429 Phil. 244

SECOND DIVISION

[G.R. No. 148496, March 19, 2002]

VIRGINES CALVO DOING BUSINESS UNDER THE NAME AND STYLE TRANSORIENT CONTAINER TERMINAL SERVICES, INC., PETITIONER, VS. UCPB GENERAL INSURANCE CO., INC. (FORMERLY ALLIED GUARANTEE INS. CO., INC.) RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review of the decision,[1] dated May 31, 2001, of the Court of Appeals, affirming the decision[2] of the Regional Trial Court, Makati City, Branch 148, which ordered petitioner to pay respondent, as subrogee, the amount of P93,112.00 with legal interest, representing the value of damaged cargo handled by petitioner, 25% thereof as attorney's fees, and the cost of the suit.

The facts are as follows:

Petitioner Virgines Calvo is the owner of Transorient Container Terminal Services, Inc. (TCTSI), a sole proprietorship customs broker. At the time material to this case, petitioner entered into a contract with San Miguel Corporation (SMC) for the transfer of 114 reels of semi-chemical fluting paper and 124 reels of kraft liner board from the Port Area in Manila to SMC's warehouse at the Tabacalera Compound, Romualdez St., Ermita, Manila. The cargo was insured by respondent UCPB General Insurance Co., Inc.

On July 14, 1990, the shipment in question, contained in 30 metal vans, arrived in Manila on board "M/V Hayakawa Maru" and, after 24 hours, were unloaded from the vessel to the custody of the arrastre operator, Manila Port Services, Inc. From July 23 to July 25, 1990, petitioner, pursuant to her contract with SMC, withdrew the cargo from the arrastre operator and delivered it to SMC's warehouse in Ermita, Manila. On July 25, 1990, the goods were inspected by Marine Cargo Surveyors, who found that 15 reels of the semi-chemical fluting paper were "wet/stained/torn" and 3 reels of kraft liner board were likewise torn. The damage was placed at P93,112.00.

SMC collected payment from respondent UCPB under its insurance contract for the aforementioned amount. In turn, respondent, as subrogee of SMC, brought suit against petitioner in the Regional Trial Court, Branch 148, Makati City, which, on December 20, 1995, rendered judgment finding petitioner liable to respondent for the damage to the shipment.

The trial court held:

It cannot be denied . . . that the subject cargoes sustained damage while in the custody of defendants. Evidence such as the Warehouse Entry Slip (Exh. "E"); the Damage Report (Exh. "F") with entries appearing therein, classified as "TED" and "TSN", which the claims processor, Ms. Agrifina De Luna, claimed to be tearrage at the end and tearrage at the middle of the subject damaged cargoes respectively, coupled with the Marine Cargo Survey Report (Exh. "H" - "H-4-A") confirms the fact of the damaged condition of the subject cargoes. The surveyor[s'] report (Exh. "H-4-A") in particular, which provides among others that:

" . . . we opine that damages sustained by shipment is attributable to improper handling in transit presumably whilst in the custody of the broker . . . ."

is a finding which cannot be traversed and overturned.

The evidence adduced by the defendants is not enough to sustain [her] defense that [she is] are not liable. Defendant by reason of the nature of [her] business should have devised ways and means in order to prevent the damage to the cargoes which it is under obligation to take custody of and to forthwith deliver to the consignee. Defendant did not present any evidence on what precaution [she] performed to prevent [the] said incident, hence the presumption is that the moment the defendant accepts the cargo [she] shall perform such extraordinary diligence because of the nature of the cargo.

. . . .

Generally speaking under Article 1735 of the Civil Code, if the goods are proved to have been lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they have observed the extraordinary diligence required by law. The burden of the plaintiff, therefore, is to prove merely that the goods he transported have been lost, destroyed or deteriorated. Thereafter, the burden is shifted to the carrier to prove that he has exercised the extraordinary diligence required by law. Thus, it has been held that the mere proof of delivery of goods in good order to a carrier, and of their arrival at the place of destination in bad order, makes out a prima facie case against the carrier, so that if no explanation is given as to how the injury occurred, the carrier must be held responsible. It is incumbent upon the carrier to prove that the loss was due to accident or some other circumstances inconsistent with its liability." (cited in Commercial Laws of the Philippines by Agbayani, p. 31, Vol. IV, 1989 Ed.)

Defendant, being a customs brother, warehouseman and at the same time a common carrier is supposed [to] exercise [the] extraordinary diligence required by law, hence the 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 the right to receive the same.[3]

Accordingly, the trial court ordered petitioner to pay the following amounts —

1. The sum of P93,112.00 plus interest;
2. 25% thereof as lawyer's fee;
3. Costs of suit.[4]

The decision was affirmed by the Court of Appeals on appeal. Hence this petition for review on certiorari.

Petitioner contends that:

I. THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR [IN] DECIDING THE CASE NOT ON THE EVIDENCE PRESENTED BUT ON PURE SURMISES, SPECULATIONS AND MANIFESTLY MISTAKEN INFERENCE.

II. THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN CLASSIFYING THE PETITIONER AS A COMMON CARRIER AND NOT AS PRIVATE OR SPECIAL CARRIER WHO DID NOT HOLD ITS SERVICES TO THE PUBLIC.[5]

It will be convenient to deal with these contentions in the inverse order, for if petitioner is not a common carrier, although both the trial court and the Court of Appeals held otherwise, then she is indeed not liable beyond what ordinary diligence in the vigilance over the goods transported by her, would require.[6] Consequently, any damage to the cargo she agrees to transport cannot be presumed to have been due to her fault or negligence.

Petitioner contends that contrary to the findings of the trial court and the Court of Appeals, she is not a common carrier but a private carrier because, as a customs broker and warehouseman, she does not indiscriminately hold her services out to the public but only offers the same to select parties with whom she may contract in the conduct of her business.

The contention has no merit. In *De Guzman v. Court of Appeals*,[7] the Court dismissed a similar contention and held the party to be a common carrier, thus —

> The Civil Code defines "common carriers" in the following terms:
>
> "Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."
>
> The above article makes no distinction between one whose *principal* business activity is the carrying of persons or goods or both, and one who does such carrying only as an *ancillary* activity . . . Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a *regular or scheduled basis* and one offering such service on an *occasional, episodic or unscheduled basis*. Neither does Article 1732 distinguish between a carrier offering its services to the "*general public,*" i.e., the general community or

population, and one who offers services or solicits business only from a narrow *segment* of the general population. We think that Article 1732 deliberately refrained from making such distinctions.

So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service," under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:

> " x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, *with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier*, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. x x x" [8]

There is greater reason for holding petitioner to be a common carrier because the transportation of goods is an integral part of her business. To uphold petitioner's contention would be to deprive those with whom she contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for her customers, as already noted, is part and parcel of petitioner's business.

Now, as to petitioner's liability, Art. 1733 of the Civil Code provides:

> Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. . . .

In *Compania Maritima v. Court of Appeals*,[9] the meaning of "extraordinary diligence in the vigilance over goods" was explained thus:

> 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 sale, carriage and delivery. 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."