

## SECOND DIVISION

[ G.R. No. 152158, February 07, 2003 ]

**WALLEM PHILIPPINES SHIPPING INC. AND SEACOAST  
MARITIME CORPORATION, PETITIONERS, VS. PRUDENTIAL  
GUARANTEE & ASSURANCE INC. AND COURT OF APPEALS,  
RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision, dated January 31, 2001, and resolution, dated February 14, 2002, of the Court of Appeals,<sup>[1]</sup> which reversed the decision, dated September 21, 1995, of the Regional Trial Court, Branch 134, Makati City in Civil Case No. 91-1053, entitled "Prudential Guarantee & Assurance Inc. v. Wallem Philippines Shipping Inc. and Seacoast Maritime Corporation."

The background of this case is as follows:

On April 17, 1991, private respondent Prudential Guarantee & Assurance Inc. (Prudential) brought an action for damages and attorney's fees against Wallem Philippines Shipping, Inc. (Wallem) and Seacoast Maritime Corporation (Seacoast). The complaint was filed with the Regional Trial Court of Makati City, where it was docketed as Civil Case No. 91-1053, and assigned to Branch 134 thereof. Private respondent Prudential sought the recovery of the sum of P995,677.00, representing the amount it had paid to its insured, General Milling Corporation (GMC), for alleged shortage incurred in the shipment of "Indian Toasted Soyabean Extraction Meal, Yellow," with 6% legal interest thereon from the date of filing of the complaint up to and until the same is fully paid, and 25% of the claim as attorney's fees.<sup>[2]</sup>

In its answer, Wallem denied liability for damage or loss to the shipment. It was alleged that the complaint did not state a cause of action against it; that Prudential, Wallem, and Seacoast were not the real parties-in-interest; that the action had prescribed; that the damage or loss, if any, was due to the inherent vice or defect of the goods, or to perils, dangers, and accidents of the sea, for which Wallem was not liable; that the damage or loss to the shipment was due to an act or omission of Prudential or the owner of the goods or their representative, or to pre-shipment damage, for which Wallem was not liable; that the shipment was carried on a "shipper's description of packages and contents," "said to weigh," "in bulk," and "free out" basis; that based on the provisions of the bill of lading, Prudential had the burden of proving the actual quantity of cargo loaded at the loading port; that Prudential had no contract with Wallem, which acted as a mere agent of a disclosed principal; that Wallem had observed the diligence required under the law in the care of the shipment; that the shipment was discharged in the same quantity as when it was loaded at the port of loading; that any loss incurred during and after discharge from the vessel was no longer the responsibility of the carrier; that Wallem could

not be made liable for the loss or damage, if any, of the goods which happened whilst the same were not in its possession and control; that Prudential's claim was excessive and exaggerated; that Wallem's liability, if any, should not exceed the invoice value of the alleged loss or the applicable package limitation, whichever was lower, or the limit of liability set in the bill of lading.

Wallem filed a compulsory counterclaim against Prudential as the complaint was allegedly a clearly unfounded civil action. Wallem filed a crossclaim against its co-defendant Seacoast, in the event that it was made liable to Prudential.<sup>[3]</sup> Upon motion of Prudential's counsel, defendant Seacoast was declared in default.<sup>[4]</sup> After termination of the pre-trial conference, this case was tried on the merits.

To prove its claim for indemnity, Prudential presented two witnesses: Josephine Suarez and Alfredo Cunanan.

Josephine Suarez, the claims processor of Prudential, testified that in March 1991 she received a claim from GMC in connection with its shipment which arrived on board M/V *Gao Yang* (Exh. A). Upon receipt of the claim and its supporting papers, she referred the same to Tan-Gatue Adjustment Company, Inc. (Tan-Gatue), which submitted a report (Exhs. G to G-8). Upon her recommendation, Prudential paid GMC the sum of P995,677.09, as evidenced by receipts and a voucher (Exhs. H, I, and K). GMC then issued a subrogation receipt to Prudential (Exh. J), which in turn sent a demand letter to Wallem (Exh. L).

On cross-examination, Ms. Suarez admitted that she had no participation in the preparation of the documents (Exhs. A to G) submitted to her, and that she had based her recommendation to pay GMC's claim on said documents. She also admitted that she did not do anything to verify the genuineness of Bill of Lading BEDI/1(Exh. B) and Commercial Invoice No. 1401 (Exh. C). She said that GMC had been paid 20% more than its alleged loss.<sup>[5]</sup>

Alfredo Cunanan, senior cargo surveyor of Tan-Gatue declared that he conducted in March 1990 a survey of the shipment on board M/V *Gao Yang* at GMC's warehouse at Tabangao, Batangas. Cunanan was present during the unloading of the shipment. He saw the cargo discharged from the vessel by the use of a suction device, wherein the cargo passed into a conveyor and weighed unto GMC's automatic scale. The quantity recorded on GMC's scale was thereafter compared with that indicated in the bill of lading. At that point a shortage was discovered. The survey report prepared by Cunanan stated in pertinent part:

#### RECAPITULATION

1)	Shipment Per Stowage Plan	-	4,417.000	M/Tons
	Outturn Per Consignee's Scale	-	<u>4,121.318</u>	M/Tons
	Shortage	-	<u>295.682</u>	M/Tons
2)	Shipment Per Bill of Lading	-	4,415.350	M/Tons
	Outturn Per Consignee's Scale	-	<u>4,121.318</u>	M/Tons

Shortage

-

294.032  
M/Tons<sup>[6]</sup>

On cross-examination, Cunanan testified that no cargo was left on the M/V *Gao Yang* after the discharging process. He admitted that his basis for determining the weight of the shipment prior to unloading was the Certificate of Weight (Exh. F-3) furnished by GMC, as to which preparation he did not participate. He further explained that, as per the Certificate of Weight, the cargo had been packed in bags at the port of origin. The bags were then conveyed to midstream in barges alongside the vessel and hauled up onto the steamer. The bags were later cut open at their mouths and the contents emptied onto the ship's storage areas, specifically Hatch Nos. One Lower Hold, One Tween Deck, Five Lower Hold, Five Tween Deck, Two Tween Deck, and Four Tween Deck.<sup>[7]</sup> He also admitted that the lack of a draft survey due to the absence of a surveyor appointed by Wallem was based merely on information gathered from one of his surveyors.

In the course of the discharging and weighing operations, one of Tan-Gatue's assigned surveyors registered a protest as there were blurred notations on GMC's weighing scale. They found that the scale had not been properly calibrated and that it showed a discrepancy of approximately 130 metric tons. Upon recommendation of Tan-Gatue, a reweighing was done on April 26, 1990 with the use of another scale. Wallem's representative was not notified of this reweighing, which was made by loading the cargo on the truck for delivery to consignee's receivers. Reloading on the trucks was also made through the use of a suction tube. An alleged shortage of 164.4 metric tons was found, which was significantly lower than the shortage stated in the recapitulation above.<sup>[8]</sup>

Part of Cunanan's report contained an opinion stating that the shortage may be attributed to the spillage incurred during the transit and loading of the shipment to the vessel at the port of origin for the following reasons: (1) the said shipment was originally packed in bags prior to loading to carrier vessel; (2) the weighing of the said shipment made prior to its loading to the carrier vessel became the basis of the quantity stated in the bill of lading; and (3) the bagged shipment, after weighing over the weighbridge scale, was conveyed to midstream in barges alongside the vessel and hauled up onto the steamer, after which the mouths of the bags were cut open and the contents emptied into ship hatches.<sup>[9]</sup>

After weighing in Batangas, the bagged shipment was delivered to GMC's warehouse in Bo. Ugong, Pasig, Metro Manila, and to Filstream and Universal Robina Corp., as direct receivers of GMC.<sup>[10]</sup> Because of the shortage, GMC filed a claim against Prudential, being its insurer.

For its part, petitioner Wallem, as defendant below, presented three witnesses: Romualdo De Belen, manager of its documentations department, Rio Puriran, marine cargo surveyor of Oceanica Cargo Marine Surveyor (Oceanica), and Edilberto Mendoza, Wallem's operations manager.

Romualdo De Belen testified that he was the claims supervisor for Wallem from January 1991 to August 1991. As such, he was tasked to gather all documents of a claim and to submit them to the Protective and Indemnity Club (P&I), which in turn handles all claims pertaining to a vessel which is a member thereof. In connection

with the claim subject matter of this case, De Belen collected the pertinent documents, like the bill of lading (Exh. 1), the general statement of facts (Exhs. 2 and 2-A), the survey certificate (Exhs. 3 and 3-A), and the inward foreign manifest (Exh. 4).<sup>[11]</sup>

After his investigation, he found that the weight stated in the bill of lading was less than what was actually discharged. The bill of lading stated that the weight of the cargo was 4,415 metric tons, but the actual weight discharged was 4,418 metric tons. The overage was based on the bill of lading, which contained the weight as declared by the shipper, and the survey certificate, which contained the weight of the total cargo discharged representing the difference between the initial and final displacement of the vessel.<sup>[12]</sup>

De Belen noted that the bulk cargo declared in the bill of lading was "said to weigh" 4,415.35 metric tons. He explained that the phrase "said to weigh" means that nobody really knows the actual weight of the cargo; the weight of the cargo written on the bill of lading and on the manifest being based only on the declaration of the shipper.<sup>[13]</sup>

On cross-examination, De Belen admitted that he collected the documents respecting GMC's claim only upon receipt of the summons in this case. He also stated that he based his finding of overage on the survey certificate (Exh. 3).<sup>[14]</sup>

Rio Puriran, an employee of Oceanica, described the procedure in preparing the draft survey which would become the basis for the survey certificate. He testified that the draft mark is taken and the known cargo weight is sounded so that the displacement of the ship may be computed and the weight of the cargo unloaded known. He identified the signatures of Cornelio Damaso, Oceanica's operations manager, and Arnel Plaza, the surveyor assigned to the vessel on the survey certificate (Exh. 3-A). On cross-examination, he admitted that he had no participation in conducting the survey covered by the survey certificate marked as Exhibits 3 to 3-A.<sup>[15]</sup>

Edilberto Mendoza, Wallem's operations manager, declared that a representative was sent to oversee the discharging of its cargo when the M/V *Gao Yang* arrived in Batangas. He tendered a Notice of Readiness (Exh. 6) to GMC and assigned Oceanica to conduct a draft survey and issue a survey certificate (Exhs. 3 to 3-B). The unloading of the cargo was undertaken by GMC per the "free out" notation on the bill of lading (Exh. 1-A). Mendoza stated that "free out" means that the vessel is free from any expenses and discharging operations for the cargo. It is the cargo receiver who has the responsibility to get their cargo. After discharge of the cargo, Wallem's representative prepared a general statement of facts (Exhs. 5 and 5-A).<sup>[16]</sup>

On cross-examination, Mendoza admitted that he was not present when the cargo was discharged from the vessel and that he had no participation in the preparation of the general statement of facts (Exhs. 5 to 5-A) and the notice of readiness (Exh. 6).<sup>[17]</sup>

The trial court resolved whether there was indeed a shortage in the shipment and

whether Wallem could be held liable for the shortage.<sup>[18]</sup> The trial court ruled that private respondent Prudential failed to prove by clear, convincing, and competent evidence that there was a shortage in the shipment. The trial court said that private respondent Prudential failed to establish by competent evidence the genuineness and due execution of the bill of lading and, therefore, the true and exact weight of the shipment when it was loaded onto the vessel. Hence, there was no way by which a shortage could be determined. The trial court ruled that the shortage, if any, could only have been incurred either before the loading of the shipment, as stated in the final report (Exhs. G to G-8), or after the unloading of the shipment from the vessel, the latter instance being admitted by Prudential's own witness, Mr. Alfredo Cunanan. Accordingly, the trial court dismissed both the complaint and the counterclaim.

On appeal, the Court of Appeals reversed. The dispositive portion of its decision reads:

WHEREFORE, judgment is hereby rendered REVERSING the appealed decision. A new one is entered ordering defendants- appellees Wallem and Seacoast to pay, jointly and severally, plaintiff-appellant Prudential the amount of P796,541.672, plus 6% interest from April 17, 1991, date of filing of the complaint, until fully paid, plus costs of the suit.

SO ORDERED.<sup>[19]</sup>

The Court of Appeals ruled that the bill of lading was prima facie evidence of the goods therein described, both notations "said to contain" and "weight unknown" on the bill of lading being inapplicable to shipments in bulk. Contrary to the opinion of the trial court, it was ruled by the appeals court that losses were incurred during the loading operations, and that these losses were the liability of the carrier. Finally, the Court of Appeals held that the principle of indemnity is violated if the insured is paid a benefit more than the loss incurred in the light of the admission of a 20% mark-up on the indemnity paid to GMC.

Petitioner Wallem moved for reconsideration, but its motion was denied.<sup>[20]</sup> Hence, this appeal.

Petitioner contends that the Court of Appeals erred-

I        WHEN IT HELD THAT THE QUANTITY OF THE CARGO REFLECTED IN THE BILL OF LADING IS CONCLUSIVE AS TO THE ACTUAL CARGO OF THE CONSIGNEE NOTWITHSTANDING THE FACT THAT SAID CARGO WAS SHIPPED ON A "SAID TO WEIGH" BASIS. SAID DECISION IS CONTRARY TO ESTABLISHED PRINCIPLES IN MARITIME LAW AND SEC. 11 OF THE CARRIAGE OF GOODS BY SEAS ACT WHERE IT IS STATED THAT:

When under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight as ascertained or accepted is stated in the bill of lading, then notwithstanding anything in this Act, the bill of lading shall not be deemed prima facie evidence against the carrier of