435 Phil. 333

FIRST DIVISION

[G.R. No. 141910, August 06, 2002]

FGU INSURANCE CORPORATION, PETITIONER, VS. G.P. SARMIENTO TRUCKING CORPORATION AND LAMBERT M. EROLES, RESPONDENTS.

D E C I S I O N

VITUG, J.:

G.P. Sarmiento Trucking Corporation (GPS) undertook to deliver on 18 June 1994 thirty (30) units of Condura S.D. white refrigerators aboard one of its Isuzu truck, driven by Lambert Eroles, from the plant site of Concepcion Industries, Inc., along South Superhighway in Alabang, Metro Manila, to the Central Luzon Appliances in Dagupan City. While the truck was traversing the north diversion road along McArthur highway in Barangay Anupol, Bamban, Tarlac, it collided with an unidentified truck, causing it to fall into a deep canal, resulting in damage to the cargoes.

FGU Insurance Corporation (FGU), an insurer of the shipment, paid to Concepcion Industries, Inc., the value of the covered cargoes in the sum of P204,450.00. FGU, in turn, being the subrogee of the rights and interests of Concepcion Industries, Inc., sought reimbursement of the amount it had paid to the latter from GPS. Since the trucking company failed to heed the claim, FGU filed a complaint for damages and breach of contract of carriage against GPS and its driver Lambert Eroles with the Regional Trial Court, Branch 66, of Makati City. In its answer, respondents asserted that GPS was the exclusive hauler only of Concepcion Industries, Inc., since 1988, and it was not so engaged in business as a common carrier. Respondents further claimed that the cause of damage was purely accidental.

The issues having thus been joined, FGU presented its evidence, establishing the extent of damage to the cargoes and the amount it had paid to the assured. GPS, instead of submitting its evidence, filed with leave of court a motion to dismiss the complaint by way of demurrer to evidence on the ground that petitioner had failed to prove that it was a common carrier.

The trial court, in its order of 30 April 1996,[1] granted the motion to dismiss, explaining thusly:

> "Under Section 1 of Rule 131 of the Rules of Court, it is provided that 'Each party must prove his own affirmative allegation, xxx.'
>
> "In the instant case, plaintiff did not present any single evidence that would prove that defendant is a common carrier.
>
> "x x x x x x x x x

"Accordingly, the application of the law on common carriers is not warranted and the presumption of fault or negligence on the part of a common carrier in case of loss, damage or deterioration of goods during transport under 1735 of the Civil Code is not availing.

"Thus, the laws governing the contract between the owner of the cargo to whom the plaintiff was subrogated and the owner of the vehicle which transports the cargo are the laws on obligation and contract of the Civil Code as well as the law on quasi delicts.

"Under the law on obligation and contract, negligence or fault is not presumed. The law on quasi delict provides for some presumption of negligence but only upon the attendance of some circumstances. Thus, Article 2185 provides:

'Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.'

"Evidence for the plaintiff shows no proof that defendant was violating any traffic regulation. Hence, the presumption of negligence is not obtaining.

"Considering that plaintiff failed to adduce evidence that defendant is a common carrier and defendant's driver was the one negligent, defendant cannot be made liable for the damages of the subject cargoes."[2]

The subsequent motion for reconsideration having been denied,[3] plaintiff interposed an appeal to the Court of Appeals, contending that the trial court had erred (a) in holding that the appellee corporation was not a common carrier defined under the law and existing jurisprudence; and (b) in dismissing the complaint on a demurrer to evidence.

The Court of Appeals rejected the appeal of petitioner and ruled in favor of GPS. The appellate court, in its decision of 10 June 1999, [4] discoursed, among other things, that -

"x x x in order for the presumption of negligence provided for under the law governing common carrier (Article 1735, Civil Code) to arise, the appellant must first prove that the appellee is a common carrier. Should the appellant fail to prove that the appellee is a common carrier, the presumption would not arise; consequently, the appellant would have to prove that the carrier was negligent.

"x x x x x x x x x

"Because it is the appellant who insists that the appellees can still be considered as a common carrier, despite its `limited clientele,' (assuming it was really a common carrier), it follows that it (appellant) has the burden of proving the same. It (plaintiff-appellant) `must establish his case by a preponderance of evidence, which means that the evidence as a whole adduced by one side is superior to that of the other.' (Summa Insurance Corporation vs. Court of Appeals, 243 SCRA 175). This,

unfortunately, the appellant failed to do -- hence, the dismissal of the plaintiff's complaint by the trial court is justified.

"x x x x x x x x x

"Based on the foregoing disquisitions and considering the circumstances that the appellee trucking corporation has been `its exclusive contractor, hauler since 1970, defendant has no choice but to comply with the directive of its principal,' the inevitable conclusion is that the appellee is a private carrier.

"x x x x x x x x x

"x x x the lower court correctly ruled that 'the application of the law on common carriers is not warranted and the presumption of fault or negligence on the part of a common carrier in case of loss, damage or deterioration of good[s] during transport under [article] 1735 of the Civil Code is not availing.' x x x.
"Finally, We advert to the long established rule that conclusions and findings of fact of a trial court are entitled to great weight on appeal and should not be disturbed unless for strong and valid reasons."[5]

Petitioner's motion for reconsideration was likewise denied;[6] hence, the instant petition,[7] raising the following issues:

I

WHETHER RESPONDENT GPS MAY BE CONSIDERED AS A COMMON CARRIER AS DEFINED UNDER THE LAW AND EXISTING JURISPRUDENCE.

II

WHETHER RESPONDENT GPS, EITHER AS A COMMON CARRIER OR A PRIVATE CARRIER, MAY BE PRESUMED TO HAVE BEEN NEGLIGENT WHEN THE GOODS IT UNDERTOOK TO TRANSPORT SAFELY WERE SUBSEQUENTLY DAMAGED WHILE IN ITS PROTECTIVE CUSTODY AND POSSESSION.

III

WHETHER THE DOCTRINE OF *RES IPSA LOQUITUR* IS APPLICABLE IN THE INSTANT CASE.

On the first issue, the Court finds the conclusion of the trial court and the Court of Appeals to be amply justified. GPS, being an exclusive contractor and hauler of Concepcion Industries, Inc., rendering or offering its services to no other individual or entity, cannot be considered a common carrier. 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 hire or compensation, offering their services to the public,[8] whether to the public in general or to a limited clientele in particular, but never on an exclusive basis.[9] The true test of a common carrier is the carriage of passengers or goods, providing space for those who opt to avail themselves of its transportation service for a fee.[10] Given accepted standards, GPS scarcely falls within the term "common carrier."