

## FIRST DIVISION

[ G.R. No. 181163, July 24, 2013 ]

**ASIAN TERMINALS, INC., PETITIONER, VS. PHILAM INSURANCE CO., INC. (NOW CHARTIS PHILIPPINES INSURANCE, INC.), RESPONDENT. G.R. NO. 181163**

[G.R. NO. 181262]

**PHILAM INSURANCE CO., INC. (NOW CHARTIS PHILIPPINES INSURANCE, INC.), PETITIONER, VS. WESTWIND SHIPPING CORPORATION AND ASIAN TERMINALS, INC., RESPONDENTS.**

[G.R. NO. 181319]

**WESTWIND SHIPPING CORPORATION, PETITIONER, VS. PHILAM INSURANCE CO., INC. (NOW CHARTIS PHILIPPINES INSURANCE, INC.) AND ASIAN TERMINALS, INC., RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us are three consolidated petitions for review on certiorari assailing the Decision<sup>[1]</sup> dated October 15, 2007 and the Resolution<sup>[2]</sup> dated January 11, 2008 of the Court of Appeals (CA) which affirmed with modification the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 96-062. The RTC had ordered Westwind Shipping Corporation (Westwind) and Asian Terminals, Inc. (ATI) to pay, jointly and severally, Philam Insurance Co., Inc. (Philam) the sum of P633,957.15, with interest at 12% per annum from the date of judicial demand and P158,989.28 as attorney's fees.

The facts of the case follow:

On April 15, 1995, Nichimen Corporation shipped to Universal Motors Corporation (Universal Motors) 219 packages containing 120 units of brand new Nissan Pickup Truck Double Cab 4x2 model, without engine, tires and batteries, on board the vessel S/S "Calayan Iris" from Japan to Manila. The shipment, which had a declared value of US\$81,368 or P29,400,000, was insured with Philam against all risks under Marine Policy No. 708-8006717-4.<sup>[4]</sup>

The carrying vessel arrived at the port of Manila on April 20, 1995, and when the shipment was unloaded by the staff of ATI, it was found that the package marked as 03-245-42K/1 was in bad order.<sup>[5]</sup> The Turn Over Survey of Bad Order Cargoes<sup>[6]</sup> dated April 21, 1995 identified two packages, labeled 03-245-42K/1 and 03/237/7CK/2, as being dented and broken. Thereafter, the cargoes were stored for temporary safekeeping inside CFS Warehouse in Pier No. 5.

On May 11, 1995, the shipment was withdrawn by R.F. Revilla Customs Brokerage, Inc., the authorized broker of Universal Motors, and delivered to the latter's warehouse in Mandaluyong City. Upon the request<sup>[7]</sup> of Universal Motors, a bad order survey was conducted on the cargoes and it was found that one Frame Axle Sub without LWR was deeply dented on the baffle plate while six Frame Assembly with Bush were deformed and misaligned.<sup>[8]</sup> Owing to the extent of the damage to said cargoes, Universal Motors declared them a total loss.

On August 4, 1995, Universal Motors filed a formal claim for damages in the amount of P643,963.84 against Westwind,<sup>[9]</sup> ATI<sup>[10]</sup> and R.F. Revilla Customs Brokerage, Inc.<sup>[11]</sup> When Universal Motors' demands remained unheeded, it sought reparation from and was compensated in the sum of P633,957.15 by Philam. Accordingly, Universal Motors issued a Subrogation Receipt<sup>[12]</sup> dated November 15, 1995 in favor of Philam.

On January 18, 1996, Philam, as subrogee of Universal Motors, filed a Complaint<sup>[13]</sup> for damages against Westwind, ATI and R.F. Revilla Customs Brokerage, Inc. before the RTC of Makati City, Branch 148.

On September 24, 1999, the RTC rendered judgment in favor of Philam and ordered Westwind and ATI to pay Philam, jointly and severally, the sum of P633,957.15 with interest at the rate of 12% per annum, P158,989.28 by way of attorney's fees and expenses of litigation.

The court *a quo* ruled that there was sufficient evidence to establish the respective participation of Westwind and ATI in the discharge of and consequent damage to the shipment. It found that the subject cargoes were compressed while being hoisted using a cable that was too short and taut. The trial court observed that while the staff of ATI undertook the physical unloading of the cargoes from the carrying vessel, Westwind's duty officer exercised full supervision and control throughout the process. It held Westwind vicariously liable for failing to prove that it exercised extraordinary diligence in the supervision of the ATI stevedores who unloaded the cargoes from the vessel. However, the court absolved R.F. Revilla Customs Brokerage, Inc. from liability in light of its finding that the cargoes had been damaged before delivery to the consignee.

The trial court acknowledged the subrogation between Philam and Universal Motors on the strength of the Subrogation Receipt dated November 15, 1995. It likewise upheld Philam's claim for the value of the alleged damaged vehicle parts contained in Case Nos. 03-245-42K/1 and 03-245-51K or specifically for "7 [pieces] of Frame Axle Sub Without Lower and Frame Assembly with Bush."<sup>[14]</sup>

Westwind filed a Motion for Reconsideration<sup>[15]</sup> which was, however, denied in an Order<sup>[16]</sup> dated October 26, 2000.

On appeal, the CA affirmed with modification the ruling of the RTC. In a Decision dated October 15, 2007, the appellate court directed Westwind and ATI to pay Philam, jointly and severally, the amount of P190,684.48 with interest at the rate of 12% per annum until fully paid, attorney's fees of P47,671 and litigation expenses.

The CA stressed that Philam may not modify its allegations by claiming in its Appellee's Brief<sup>[17]</sup> that the six pieces of Frame Assembly with Bush, which were purportedly damaged, were also inside Case No. 03-245-42K/1. The CA noted that in its Complaint, Philam alleged that "one (1) pc. FRAME AXLE SUB W/O LWR from Case No. 03-245-42K/1 [was] completely deformed and misaligned, and six (6) other pcs. of FRAME ASSEMBLY WITH BUSH from Case No. 03-245-51K [were] likewise completely deformed and misaligned."<sup>[18]</sup>

The appellate court accordingly affirmed Westwind and ATI's joint and solidary liability for the damage to only one (1) unit of Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It also noted that when said cargo sustained damage, it was not yet in the custody of the consignee or the person who had the right to receive it. The CA pointed out that Westwind's duty to observe extraordinary diligence in the care of the cargoes subsisted during unloading thereof by ATI's personnel since the former exercised full control and supervision over the discharging operation.

Similarly, the appellate court held ATI liable for the negligence of its employees who carried out the offloading of cargoes from the ship to the pier. As regards the extent of ATI's liability, the CA ruled that ATI cannot limit its liability to P5,000 per damaged package. It explained that Section 7.01<sup>[19]</sup> of the Contract for Cargo Handling Services<sup>[20]</sup> does not apply in this case since ATI was not yet in custody and control of the cargoes when the Frame Axle Sub without Lower suffered damage.

Citing *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*,<sup>[21]</sup> the appellate court also held that Philam's action for damages had not prescribed notwithstanding the absence of a notice of claim.

All the parties moved for reconsideration, but their motions were denied in a Resolution dated January 11, 2008. Thus, they each filed a petition for review on certiorari which were consolidated together by this Court considering that all three petitions assail the same CA decision and resolution and involve the same parties.

Essentially, the issues posed by petitioner ATI in G.R. No. 181163, petitioner Philam in G.R. No. 181262 and petitioner Westwind in G.R. No. 181319 can be summed up into and resolved by addressing three questions: (1) Has Philam's action for damages prescribed? (2) Who between Westwind and ATI should be held liable for the damaged cargoes? and (3) What is the extent of their liability?

### **Petitioners' Arguments**

#### **G.R. No. 181163**

Petitioner ATI disowns liability for the damage to the Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It shifts the blame to Westwind, whom it charges with negligence in the supervision of the stevedores who unloaded the cargoes. ATI admits that the damage could have been averted had Westwind observed extraordinary diligence in handling the goods. Even so, ATI suspects that Case No.

03-245-42K/1 is "weak and defective"<sup>[22]</sup> considering that it alone sustained damage out of the 219 packages.

Notwithstanding, petitioner ATI submits that, at most, it can be held liable to pay only P5,000 per package pursuant to its Contract for Cargo Handling Services. ATI maintains that it was not properly notified of the actual value of the cargoes prior to their discharge from the vessel.

**G.R. No. 181262**

Petitioner Philam supports the CA in holding both Westwind and ATI liable for the deformed and misaligned Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It, however, faults the appellate court for disallowing its claim for the value of six Chassis Frame Assembly which were likewise supposedly inside Case Nos. 03-245-51K and 03-245-42K/1. As to the latter container, Philam anchors its claim on the results of the Inspection/Survey Report<sup>[23]</sup> of Chartered Adjusters, Inc., which the court received without objection from Westwind and ATI. Petitioner believes that with the offer and consequent admission of evidence to the effect that Case No. 03-245-42K/1 contains six pieces of dented Chassis Frame Assembly, Philam's claim thereon should be treated, in all respects, as if it has been raised in the pleadings. Thus, Philam insists on the reinstatement of the trial court's award in its favor for the payment of P633,957.15 plus legal interest, P158,989.28 as attorney's fees and costs.

**G.R. No. 181319**

Petitioner Westwind denies joint liability with ATI for the value of the deformed Frame Axle Sub without Lower in Case No. 03-245-42K/1. Westwind argues that the evidence shows that ATI was already in actual custody of said case when the Frame Axle Sub without Lower inside it was misaligned from being compressed by the tight cable used to unload it. Accordingly, Westwind ceased to have responsibility over the cargoes as provided in paragraph 4 of the Bill of Lading which provides that the responsibility of the carrier shall cease when the goods are taken into the custody of the arrastre.

Westwind contends that sole liability for the damage rests on ATI since it was the latter's stevedores who operated the ship's gear to unload the cargoes. Westwind reasons that ATI is an independent company, over whose employees and operations it does not exercise control. Moreover, it was ATI's employees who selected and used the wrong cable to lift the box containing the cargo which was damaged.

Westwind likewise believes that ATI is bound by its acceptance of the goods in good order despite a finding that Case No. 03-245-42K/1 was partly torn and crumpled on one side. Westwind also notes that the discovery that a piece of Frame Axle Sub without Lower was completely deformed and misaligned came only on May 12, 1995 or 22 days after the cargoes were turned over to ATI and after the same had been hauled by R.F. Revilla Customs Brokerage, Inc.

Westwind further argues that the CA erred in holding it liable considering that Philam's cause of action has prescribed since the latter filed a formal claim with it only on August 17, 1995 or four months after the cargoes arrived on April 20, 1995.

Westwind stresses that according to the provisions of clause 20, paragraph 2<sup>[24]</sup> of the Bill of Lading as well as Article 366<sup>[25]</sup> of the Code of Commerce, the consignee had until April 20, 1995 within which to make a claim considering the readily apparent nature of the damage, or until April 27, 1995 at the latest, if it is assumed that the damage is not readily apparent.

Lastly, petitioner Westwind contests the imposition of 12% interest on the award of damages to Philam reckoned from the time of extrajudicial demand. Westwind asserts that, at most, it can only be charged with 6% interest since the damages claimed by Philam does not constitute a loan or forbearance of money.

### **The Court's Ruling**

The three consolidated petitions before us call for a determination of who between ATI and Westwind is liable for the damage suffered by the subject cargo and to what extent. However, the resolution of the issues raised by the present petitions is predicated on the appreciation of factual issues which is beyond the scope of a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is settled that in petitions for review on certiorari, only questions of law may be put in issue. Questions of fact cannot be entertained.<sup>[26]</sup>

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.<sup>[27]</sup>

In the present petitions, the resolution of the question as to who between Westwind and ATI should be liable for the damages to the cargo and to what extent would have this Court pass upon the evidence on record. But while it is not our duty to review, examine and evaluate or weigh all over again the probative value of the evidence presented,<sup>[28]</sup> the Court may nonetheless resolve questions of fact when the case falls under any of the following exceptions:

- (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 fact are conflicting;
- (6) when in making its findings the Court of Appeals 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 those of 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;
- and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>[29]</sup>