541 Phil. 641

FIRST DIVISION

[G.R. NO. 150403, January 25, 2007]

CEBU SALVAGE CORPORATION, PETITIONER, VS. PHILIPPINE HOME ASSURANCE CORPORATION, RESPONDENT.

D E C I S I O N

CORONA, J.:

May a carrier be held liable for the loss of cargo resulting from the sinking of a ship it does not own?

This is the issue presented for the Court's resolution in this petition for review on certiorari[1] assailing the March 16, 2001 decision[2] and September 17, 2001 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 40473 which in turn affirmed the December 27, 1989 decision[4] of the Regional Trial Court (RTC), Branch 145, Makati, Metro Manila.[5]

The pertinent facts follow.

On November 12, 1984, petitioner Cebu Salvage Corporation (as carrier) and Maria Cristina Chemicals Industries, Inc. [MCCII] (as charterer) entered into a voyage charter[6] wherein petitioner was to load 800 to 1,100 metric tons of silica quartz on board the M/T Espiritu Santo[7] at Ayungon, Negros Occidental for transport to and discharge at Tagoloan, Misamis Oriental to consignee Ferrochrome Phils., Inc.[8]

Pursuant to the contract, on December 23, 1984, petitioner received and loaded 1,100 metric tons of silica quartz on board the M/T Espiritu Santo which left Ayungon for Tagoloan the next day.[9] The shipment never reached its destination, however, because the M/T Espiritu Santo sank in the afternoon of December 24, 1984 off the beach of Opol, Misamis Oriental, resulting in the total loss of the cargo.[10]

MCCII filed a claim for the loss of the shipment with its insurer, respondent Philippine Home Assurance Corporation.[11] Respondent paid the claim in the amount of P211,500 and was subrogated to the rights of MCCII.[12] Thereafter, it filed a case in the RTC[13] against petitioner for reimbursement of the amount it paid MCCII.

After trial, the RTC rendered judgment in favor of respondent. It ordered petitioner to pay respondent P211,500 plus legal interest, attorney's fees equivalent to 25% of the award and costs of suit.

On appeal, the CA affirmed the decision of the RTC. Hence, this petition.

Petitioner and MCCII entered into a "voyage charter," also known as a contract of affreightment wherein the ship was leased for a single voyage for the conveyance of goods, in consideration of the payment of freight.[14] Under a voyage charter, the shipowner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of freight.[15] An owner who retains possession of the ship remains liable as carrier and must answer for loss or non-delivery of the goods received for transportation.[16]

Petitioner argues that the CA erred when it affirmed the RTC finding that the voyage charter it entered into with MCCII was a contract of carriage.[17] It insists that the agreement was merely a contract of hire wherein MCCII hired the vessel from its owner, ALS Timber Enterprises (ALS).[18] Not being the owner of the M/T Espiritu Santo, petitioner did not have control and supervision over the vessel, its master and crew.[19] Thus, it could not be held liable for the loss of the shipment caused by the sinking of a ship it did not own.

We disagree.

Based on the agreement signed by the parties and the testimony of petitioner's operations manager, it is clear that it was a contract of carriage petitioner signed with MCCII. It actively negotiated and solicited MCCII's account, offered its services to ship the silica quartz and proposed to utilize the M/T Espiritu Santo in lieu of the M/T Seebees or the M/T Shirley (as previously agreed upon in the voyage charter) since these vessels had broken down.[20]

There is no dispute that petitioner was a common carrier. At the time of the loss of the cargo, it was engaged in the business of carrying and transporting goods by water, for compensation, and offered its services to the public.[21]

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport according to the circumstances of each case.[22] In the event of loss of the goods, common carriers are responsible, unless they can prove that this was brought about by the causes specified in Article 1734 of the Civil Code.[23] In all other cases, common carriers are presumed to be at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.[24]

Petitioner was the one which contracted with MCCII for the transport of the cargo. It had control over what vessel it would use. All throughout its dealings with MCCII, it represented itself as a common carrier. The fact that it did not own the vessel it decided to use to consummate the contract of carriage did not negate its character and duties as a common carrier. The MCCII (respondent's subrogor) could not be reasonably expected to inquire about the ownership of the vessels which petitioner carrier offered to utilize. As a practical matter, it is very difficult and often impossible for the general public to enforce its rights of action under a contract of carriage if it should be required to know who the actual owner of the vessel is.[25] In fact, in this case, the voyage charter itself denominated petitioner as the "owner/operator" of

the vessel.[26]

Petitioner next contends that if there was a contract of carriage, then it was between MCCII and ALS as evidenced by the bill of lading ALS issued.[27]

Again, we disagree.

The bill of lading was merely a receipt issued by ALS to evidence the fact that the goods had been received for transportation. It was not signed by MCCII, as in fact it was simply signed by the supercargo of ALS.[28] This is consistent with the fact that MCCII did not contract directly with ALS. While it is true that a bill of lading may serve as the contract of carriage between the parties,[29] it cannot prevail over the express provision of the voyage charter that MCCII and petitioner executed:

> [I]n cases where a Bill of Lading has been issued by a carrier covering goods shipped aboard a vessel under a charter party, and the charterer is also the holder of the bill of lading, "the bill of lading operates as the receipt for the goods, and as document of title passing the property of the goods, but not as varying the contract between the charterer and the shipowner." The Bill of Lading becomes, therefore, only a receipt and not the contract of carriage in a charter of the entire vessel, for the contract is the Charter Party, and is the law between the parties who are bound by its terms and condition provided that these are not contrary to law, morals, good customs, public order and public policy. [30]

Finally, petitioner asserts that MCCII should be held liable for its own loss since the voyage charter stipulated that cargo insurance was for the charterer's account.[31] This deserves scant consideration. This simply meant that the charterer would take care of having the goods insured. It could not exculpate the carrier from liability for the breach of its contract of carriage. The law, in fact, prohibits it and condemns it as unjust and contrary to public policy.[32]

To summarize, a contract of carriage of goods was shown to exist; the cargo was loaded on board the vessel; loss or non-delivery of the cargo was proven; and petitioner failed to prove that it exercised extraordinary diligence to prevent such loss or that it was due to some casualty or *force majeure*. The voyage charter here being a contract of affreightment, the carrier was answerable for the loss of the goods received for transportation.[33]

The idea proposed by petitioner is not only preposterous, it is also dangerous. It says that a carrier that enters into a contract of carriage is not liable to the charterer or shipper if it does not own the vessel it chooses to use. MCCII never dealt with ALS and yet petitioner insists that MCCII should sue ALS for reimbursement for its loss. Certainly, to permit a common carrier to escape its responsibility for the goods it agreed to transport (by the expedient of alleging non-ownership of the vessel it employed) would radically derogate from the carrier's duty of extraordinary diligence. It would also open the door to collusion between the carrier and the supposed owner and to the possible shifting of liability from the carrier to one without any financial capability to answer for the resulting damages. [34]