

SECOND DIVISION

[G.R. NO. 140349, June 29, 2005]

SULPICIO LINES, INC. PETITIONER, VS. FIRST LEPANTO-TAISHO INSURANCE CORPORATION, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals reversing the Decision^[2] of the Regional Trial Court (RTC) of Manila, Branch XIV, dismissing the complaint for damages for failure of the plaintiff to prove its case with a preponderance of evidence. Assailed as well is the Resolution^[3] of the Court of Appeals denying petitioner's Motion for Reconsideration.

THE FACTS

On 25 February 1992, Taiyo Yuden Philippines, Inc. (owner of the goods) and Delbros, Inc. (shipper) entered into a contract, evidenced by Bill of Lading No. CEB/SIN-008/92 issued by the latter in favor of the owner of the goods, for Delbros, Inc. to transport a shipment of goods consisting of three (3) wooden crates containing one hundred thirty-six (136) cartons of inductors and LC compound on board the V Singapore V20 from Cebu City to Singapore in favor of the consignee, Taiyo Yuden Singapore Pte, Ltd.

For the carriage of said shipment from Cebu City to Manila, Delbros, Inc. engaged the services of the vessel M/V Philippine Princess, owned and operated by petitioner Sulpicio Lines, Inc. (carrier). The vessel arrived at the North Harbor, Manila, on 24 February 1992.

During the unloading of the shipment, one crate containing forty-two (42) cartons dropped from the cargo hatch to the pier apron. The owner of the goods examined the dropped cargo, and upon an alleged finding that the contents of the crate were no longer usable for their intended purpose, they were rejected as a total loss and returned to Cebu City.

The owner of the goods filed a claim with herein petitioner-carrier for the recovery of the value of the rejected cargo which was refused by the latter. Thereafter, the owner of the goods sought payment from respondent First Lepanto-Taisho Insurance Corporation (insurer) under a marine insurance policy issued to the former. Respondent-insurer paid the claim less thirty-five percent (35%) salvage value or P194, 220.31.

The payment of the insurance claim of the owner of the goods by the respondent-insurer subrogated the latter to whatever right or legal action the owner of the goods may have against Delbros, Inc. and petitioner-carrier, Sulpicio Lines, Inc.

Thus, respondent-insurer then filed claims for reimbursement from Delbros, Inc. and petitioner-carrier Sulpicio Lines, Inc. which were subsequently denied.

On 04 November 1992, respondent-insurer filed a suit for damages docketed as Civil Case No. 92-63337 with the trial court against Delbros, Inc. and herein petitioner-carrier. On 05 February 1993, petitioner-carrier filed its Answer with Counterclaim. Delbros, Inc. filed on 15 April 1993 its Answer with Counterclaim and Cross-claim, alleging that assuming the contents of the crate in question were truly in bad order, fault is with herein petitioner-carrier which was responsible for the unloading of the crates.

Petitioner-carrier filed its Answer to Delbros, Inc.'s cross-claim asserting that it observed extraordinary diligence in the handling, storage and general care of the shipment and that subsequent inspection of the shipment by the Manila Adjusters and Surveyors Company showed that the contents of the third crate that had fallen were found to be in apparent sound condition, except that "2 cello bags each of 50 pieces ferri inductors No. LC FL 112270K-60 (c) were unaccounted for and missing as per packaging list."

After hearing, the trial court dismissed the complaint for damages as well as the counterclaim filed by therein defendant Sulpicio Lines, Inc. and the cross-claim filed by Delbros, Inc. According to the RTC:

The plaintiff has failed to prove its case. The first witness for the plaintiff merely testified about the payment of the claim based on the documents accompanying the claim which were the Packing List, Commercial Invoices, Bill of Lading, Claims Statement, Marine Policies, Survey Report, Marine Risk Note, and the letter to Third Party carriers and shipping lines (Exhibit A-J).

The check was paid and delivered to the assured as evidenced by the check voucher and the subrogation receipt.

On cross-examination by counsel for the Sulpicio Lines, he said that their company paid the claim less 35% salvage value based on the adjuster report. This testimony is hearsay.

The second witness for the plaintiff, Arturo Valdez, testified, among others, that he, together with a co-surveyor and a representative of Sulpicio Lines had conducted a survey of the shipment at the compound of Sulpicio Lines. He prepared a survey report (Exhibits G and G-1) and took a picture of shipment (Exhibit G-2).

On cross-examination, he said that two cartons were torn at the sides with top portion flaps opened and the 41 cartons were properly sealed and in good order conditions. Two cartons were already opened and slightly damaged. He merely looked at them but did not conduct an inspection of the contents. What he was referring to as slightly damaged were the cartons only and not the contents.

From the foregoing evidence, it is apparent that the plaintiff had failed to prove its case with a preponderance of evidence.

....

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered dismissing the Complaint, defendant Sulpicio Lines' counterclaim and defendant Delbros Inc.'s cross-claim.^[4]

A Motion for Reconsideration was then filed by herein respondent-insurer and subsequently denied by the trial court in an Order dated 07 February 1995 on the ground that it did not raise any new issue. Thus, respondent-insurer instituted an appeal with the Court of Appeals, which reversed the dismissal of the complaint by the lower court, the decretal portion of which reads:

WHEREFORE, the appeal is granted. The decision appealed from is REVERSED. Defendants-appellees Delbros and Sulpicio Lines are hereby ordered to pay, jointly and severally, plaintiff-appellant the sum of P194,220.31 representing actual damages, plus legal interest counted from the filing of the complaint until fully paid.^[5]

The appellate court disposed of the issues in the case in this wise:

Furthermore, the evidence shows that one of the three crates fell during the unloading at the pier in Manila. The wooden crate which fell was damaged such that this particular crate was not anymore sent to Singapore and was instead shipped back to Cebu from Manila. Upon examination, it was found that two (2) cartons of the forty-two (42) cartons contained in this crate were externally damaged. They were torn at the sides and their top portions or flaps were open. These facts were admitted by all the parties. Defendant-appellees, however, insist that it was only the external packaging that was damaged, and that there was no actual damage to the goods such that would make them liable to the shipper. This theory is erroneous. When the goods are placed at a common carrier's possession for delivery to a specified consignee, they are in good order and condition and are supposed to be transported and delivered to the consignee in the same state. In the case herein, the goods were received by defendant-appellee Delbros in Cebu properly packed in cardboard cartons and then placed in wooden crates, for delivery to the consignee in Singapore. However, before the shipment reached Singapore (while it was in Manila) one crate and 2 cartons contained therein were not anymore in their original state. They were no longer fit to be sent to Singapore.

....

As We have already found, there is damage suffered by the goods of the shipper. This consists in the destruction of one wooden crate and the tearing of two of the cardboard boxes therein rendering then unfit to be sent to Singapore. Defendant-appellee Sulpicio Lines admits that this crate fell while it was being unloaded at the Manila pier. Falling of the crate was negligence on the part of defendant-appellee Sulpicio Lines under the doctrine of *res ipsa loquitur*. Defendant-appellee Sulpicio Lines cannot exculpate itself from liability because it failed to prove that it

exercised due diligence in the selection and supervision of its employees to prevent the damage.^[6]

On 21 June 1999, herein petitioner-carrier filed its Motion for Reconsideration of the decision of the Court of Appeals which was subsequently denied in a Resolution dated 13 October 1999. Hence, the instant petition.

During the pendency of the appeal before this Court, Delbros, Inc. filed a manifestation stating that its appeal^[7] filed before this Court had been dismissed for being filed out of time and thus the case as against it was declared closed and terminated. As a consequence, it paid in full the amount of the damages awarded by the appellate court to the respondent-insurer. Before this Court, Delbros, Inc. prays for reimbursement, contribution, or indemnity from its co-defendant, herein petitioner-carrier Sulpicio Lines, Inc. for whatever it had paid to respondent-insurer in consonance with the decision of the appellate court declaring both Delbros, Inc. and petitioner-carrier Sulpicio Lines, Inc. jointly and severally liable.

ISSUES

Petitioner-carrier raises the following issues in its petition:

1. *The Court of Appeals erred in not holding that the trial court justly and correctly dismissed the complaint against Sulpicio Lines, which dismissal is already final.*
2. *The Court of Appeals erred in not dismissing the appeal for failure of appellant to comply with the technical requirement of the Rules of Court.*

RULING OF THE COURT

We shall first address the procedural issue raised by petitioner-carrier, Sulpicio Lines, Inc. that the Court of Appeals should have dismissed the appeal for failure of respondent-insurer to attach a copy of the decision of the trial court to its appellant's brief in violation of Rule 44, Section 13(h) of the Rules of Civil Procedure.^[8]

A perusal of the records will show, however, that in a Resolution^[9] dated 13 August 1996, the Court of Appeals required herein respondent-insurer to submit seven (7) copies of the questioned decision within five (5) days from notice. Said Resolution was properly complied with.

As a rule, the right to appeal is a statutory right and one who seeks to avail of that right must comply with the manner required by the pertinent rules for the perfection of an appeal. Nevertheless, this Court has allowed the filing of an appeal upon subsequent compliance with the requirements imposed by law, where a strict application of the technical rules will impair the proper administration of justice. As enunciated by the Court in the case of *Jaro v. Court of Appeals*:^[10]

There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In *Cusi-Hernandez vs. Diaz* [336 SCRA 113] and *Piglas-Kamao vs. National Labor Relations Commission* [357SCRA 640], we