662 Phil. 473

FIRST DIVISION

[G.R. No. 171406, April 04, 2011]

ASIAN TERMINALS, INC., PETITIONER, VS. MALAYAN INSURANCE, CO., INC., RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

> *Once the insurer pays the insured, equity demands reimbursement as no one should benefit at the expense of another.*

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the July 14, 2005 Decision[2] and the February 14, 2006 Resolution[3] of the Court of Appeals (CA) in CA G.R. CV No. 61798.

Factual Antecedents

On November 14, 1995, Shandong Weifang Soda Ash Plant shipped on board the vessel MV "Jinlian I" 60,000 plastic bags of soda ash dense (each bag weighing 50 kilograms) from China to Manila.[4] The shipment, with an invoice value of US$456,000.00, was insured with respondent Malayan Insurance Company, Inc. under Marine Risk Note No. RN-0001-21430, and covered by a Bill of Lading issued by Tianjin Navigation Company with Philippine Banking Corporation as the consignee and Chemphil Albright and Wilson Corporation as the notify party.[5]

On November 21, 1995, upon arrival of the vessel at Pier 9, South Harbor, Manila,[6] the stevedores of petitioner Asian Terminals, Inc., a duly registered domestic corporation engaged in providing arrastre and stevedoring services,[7] unloaded the 60,000 bags of soda ash dense from the vessel and brought them to the open storage area of petitioner for temporary storage and safekeeping, pending clearance from the Bureau of Customs and delivery to the consignee.[8] When the unloading of the bags was completed on November 28, 1995, 2,702 bags were found to be in bad order condition.[9]

On November 29, 1995, the stevedores of petitioner began loading the bags in the trucks of MEC Customs Brokerage for transport and delivery to the consignee.[10] On December 28, 1995, after all the bags were unloaded in the warehouses of the consignee, a total of 2,881 bags were in bad order condition due to spillage, caking, and hardening of the contents.[11]

On April 19, 1996, respondent, as insurer, paid the value of the lost/ damaged cargoes to the consignee in the amount of P643,600.25.[12]

Ruling of the Regional Trial Court

On November 20, 1996, respondent, as subrogee of the consignee, filed before the Regional Trial Court (RTC) of Manila, Branch 35, a Complaint[13] for damages against petitioner, the shipper Inchcape Shipping Services, and the cargo broker MEC Customs Brokerage.[14]

After the filing of the Answers,[15] trial ensued.

On June 26, 1998, the RTC rendered a Decision[16] finding petitioner liable for the damage/loss sustained by the shipment but absolving the other defendants. The RTC found that the proximate cause of the damage/loss was the negligence of petitioner's stevedores who handled the unloading of the cargoes from the vessel.[17] The RTC emphasized that despite the admonitions of Marine Cargo Surveyors Edgar Liceralde and Redentor Antonio not to use steel hooks in retrieving and picking-up the bags, petitioner's stevedores continued to use such tools, which pierced the bags and caused the spillage.[18] The RTC, thus, ruled that petitioner, as employer, is liable for the acts and omissions of its stevedores under Articles 2176[19] and 2180 paragraph (4)[20] of the Civil Code.[21] Hence, the dispositive portion of the Decision reads:

> WHEREFORE, judgment is rendered ordering defendant Asian Terminal, Inc. to pay plaintiff Malayan Insurance Company, Inc. the sum of P643,600.25 plus interest thereon at legal rate computed from November 20, 1996, the date the Complaint was filed, until the principal obligation is fully paid, and the costs.
>
> The complaint of the plaintiff against defendants Inchcape Shipping Services and MEC Customs Brokerage, and the counterclaims of said defendants against the plaintiff are dismissed.
>
> SO ORDERED.[22]

Ruling of the Court of Appeals

Aggrieved, petitioner appealed[23] to the CA but the appeal was denied. In its July 14, 2005 Decision, the CA agreed with the RTC that the damage/loss was caused by the negligence of petitioner's stevedores in handling and storing the subject shipment.[24] The CA likewise rejected petitioner's assertion that it received the subject shipment in bad order condition as this was belied by Marine Cargo Surveyors Redentor Antonio and Edgar Liceralde, who both testified that the actual counting of bad order bags was done only after all the bags were unloaded from the vessel and that the Turn Over Survey of Bad Order Cargoes (TOSBOC) upon which petitioner anchors its defense was prepared only on November 28, 1995 or after the unloading of the bags was completed.[25] Thus, the CA disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal is ***DENIED.*** The assailed Decision dated June 26, 1998 of the Regional Trial Court of Manila, Branch 35, in Civil Case No. 96-80945 is hereby ***AFFIRMED*** in all respects.

SO ORDERED.[26]

Petitioner moved for reconsideration[27] but the CA denied the same in a Resolution[28] dated February 14, 2006 for lack of merit.

Issues

Hence, the present recourse, petitioner contending that:

1. RESPONDENT-INSURER IS NOT ENTITLED TO THE RELIEF GRANTED AS IT FAILED TO ESTABLISH ITS CAUSE OF ACTION AGAINST HEREIN PETITIONER SINCE, AS THE ALLEGED SUBROGEE, IT NEVER PRESENTED ANY VALID, EXISTING, ENFORCEABLE INSURANCE POLICY OR ANY COPY THEREOF IN COURT.

2. THE HONORABLE COURT OF APPEALS ERRED WHEN IT OVERLOOKED THE FACT THAT THE TOSBOC & RESBOC WERE ADOPTED AS COMMON EXHIBITS BY BOTH PETITIONER AND RESPONDENT.

3. CONTRARY TO TESTIMONIAL EVIDENCE ON RECORD, VARIOUS DOCUMENTATIONS WOULD POINT TO THE VESSEL'S LIABILITY AS THERE IS, IN THIS INSTANT CASE, AN OVERWHELMING DOCUMENTARY EVIDENCE TO PROVE THAT THE DAMAGE IN QUESTION WERE SUSTAINED WHEN THE SHIPMENT WAS IN THE CUSTODY OF THE VESSEL.

4. THE HONORABLE COURT OF APPEALS ERRED WHEN IT ADJUDGED HEREIN DEFENDANT LIABLE DUE TO [THE] FACT THAT THE TURN OVER SURVEY OF BAD ORDER CARGOES (TOSBOC) WAS PREPARED ONLY AFTER THE COMPLETION OF THE DISCHARGING OPERATIONS OR ON NOVEMBER 28, 1995. THUS, CONCLUDING THAT DAMAGE TO THE CARGOES WAS DUE TO THE IMPROPER HANDLING THEREOF BY ATI STEVEDORES.

5. THE HONORABLE COURT OF APPEALS ERRED IN NOT TAKING JUDICIAL NOTICE OF THE CONTRACT FOR CARGO HANDLING SERVICES BETWEEN PPA AND ATI AND APPLYING THE PERTINENT PROVISIONS THEREOF AS REGARDS ATI'S LIABILITY.[29]

In sum, the issues are: (1) whether the non-presentation of the insurance contract or policy is fatal to respondent's cause of action; (2) whether the proximate cause of the damage/loss to the shipment was the negligence of petitioner's stevedores; and (3) whether the court can take judicial notice of the Management Contract between

petitioner and the Philippine Ports Authority (PPA) in determining petitioner's liability.

Petitioner's Arguments

Petitioner contends that respondent has no cause of action because it failed to present the insurance contract or policy covering the subject shipment.[30] Petitioner argues that the Subrogation Receipt presented by respondent is not sufficient to prove that the subject shipment was insured and that respondent was validly subrogated to the rights of the consignee.[31] Thus, petitioner submits that without proof of a valid subrogation, respondent is not entitled to any reimbursement.[32]

Petitioner likewise puts in issue the finding of the RTC, which was affirmed by the CA, that the proximate cause of the damage/loss to the shipment was the negligence of petitioner's stevedores.[33] Petitioner avers that such finding is contrary to the documentary evidence, *i.e.*, the TOSBOC, the Request for Bad Order Survey (RESBOC) and the Report of Survey.[34] According to petitioner, these documents prove that it received the subject shipment in bad order condition and that no additional damage was sustained by the subject shipment under its custody.[35] Petitioner asserts that although the TOSBOC was prepared only after all the bags were unloaded by petitioner's stevedores, this does not mean that the damage/loss was caused by its stevedores.[36]

Petitioner also claims that the amount of damages should not be more than P5,000.00, pursuant to its Management Contract for cargo handling services with the PPA.[37] Petitioner contends that the CA should have taken judicial notice of the said contract since it is an official act of an executive department subject to judicial cognizance.[38]

Respondent's Arguments

Respondent, on the other hand, argues that the non-presentation of the insurance contract or policy was not raised in the trial court. Thus, it cannot be raised for the first time on appeal.[39] Respondent likewise contends that under prevailing jurisprudence, presentation of the insurance policy is not indispensable.[40] Moreover, with or without the insurance contract or policy, respondent claims that it should be allowed to recover under Article 1236[41] of the Civil Code.[42] Respondent further avers that "the right of subrogation has its roots in equity - it is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay."[43]

Respondent likewise maintains that the RTC and the CA correctly found that the damage/loss sustained by the subject shipment was caused by the negligent acts of petitioner's stevedores.[44] Such factual findings of the RTC, affirmed by the CA, are conclusive and should no longer be disturbed.[45] In fact, under Section 1[46] of Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*.[47]

As to the Management Contract for cargo handling services, respondent contends that this is outside the operation of judicial notice.[48] And even if it is not, petitioner's liability cannot be limited by it since it is a contract of adhesion.[49]

Our Ruling

The petition is bereft of merit.

Non-presentation of the insurance contract or policy is not fatal in the instant case

Petitioner claims that respondent's non-presentation of the insurance contract or policy between the respondent and the consignee is fatal to its cause of action.

We do not agree.

First of all, this was never raised as an issue before the RTC. In fact, it is not among the issues agreed upon by the parties to be resolved during the pre-trial.[50] As we have said, "the determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal."[51] Thus, "[t]he parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. x x x The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same."[52]

Neither was this issue raised on appeal.[53] Basic is the rule that "issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process."[54]

Besides, non-presentation of the insurance contract or policy is not

necessarily fatal.[55] In *Delsan Transport Lines, Inc. v. Court of Appeals,*[56] we ruled that:

> Anent the second issue, it is our view and so hold that **the presentation in evidence of the marine insurance policy is not indispensable** in this case **before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, is sufficient to establish not only the relationship of herein private respondent as insurer and Caltex, as the assured shipper of the lost cargo of industrial fuel oil, but also the amount paid to settle the insurance claim. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.**
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> The presentation of the insurance policy was necessary in the case of