

FIRST DIVISION

[G.R. NO. 155824, January 31, 2007]

GILLAMAC'S MARKETING, INC., PETITIONER,-VS.- ABOITIZ SHIPPING CORPORATION AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

CORONA, J.

At bar is a special civil action for certiorari under Rule 65 of the Rules of Court seeking the reversal of the Court of Appeals (CA) resolutions in CA-G.R. CV No. 73252^[1] dated February 15, 2002 and August 22, 2002, respectively.

The facts follow.

Petitioner Gillamac's Marketing, Inc. operates an appliance store in Ormoc City. On March 30, 1995, it sent assorted appliance units on board the "MV Elcano," a commercial vessel owned and operated by private respondent Aboitiz Shipping Corporation. The bill of lading issued by the latter stated that the appliances were worth P740,833 and they were to be delivered to petitioner's Cavite branch within a week. However, it was only after nine months that private respondent delivered them. Worse, they were delivered in bad condition. Petitioner refused to accept delivery and instead demanded payment of the shipment's value.

When the parties failed to settle amicably, petitioner filed in the Regional Trial Court (RTC) of Cebu City, Branch 9, a complaint for collection of sum of money. Petitioner claimed that the damage to the appliance units was caused by private respondent's failure to exercise extraordinary diligence. It sought the following reliefs, namely:

- 1) P740,833 as actual value of the damaged appliance units;
- 2) P16,660.33 as freightage;
- 3) P444,499 as unrealized income from the supposed sale of the units and;
- 4) P15,000 as attorney's fees.^[2]

Private respondent countered that petitioner's unsuitable packaging of the appliance units caused the damage. It added that, if at all it was liable, its liability was limited only to the actual value of the goods as appearing on the bill of lading.^[3]

After trial, the court *a quo* ruled in favor of petitioner. It held:

...From the evidence adduced by [petitioner], the Court is convinced that [private respondent] did not exercise extraordinary diligence in taking care of [petitioner's cargoes] as required by law[;] [private respondent] being a common carrier...[F]urther, [private respondent] incurred gross delay in the delivery of the cargoes of [petitioner]...

The Court is inclined to grant the other damages prayed for by [petitioner] in its complaint, although not in the amount prayed for. For instance, with respect to the unearned income fixed by [petitioner] at 60% of the value of the cargo or the amount of P444,499.00 is found by the Court to be too speculative aside from being too high. The Court is inclined to grant a mark up of only 15% of [petitioner's] principal by way of unearned income. The attorney's fees of 25% of [petitioner's] principal claim is likewise found by the Court to be rather too high even if it is contingent. The Court is inclined to allow 10% thereof..

The Court takes note of the fact that the parties stipulated that the total price of the units shipped is P740,833.00

xxx xxx xxx

WHEREFORE, judgment is hereby rendered in favor of [petitioner], Gillamac's Marketing, Inc. and against [private respondent], Aboitiz Shipping Corporation, ordering [private respondent] to pay to [petitioner] the following]:

- 1) The amount of P740,833 as actual damages;
- 2) The amount equivalent to 15% of the actual damages by way of unearned income;
- 3) Legal interest on the actual damages at 12% per annum to start from the time of the filing of the complaint until the whole amount is fully paid;
- 4) The amount equivalent of 10% of the actual damages by way of attorney's fees and P15,000.00 as litigation expenses.

Plus costs.

SO ORDERED.^[4]

Private respondent appealed the case to the CA. On October 31, 2001, the CA dismissed private respondent's appeal after it failed to pay appeal and docket fees.

^[5] Its counsel, Atty. Jose C. Palma, filed a motion for reconsideration (MR) of the above resolution stating that he took care of his ailing father (who eventually died of kidney cancer) and instead asked a member of his staff to pay the required fees. He later on discovered that the latter failed to pay the fees, hence, he immediately paid them.

The CA did not act on the motion but instead required petitioner (as then appellee in the CA) to file its comment on private respondent's MR. On February 15,