect of the goods, the perils and accidents of the sea, to pre-shipment loss and insufficiency of packing.^[17] They claimed to have exercised the diligence required by law so that the damage incurred was not their fault.^[18]

The case underwent trial and, thereafter, the Regional Trial Court (*RTC*) of Makati City, Branch 148, found all the-defendants, including the predecessor of herein petitioner, liable for the losses. The dispositive portion of the trial court's Decision dated September 9, 1993 states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, thereby ordering the latter to pay the obligation in the following manner:

a) the amount of P623,935.76 plus interest corresponding to the 158 rolls of kraft linear board that was damaged while in the custody of defendant Transocean Inc. to be paid by the latter to the plaintiff with legal rate of interest from the time when it was due and until fully paid;

b) the amount of P131,731.08 plus interest corresponding to the additional 54 rolls of kraft linear board that was damaged, to be paid jointly and severally by defendants Marina Port Services Inc. and Dynamic Brokerage Co. Inc. to the plaintiff with legal rate of interest from the time when it was due until fully paid;

c) 25% of the aforesaid principal amounts as attorney's fees to be paid jointly and severally by all the defendants.

d) plus costs of suit.

SO ORDERED.^[19]

The RTC found the defendant shipping company Transocean liable for the 158 rolls of damaged goods due to the latter's failure to observe the necessary precautions and extraordinary diligence as common carrier to prevent such damage.^[20] Then, the additional 54 rolls of the goods that were lost were found to have been damaged while in the possession of Marina, the arrastre operator and Dynamic, the broker.^[21] It found Marina and Dynamic solidarity liable for the said damaged goods.^[22] Thus, the trial court found all the defendants liable for portions of the cargo that were damaged in their respective custody. It dismissed the parties' counterclaims and crossclaims.

Marina, which changed its name to Asian Terminals Inc. (ATI), elevated the case to the Court of Appeals.^[23] The lone assignment of error it attributes to the RTC decision is:

THE COURT A *QUO* ERRED IN RENDERING
ATI LIABLE FOR THE ADDITIONAL DAMAGES
SUSTAINED BY THE SUBJECT SHIPMENT.

ATI maintained that the goods were withdrawn by the broker in the same condition as they were discharged from the vessel.^[24] It argued that it is not liable for the damage to the additional 54 rolls as these were discovered only at the warehouse of San Miguel and these were the broker's responsibility after they were released from ATI's custody until delivery to the consignee.^[25] It accused the trial court of merely speculating when it held ATI and Dynamic to be jointly and severally liable for the the additional damage.^[26]

In its assailed Decision, the Court of Appeals did not sustain ATI's appeal and affirmed the decision of the RTC, as follows:

WHEREFORE, premises considered, the assailed September 9, 1993 Decision of the Regional Trial Court of Makati City, Branch 148, in Civil Case No. 904661, is hereby AFFIRMED.

SO ORDERED.^[27]

Like the trial court, the appellate court found the carriers Transocean and Philippine Transmarine liable to the plaintiff insurer, the subrogee of the consignee, for the 158 rolls of kraft linear board that were lost or damaged while in the former's custody during shipping.^[28] The common carriers were held liable because they were found unable to overcome the presumption of negligence while in custody of the goods.^[29] Then, the arrastre ATI and the broker Dynamic were likewise found liable for the additional 54 rolls of the same goods destroyed as both failed to prove the exercise of the amount of diligence required in- the safekeeping of said goods.^[30] In particular, the appellate court stated that ATI failed to present the Turn Over Inspector and Bad Order Inspector as witnesses who could have testified that no additional goods were damaged during its custody.^[31]

ATI filed a motion for reconsideration of the above' decision, but the same was denied by the appellate court.^[32]

From the said decision, ATI filed the instant'petition for review.

Petitioner ATI argues that the appellate court erroneously failed to note the so-called Turn Over Survey of Bad Order Cargoes and the Requests for Bad Order Survey which supposedly could absolve it from liability for the damaged shipment.^[33] The reports were allegedly made prior to the shipment's turnover from ATI to Dynamic and they purportedly show that no additional loss or damage happened while the shipment was in ATI's custody as the reports only mention the 158 rolls that were damaged during shipping or prior to ATI's possession.^[34] ATI also assails the award of attorney's fees, stating that no findings of fact or law mas made to justify the grant of such an award.^[35]

Hence, the Court resolves the issues of whether or not petitioner has been proven liable for the additional 54 rolls of damaged goods to respondent and, if so, whether it is also liable for attorney's fees.

The court denies the petition with respect to the additional 54 rolls of damaged goods, as petitioner's liability thereon was duly proven and well established during trial. The rulings of both the trial and appellate courts in this respect are upheld.

At the outset, it is fairly evident that the petition prays for this Court to re-examine the factual-findings of the lower courts. But well-settled is the rule that an appeal to the Court via a petition for review on *certiorari* under Rule 45 should raise or involve only pure questions of law.^[36] The distinction between questions of law and questions of fact are explained in *Microsoft Corporation v. Maxicorp, Inc.*^[37] as follows:

x x x A question of law exists when the doubt or difference centers on what the law is'on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometimes problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual, x x x

A perusal of the current petition would show that it is disputing the facts as found by the courts below. Verily, the nexus of the petition is the allegation that the trial court

did not appreciate the Turn Over Survey of Bad Order Cargoes and the Requests for Bad Order Survey which were supposedly proof that the goods suffered no additional damage while in petitioner's custody. Plainly, the petition requests this Court to re-examine these particular evidence and again weigh the same in relation to all other evidence in the case in the hope that a conclusion different from those arrived at by the trial court and appellate court may be reached. Such, however, is a resolution of a question of fact which is outside the office of a petition for review on *certiorari* under Rule 45.

Verily, there are exceptions to this rule that only questions of law may be entertained by this Court in a petition for review on *certiorari*, such as when:

- (1) the conclusion is grounded on speculations, surmises or conjectures;
- (2) the inference is manifestly mistaken, absurd or impossible;
- (3) there is grave abuse of discretion;
- (4) the judgment is based on a misapprehension of facts;
- (5) the findings of fact are conflicting;
- (6) there is no citation-of specific evidence on which the factual findings are based;
- (7) the findings of absence of facts are contradicted by the presence of evidence on record; '
- (8) the findings of the Court of Appeals are contrary to those of the trial court;
- (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;
- (10) the findings of the Court of Appeals are beyond the issues of the case; and
- (11) such findings are contrary to the admissions of both parties.^[38]

None of these, however, obtains in the case at bar. The petition fails to even explain or argue if or why any of these apply to the present case. In fact, the petition cites only three (3) of the said exceptions, namely:

- (a) when the findings of facts of the appellate court are at variance with those of the trial court;
- (b) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion; and
- (c) when the judgment itself is based on misapprehension of facts.^[39]

Still, none of the above applies in the present case. The first exception does not apply as it is well established that the trial court and the Court of Appeals have made similar findings in this case as, in fact, the latter's decision fully affirms the former's. Then, as for the second and third exceptions, petitioner could cite no undisputed fact that was "overlooked" by the Court of Appeals and neither does it explain any "misapprehension" of established facts. And even if it is granted, for argument's sake, that by "misapprehension" is meant the trial court's alleged failure to see the significance of the Turn Over Survey of Bad Order Cargoes and the Requests for Bad Order Survey in absolving petitioner of liability over the additional,