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SECOND DIVISION

[G.R. No. 136960, December 08, 2003]

IRON BULK SHIPPING PHILIPPINES, CO., LTD., PETITIONER, VS. REMINGTON INDUSTRIAL SALES CORPORATION, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the August 28, 1998 Decision[1] and the December 24, 1998 Resolution of the Court of Appeals in CA-G.R. CV No. 49725,[2] affirming *in toto* the decision of the Regional Trial Court of Manila (Branch 9).

The factual background of the case is summarized by the appellate court, thus:

> Sometime in the latter part of 1991, plaintiff Remington Industrial Sales Corporation (hereafter Remington for short) ordered from defendant Wangs Company, Inc. (hereafter Wangs for short) 194 packages of hot rolled steel sheets, weighing 686.565 metric tons, with a total value of $219,380.00, then equivalent to P6,469,759.17. Wangs forwarded the order to its supplier, Burwill (Agencies) Ltd., in Hongkong. On or about November 26, 1991, the 194 packages were loaded on board the vessel MV `Indian Reliance' at the Port of Gdynia, Poland, for transportation to the Philippines, under Bill of Lading No. 27 (Exh. `C'). The vessel's owner/charterer is represented in the Philippines by defendant Iron Bulk Shipping Phils., Inc. (hereafter Iron Bulk for short).
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> Remington had the cargo insured for P6,469,759.17 during the voyage by Marine Insurance Policy No. 7741 issued by defendant Pioneer Asia Insurance Corporation (hereafter Pioneer for short).
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> On or about January 3, 1992, the MV `Indian Reliance' arrived in the Port of Manila, and the 194 packages of hot rolled steel sheets were discharged from the vessel. The cargo was inspected twice by SGS Far East Ltd. and found to be wet (with slight trace of salt) and rusty, extending from 50% to 80% of each plate. Plaintiff filed formal claims for loss amounting to P544,875.17 with Pioneer, Iron Bulk, Manila Port Services, Inc. (MPS) and ESE Brokerage Corporation (ESE). No one honored such claims.
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> Thus, plaintiff filed an action for collection, plus attorney's fees, against Wangs, Pioneer and Iron Bulk. . . ."[3]

and affirmed *in toto* the following findings of the trial court, on February 1, 1995, to wit:

> ...

The evidence on record shows that the direct and immediate cause of the rusting of the goods imported by the plaintiff was the water found inside the cargo hold of M/V `Indian Reliance' wherein those goods were stored during the voyage, particularly the water found on the surface of the merchandise and on the floor of the vessel hatch. And even at the time the cargoes were being unloaded by crane at the Pier of Manila, Iron Bulk's witnesses noticed that water was dripping from the cargoes. (TSN dated July 20, 1993, pp. 13-14; TSN dated May 30, 1994, pp. 8-9, 14, 24-25; TSN dated June 3, 1994, pp. 31-32; TSN dated July 14, 1994, pp. 10-11).

SGS Far East Limited, an inspection agency hired by defendant Wangs, issued Certificate of Inspection and Analysis No 6401/35071 stating the following findings:

> Results of tests indicated that a very slight trace of salt was present in the sample as confirmed by the test of Sodium. The results however does not necessarily indicate that the rusty condition of the material was caused by seawater.

Tan-Gatue Adjustment Co., Inc., a claims adjustment firm hired by defendant Pioneer, submitted a Report (Exh. 10-Pioneer) dated February 20, 1992 to Pioneer which pertinently reads as follows:

> All the above 3,971 sheets were heavily rusty at sides/ends/edges/surfaces. Pieces of cotton were rubbed by us on different rusty steel sheets and submitted to Precision Analytical Services, Inc. to determine the cause of wetting. Result thereof as per Laboratory Report No. 077-92 of this firm showed that: `The sample was wetted/contaminated by fresh water.

After considering the foregoing test results and the other evidence on record, the Court found no clear and sufficient proof showing that the water which stayed in the cargo hold of the vessel and which contaminated the merchandise was seawater. The Court, however, is convinced that the subject goods were exposed to salt conditions as evidenced by the presence of about 17% Sodium on the rust sample tested by SGS.

As to the source of the water found in the cargo hold, there is also no concrete and competent evidence on record establishing that such water leaked from the pipe installed in Hatch No. 1 of M/V `Indian Reliance', as claimed by plaintiff. Indeed, the plaintiff based such claim only from information it allegedly received from its supplier, as stated in its letter to defendant Iron Bulk dated March 28, 1992 (Exh. K-3). And no one took the witness stand to confirm or establish the alleged leakage.

Nevertheless, since Iron Bulk's own evidence shows that there was water inside the cargo hold of the vessel and that the goods stored therein were wet and full of rust, without sufficient explanation on its part as to when and how water found its way into the vessel holds, the Court finds and so holds that Iron Bulk failed to exercise the extraordinary diligence required by law in the handling and transporting of the goods.

. . . . .

Iron Bulk did not even exercise due diligence because admittedly, water was dripping from the cargoes at the time they were being discharged from the vessel. Had Iron Bulk done so, it could have discovered by ordinary inspection that the cargo holds and the cargoes themselves were affected by water and it could have provided some remedial measures to prevent or minimize the damage to the cargoes. But it did not, showing its lack of care and diligence over the goods.

Besides, since the goods were undoubtedly damaged, and as Iron Bulk failed to establish by any clear and convincing evidence any of the exempting causes provided for in Article 1734 of the Civil Code, it is presumed to have been at fault or to have acted negligently.

. . . . .

WHEREFORE, the Court finding preponderance of evidence for the plaintiff hereby renders judgment in favor of it and against all the defendants herein as follows:

1. Ordering defendant Pioneer Asia Insurance Corporation to pay plaintiff the following amounts:

   a) P544,875.17 representing the loss allowance for the goods insured, plus interest at the legal rate (6% p.a.) reckoned from the time of filing of this case until full payment is made;

   b) P50,000.00 for and as attorney's fees; and

   c) the cost of suit.

2. Ordering defendant Iron Bulk Shipping Co. Inc. immediately upon payment by defendant Pioneer of the foregoing award to the plaintiff, to reimburse defendant Pioneer the total amount it paid to the plaintiff, in respect to its right of subrogation.

3. Denying the counterclaims of all the defendants and the cross-claim of defendant Wangs Company, Incorporated and Iron Bulk Shipping Co., Inc. for lack of merit.

4. Granting the cross-claim of defendant Pioneer Asia Insurance Corporation against defendant Iron Bulk by virtue of its right of subrogation.

5. Dismissing the case against defendant Wangs Company, Inc.

SO ORDERED.[4]

Only Iron Bulk filed the present petition raising the following Assignment of Errors:

FIRSTLY, the Court of Appeals erred in its insistent reliance on the pro forma Bills of Lading to establish the condition of the cargo upon loading;

SECONDLY, the Court of Appeals erred in not exculpating petitioner since the cargo was not contaminated during the time the same was in possession of

> the vessel, as evidenced by the express finding of the lower court that the contamination and rusting was chemically established to have been caused by fresh water;
>
> THRIDLY, the Court of Appeals erred in making a sweeping finding that the petitioner as carrier failed to exercise the requisite diligence under the law, which is contrary to what is demonstrated by the evidence adduced; and
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> FINALLY, the Court of Appeals erred in affirming the amount of damages adjudicated by the Court below, which is at best speculative and not supported by damages.[5]

The general rule is that only questions of law are entertained in petitions for review by certiorari under Rule 45 of the Rules of Court. The trial court's findings of fact, which the Court of Appeals affirmed, are generally binding and conclusive upon this court.[6] There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[7] Petitioner failed to demonstrate that its petition falls under any one of the above exceptions, except as to damages which will be discussed forthwith.

Anent the first assigned error: That the Court of Appeals erred in relying on the pro forma Bills of Lading to establish the condition of the cargo upon landing.

There is no merit to petitioner's contention that the Bill of Lading covering the subject cargo cannot be relied upon to indicate the condition of the cargo upon loading. It is settled that a bill of lading has a two-fold character. In *Phoenix Assurance Co., Ltd. vs. United States Lines*, we held that:

> [A] bill of lading operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks and condition, quality and value. As a contract, it names the contracting parties, which include the consignee, fixes the route, destination, and freight rate or charges, and stipulates the rights and obligations assumed by the parties.[8]

We find no error in the findings of the appellate court that the questioned bill of lading is a clean bill of lading, i.e., it does not indicate any defect in the goods covered by it, as shown by the notation, "CLEAN ON BOARD"[9] and "Shipped at the Port of Loading in apparent good condition on board the vessel for carriage to Port of Discharge".[10]

Petitioner presented evidence to prove that, contrary to the recitals contained in the subject bill of lading, the cargo therein described as clean on board is actually wet and covered with rust. Indeed, having the nature of a receipt, or an acknowledgement of

the quantity and condition of the goods delivered, the bill of lading, like any other receipts, may be explained, varied or even contradicted.[11] However, we agree with the Court of Appeals that far from contradicting the recitals contained in the said bill, petitioner's own evidence shows that the cargo covered by the subject bill of lading, although it was partially wet and covered with rust was, nevertheless, found to be in a "fair, usually accepted condition" when it was accepted for shipment.[12]

The fact that the issued bill of lading is *pro forma* is of no moment. If the bill of lading is not truly reflective of the true condition of the cargo at the time of loading to the effect that the said cargo was indeed in a damaged state, the carrier could have refused to accept it, or at the least, made a marginal note in the bill of lading indicating the true condition of the merchandise. But it did not. On the contrary, it accepted the subject cargo and even agreed to the issuance of a clean bill of lading without taking any exceptions with respect to the recitals contained therein. Since the carrier failed to annotate in the bill of lading the alleged damaged condition of the cargo when it was loaded, said carrier and the petitioner, as its representative, are bound by the description appearing therein and they are now estopped from denying the contents of the said bill.

Petitioner presented in evidence the Mate's Receipts[13] and a Survey Report[14] to prove the damaged condition of the cargo. However, contrary to the asseveration of petitioner, the Mate's Receipts and the Survey Report which were both dated November 6, 1991, are unreliable evidence of the true condition of the shipment at the time of loading since said receipts and report were issued twenty days prior to loading and before the issuance of the clean bill of lading covering the subject cargo on November 26, 1991. Moreover, while the surveyor, commissioned by the carrier to inspect the subject cargo, found the inspected steel goods to be contaminated with rust he, nonetheless, estimated the merchandise to be in a fair and usually accepted condition.

Anent the second and third assigned errors: That the Court of Appeals erred in not finding that the contamination and rusting was chemically to have been caused by fresh water; and that the appellate court erred in finding that petitioner failed to exercise the requisite diligence under the law.

Petitioner's arguments in support of the assigned errors are not plausible. Even granting, for the sake of argument, that the subject cargo was already in a damaged condition at the time it was accepted for transportation, the carrier is not relieved from its responsibility to exercise due care in handling the merchandise and in employing the necessary precautions to prevent the cargo from further deteriorating. It is settled that the extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for safe carriage and delivery.[15] It requires common carriers to render service with the greatest skill and foresight and to use all reasonable means to ascertain the nature and characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires.[16] Under Article 1742 of the Civil Code, even if the loss, destruction, or deterioration of the goods should be caused, among others, by the character of the goods, the common carrier must exercise due diligence to forestall or lessen the loss. This extraordinary responsibility lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.[17] In the instant