428 Phil. 705

FIRST DIVISION

[G.R. No. 135645, March 08, 2002]

THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., PETITIONER, VS. MGG MARINE SERVICES, INC. AND DOROTEO GAERLAN, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This petition for review seeks the reversal of the Decision, dated September 23, 1998, of the Court of Appeals in CA-G.R. CV No. 43915,[1] which absolved private respondents MCG Marine Services, Inc. and Doroteo Gaerlan of any liability regarding the loss of the cargo belonging to San Miguel Corporation due to the sinking of the M/V Peatheray Patrick-G owned by Gaerlan with MCG Marine Services, Inc. as agent.

On March 1, 1987, San Miguel Corporation insured several beer bottle cases with an aggregate value of P5,836,222.80 with petitioner Philippine American General Insurance Company.[2] The cargo were loaded on board the M/V Peatheray Patrick-G to be transported from Mandaue City to Bislig, Surigao del Sur.

After having been cleared by the Coast Guard Station in Cebu the previous day, the vessel left the port of Mandaue City for Bislig, Surigao del Sur on March 2, 1987. The weather was calm when the vessel started its voyage.

The following day, March 3, 1987, M/V Peatheray Patrick-G listed and subsequently sunk off Cawit Point, Cortes, Surigao del Sur. As a consequence thereof, the cargo belonging to San Miguel Corporation was lost.

Subsequently, San Miguel Corporation claimed the amount of its loss from petitioner.

Upon petitioner's request, on March 18, 1987, Mr. Eduardo Sayo, a surveyor from the Manila Adjusters and Surveyors Co., went to Taganauan Island, Cortes, Surigao del Sur where the vessel was cast ashore, to investigate the circumstances surrounding the loss of the cargo. In his report, Mr. Sayo stated that the vessel was structurally sound and that he did not see any damage or crack thereon. He concluded that the proximate cause of the listing and subsequent sinking of the vessel was the shifting of ballast water from starboard to portside. The said shifting of ballast water allegedly affected the stability of the M/V Peatheray Patrick-G.

Thereafter, petitioner paid San Miguel Corporation the full amount of P5,836,222.80 pursuant to the terms of their insurance contract.

On November 3, 1987, petitioner as subrogee of San Miguel Corporation filed with the Regional Trial Court (RTC) of Makati City a case for collection against private

respondents to recover the amount it paid to San Miguel Corporation for the loss of the latter's cargo.

Meanwhile, the Board of Marine Inquiry conducted its own investigation of the sinking of the M/V Peatheray Patrick-G to determine whether or not the captain and crew of the vessel should be held responsible for the incident.[3] On May 11, 1989, the Board rendered its decision exonerating the captain and crew of the ill-fated vessel for any administrative liability. It found that the cause of the sinking of the vessel was the existence of strong winds and enormous waves in Surigao del Sur, a fortuitous event that could not have been forseen at the time the M/V Peatheray Patrick-G left the port of Mandaue City. It was further held by the Board that said fortuitous event was the proximate and only cause of the vessel's sinking.

On April 15, 1993, the RTC of Makati City, Branch 134, promulgated its Decision finding private respondents solidarily liable for the loss of San Miguel Corporation's cargo and ordering them to pay petitioner the full amount of the lost cargo plus legal interest, attorney's fees and costs of suit.[4]

Private respondents appealed the trial court's decision to the Court of Appeals. On September 23, 1998, the appellate court issued the assailed Decision, which reversed the ruling of the RTC. It held that private respondents could not be held liable for the loss of San Miguel Corporation's cargo because said loss occurred as a consequence of a fortuitous event, and that such fortuitous event was the proximate and only cause of the loss.[5]

Petitioner thus filed the present petition, contending that:

(A)

> IN REVERSING AND SETTING ASIDE THE DECISION OF RTC BR. 134 OF MAKATI CITY ON THE BASIS OF THE FINDINGS OF THE BOARD OF MARINE INQUIRY, APPELLATE COURT DECIDED THE CASE AT BAR NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT;

(B)

> IN REVERSING THE TRIAL COURT'S DECISION, THE APPELLATE COURT GRAVELY ERRED IN CONTRADICTING AND IN DISTURBING THE FINDINGS OF THE FORMER;

(C)

> THE APPELLATE COURT GRAVELY ERRED IN REVERSING THE DECISION OF THE TRIAL COURT AND IN DISMISSING THE COMPLAINT.[6]

Common carriers, from the nature of their business and for reasons of public policy, are mandated to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them.[7] Owing to this high degree of diligence required of them, common carriers, as a general rule, are presumed to have been at fault or negligent if the goods transported by them are lost, destroyed

or if the same deteriorated.[8]

However, this presumption of fault or negligence does not arise in the cases enumerated under Article 1734 of the Civil Code:

> Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:
>
> (1) Flood, storm, earthquake, lightning or other natural disaster or calamity;
>
> (2) Act of the public enemy in war, whether international or civil;
>
> (3) Act or omission of the shipper or owner of the goods;
>
> (4) The character of the goods or defects in the packing or in the containers;
>
> (5) Order or act of competent public authority.

In order that a common carrier may be absolved from liability where the loss, destruction or deterioration of the goods is due to a natural disaster or calamity, it must further be shown that the such natural disaster or calamity was the proximate and **only** cause of the loss;[9] there must be "an entire exclusion of human agency from the cause of the injury of the loss."[10]

Moreover, even in cases where a natural disaster is the proximate and only cause of the loss, a common carrier is still required to exercise due diligence to prevent or minimize loss before, during and after the occurrence of the natural disaster, for it to be exempt from liability under the law for the loss of the goods.[11] If a common carrier fails to exercise due diligence--or that ordinary care which the circumstances of the particular case demand[12] --to preserve and protect the goods carried by it on the occasion of a natural disaster, it will be deemed to have been negligent, and the loss will not be considered as having been due to a natural disaster under Article 1734 (1).

In the case at bar, the issues may be narrowed down to whether the loss of the cargo was due to the occurrence of a natural disaster, and if so, whether such natural disaster was the sole and proximate cause of the loss or whether private respondents were partly to blame for failing to exercise due diligence to prevent the loss of the cargo.

The parties do not dispute that on the day the M/V Peatheray Patrick-G sunk, said vessel encountered strong winds and huge waves ranging from six to ten feet in height. The vessel listed at the port side and eventually sunk at Cawit Point, Cortes, Surigao del Sur.

The Court of Appeals, citing the decision of the Board of Marine Inquiry in the administrative case against the vessel's crew (BMI--646-87), found that the loss of the cargo was due solely to the existence of a fortuitous event, particularly the