

SECOND DIVISION

[G.R. No. 161833, July 08, 2005]

**PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER,
VS. UNKNOWN OWNER OF THE VESSEL M/V "NATIONAL
HONOR," NATIONAL SHIPPING CORPORATION OF THE
PHILIPPINES AND INTERNATIONAL CONTAINER SERVICES,
INC., RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the Decision^[1] dated January 19, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 57357 which affirmed the Decision dated February 17, 1997 of the Regional Trial Court (RTC) of Manila, Branch 37, in Civil Case No. 95-73338.

The Antecedent

On November 5, 1995, J. Trading Co. Ltd. of Seoul, Korea, loaded a shipment of four units of parts and accessories in the port of Pusan, Korea, on board the vessel M/V "*National Honor*," represented in the Philippines by its agent, National Shipping Corporation of the Philippines (NSCP). The shipment was for delivery to Manila, Philippines. Freight forwarder, Samhwa Inter-Trans Co., Ltd., issued Bill of Lading No. SH9410306^[2] in the name of the shipper consigned to the order of Metropolitan Bank and Trust Company with arrival notice in Manila to ultimate consignee Blue Mono International Company, Incorporated (BMICI), Binondo, Manila.

NSCP, for its part, issued Bill of Lading No. NSGPBSML512565^[3] in the name of the freight forwarder, as shipper, consigned to the order of Stamm International Inc., Makati, Philippines. It is provided therein that:

12. This Bill of Lading shall be *prima facie* evidence of the receipt of the Carrier in apparent good order and condition except as, otherwise, noted of the total number of Containers or other packages or units enumerated overleaf. Proof to the contrary shall be admissible when this Bill of Lading has been transferred to a third party acting in good faith. No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers, or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
13. The shipper, whether principal or agent, represents and warrants that the goods are properly described, marked, secured, and packed and may be handled in ordinary course without damage to

the goods, ship, or property or persons and guarantees the correctness of the particulars, weight or each piece or package and description of the goods and agrees to ascertain and to disclose in writing on shipment, any condition, nature, quality, ingredient or characteristic that may cause damage, injury or detriment to the goods, other property, the ship or to persons, and for the failure to do so the shipper agrees to be liable for and fully indemnify the carrier and hold it harmless in respect of any injury or death of any person and loss or damage to cargo or property. The carrier shall be responsible as to the correctness of any such mark, descriptions or representations.^[4]

The shipment was contained in two wooden crates, namely, Crate No. 1 and Crate No. 2, complete and in good order condition, covered by Commercial Invoice No. YJ-73564 DTD^[5] and a Packing List.^[6] There were no markings on the outer portion of the crates except the name of the consignee.^[7] Crate No. 1 measured 24 cubic meters and weighed 3,620 kgs. It contained the following articles: one (1) unit Lathe Machine complete with parts and accessories; one (1) unit Surface Grinder complete with parts and accessories; and one (1) unit Milling Machine complete with parts and accessories. On the flooring of the wooden crates were three wooden battens placed side by side to support the weight of the cargo. Crate No. 2, on the other hand, measured 10 cubic meters and weighed 2,060 kgs. The Lathe Machine was stuffed in the crate. The shipment had a total invoice value of US\$90,000.00 C&F Manila.^[8] It was insured for P2,547,270.00 with the Philippine Charter Insurance Corporation (PCIC) thru its general agent, Family Insurance and Investment Corporation,^[9] under Marine Risk Note No. 68043 dated October 24, 1994.^[10]

The M/V "*National Honor*" arrived at the Manila International Container Terminal (MICT) on November 14, 1995. The International Container Terminal Services, Incorporated (ICTSI) was furnished with a copy of the crate cargo list and bill of lading, and it knew the contents of the crate.^[11] The following day, the vessel started discharging its cargoes using its winch crane. The crane was operated by Olegario Balsa, a winchman from the ICTSI,^[12] the exclusive arrastre operator of MICT.

Denasto Dauz, Jr., the checker-inspector of the NSCP, along with the crew and the surveyor of the ICTSI, conducted an inspection of the cargo.^[13] They inspected the hatches, checked the cargo and found it in apparent good condition.^[14] Claudio Cansino, the stevedore of the ICTSI, placed two sling cables on each end of Crate No. 1.^[15] No sling cable was fastened on the mid-portion of the crate. In Dauz's experience, this was a normal procedure.^[16] As the crate was being hoisted from the vessel's hatch, the mid-portion of the wooden flooring suddenly snapped in the air, about five feet high from the vessel's twin deck, sending all its contents crashing down hard,^[17] resulting in extensive damage to the shipment.

BMICI's customs broker, JRM Incorporated, took delivery of the cargo in such damaged condition.^[18] Upon receipt of the damaged shipment, BMICI found that the same could no longer be used for the intended purpose. The Mariners'

Adjustment Corporation hired by PCIC conducted a survey and declared that the packing of the shipment was considered insufficient. It ruled out the possibility of taxes due to insufficiency of packing. It opined that three to four pieces of cable or wire rope slings, held in all equal setting, never by-passing the center of the crate, should have been used, considering that the crate contained heavy machinery.^[19]

BMICI subsequently filed separate claims against the NSCP,^[20] the ICTSI,^[21] and its insurer, the PCIC,^[22] for US\$61,500.00. When the other companies denied liability, PCIC paid the claim and was issued a Subrogation Receipt^[23] for P1,740,634.50.

On March 22, 1995, PCIC, as subrogee, filed with the RTC of Manila, Branch 35, a Complaint for Damages^[24] against the "Unknown owner of the vessel M/V National Honor," NSCP and ICTSI, as defendants.

PCIC alleged that the loss was due to the fault and negligence of the defendants. It prayed, among others —

WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered ordering defendants to pay plaintiff, jointly or in the alternative, the following:

1. Actual damages in the amount of P1,740,634.50 plus legal interest at the time of the filing of this complaint until fully paid;
2. Attorney's fees in the amount of P100,000.00;
3. Cost of suit.^[25]

ICTSI, for its part, filed its Answer with Counterclaim and Cross-claim against its co-defendant NSCP, claiming that the loss/damage of the shipment was caused exclusively by the defective material of the wooden battens of the shipment, insufficient packing or acts of the shipper.

At the trial, Anthony Abarquez, the safety inspector of ICTSI, testified that the wooden battens placed on the wooden flooring of the crate was of good material but was not strong enough to support the weight of the machines inside the crate. He averred that most stevedores did not know how to read and write; hence, he placed the sling cables only on those portions of the crate where the arrow signs were placed, as in the case of fragile cargo. He said that unless otherwise indicated by arrow signs, the ICTSI used only two cable slings on each side of the crate and would not place a sling cable in the mid-section.^[26] He declared that the crate fell from the cranes because the wooden batten in the mid-portion was broken as it was being lifted.^[27] He concluded that the loss/damage was caused by the failure of the shipper or its packer to place wooden battens of strong materials under the flooring of the crate, and to place a sign in its mid-term section where the sling cables would be placed.

The ICTSI adduced in evidence the report of the R.J. Del Pan & Co., Inc. that the damage to the cargo could be attributed to insufficient packing and unbalanced weight distribution of the cargo inside the crate as evidenced by the types and shapes of items found.^[28]

The trial court rendered judgment for PCIC and ordered the complaint dismissed, thus:

WHEREFORE, the complaint of the plaintiff, and the respective counterclaims of the two defendants are dismissed, with costs against the plaintiff.

SO ORDERED.^[29]

According to the trial court, the loss of the shipment contained in Crate No. 1 was due to the internal defect and weakness of the materials used in the fabrication of the crates. The middle wooden batten had a hole (*bukong-bukong*). The trial court rejected the certification^[30] of the shipper, stating that the shipment was properly packed and secured, as mere hearsay and devoid of any evidentiary weight, the affiant not having testified.

Not satisfied, PCIC appealed^[31] to the CA which rendered judgment on January 19, 2004 affirming *in toto* the appealed decision, with this *fallo* —

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 35, dated February 17, 1997, is AFFIRMED.

SO ORDERED.^[32]

The appellate court held, *inter alia*, that it was bound by the finding of facts of the RTC, especially so where the evidence in support thereof is more than substantial. It ratiocinated that the loss of the shipment was due to an excepted cause — "[t]he character of the goods or defects in the packing or in the containers" and the failure of the shipper to indicate signs to notify the stevedores that extra care should be employed in handling the shipment.^[33] It blamed the shipper for its failure to use materials of stronger quality to support the heavy machines and to indicate an arrow in the middle portion of the cargo where additional slings should be attached.^[34] The CA concluded that common carriers are not absolute insurers against all risks in the transport of the goods.^[35]

Hence, this petition by the PCIC, where it alleges that:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN NOT HOLDING THAT RESPONDENT COMMON CARRIER IS LIABLE FOR THE DAMAGE SUSTAINED BY THE SHIPMENT IN THE POSSESSION OF THE ARRASTRE OPERATOR.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN NOT APPLYING THE STATUTORY PRESUMPTION OF FAULT AND NEGLIGENCE IN THE CASE AT BAR.

III.

THE COURT OF APPEALS GROSSLY MISCOMPREHENDED THE FACTS IN FINDING THAT THE DAMAGE SUSTAINED BY THE [SHIPMENT] WAS DUE TO ITS DEFECTIVE PACKING AND NOT TO THE FAULT AND NEGLIGENCE OF THE RESPONDENTS.^[36]

The petitioner asserts that the mere proof of receipt of the shipment by the common carrier (to the carrier) in good order, and their arrival at the place of destination in bad order makes out a *prima facie* case against it; in such case, it is liable for the loss or damage to the cargo absent satisfactory explanation given by the carrier as to the exercise of extraordinary diligence. The petitioner avers that the shipment was sufficiently packed in wooden boxes, as shown by the fact that it was accepted on board the vessel and arrived in Manila safely. It emphasizes that the respondents did not contest the contents of the bill of lading, and that the respondents knew that the manner and condition of the packing of the cargo was normal and barren of defects. It maintains that it behooved the respondent ICTSI to place three to four cables or wire slings in equal settings, including the center portion of the crate to prevent damage to the cargo:

. . . [A] simple look at the manifesto of the cargo and the bill of lading would have alerted respondents of the nature of the cargo consisting of thick and heavy machinery. Extra-care should have been made and extended in the discharge of the subject shipment. Had the respondent only bothered to check the list of its contents, they would have been nervous enough to place additional slings and cables to support those massive machines, which were composed almost entirely of thick steel, clearly intended for heavy industries. As indicated in the list, the boxes contained one lat[h]e machine, one milling machine and one grinding machine-all coming with complete parts and accessories. Yet, not one among the respondents were cautious enough. Here lies the utter failure of the respondents to observed extraordinary diligence in the handling of the cargo in their custody and possession, which the Court of Appeals should have readily observed in its appreciation of the pertinent facts.^[37]

The petitioner posits that the loss/damage was caused by the mishandling of the shipment by therein respondent ICTSI, the arrastre operator, and not by its negligence.

The petitioner insists that the respondents did not observe extraordinary diligence in the care of the goods. It argues that in the performance of its obligations, the respondent ICTSI should observe the same degree of diligence as that required of a common carrier under the New Civil Code of the Philippines. Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,^[38] it posits that respondents are liable in *solidum* to it, inasmuch as both are charged with the obligation to deliver the goods in good condition to its consignee, BMICI.

Respondent NSCP counters that if ever respondent ICTSI is adjudged liable, it is not solidarily liable with it. It further avers that the "carrier cannot discharge directly to the consignee because cargo discharging is the monopoly of the arrastre." Liability, therefore, falls solely upon the shoulder of respondent ICTSI, inasmuch as the discharging of cargoes from the vessel was its exclusive responsibility. Besides, the petitioner is raising questions of facts, improper in a petition for review on *certiorari*.