

[G. R. No. 116332, January 25, 2000]

**BAYNE ADJUSTERS AND SURVEYORS, INC., PETITIONER, VS.
COURT OF APPEALS AND INSURANCE COMPANY OF NORTH
AMERICA, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

This petition for review on certiorari seeks a re-examination of the conclusions reached both by the trial court and of the appellate court from the evidence on record finding petitioner Bayne Adjusters and Surveyors Inc., liable for damages in the amount of P811,609.53 for the alkyl benzene lost due to spillage while the said liquid cargo was being pumped into the shore storage tanks of the consignee Colgate Palmolive Philippines, Inc., under the supervision of herein petitioner.

In May 1987 Colgate Palmolive Philippine, Inc., imported alkyl benzene from Japan valued at US\$255,802.88. The said liquid cargo was insured with herein private respondent Insurance Company of North America against all risk for its full value. Herein petitioner Bayne Adjusters and Surveyors Inc., was contracted by the consignee to supervise the proper handling and discharge of the cargo from the chemical tanker to a receiving barge until the cargo is pumped into the consignee's shore tank. When the cargo arrived in Manila petitioner's surveyor supervised the transfer of the cargo from the chemical tanker to the receiving barge. Pumping operation from the barge to the consignee's shore tank commenced at 2020 hours of June 27, 1987. Pumping of the liquid cargo from the barge to the consignee's tank was interrupted several times due to mechanical problems with the pump. When the pump broke down once again at about 1300 hours of June 29, 1987, the petitioner's surveyor left the premises without leaving any instruction with the barge foreman what to do in the event that the pump becomes operational again. No other surveyor was left in the premises and the assigned surveyor did not seal the valves leading to the tank to avoid unsupervised pumping of the cargo. Later that day, the consignee asked the petitioner to send a surveyor to conduct tank sounding. Petitioner sent Amado Fontillas, a cargo surveyor, not a liquid bulk surveyor, to the premises and it was agreed that pumping operation would resume the following day at 1030 hours. Fontillas tried to inform both the barge men and the assigned surveyor of the scheduled resumption of pumping operation but he could not find them so he left the premises. When the barge men arrived in the early evening , they found the valves of the tank open and resumed pumping operation in the absence of any instruction from the surveyor to the contrary. The following morning it was found that an undetermined amount of alkyl benzene was lost due to overflow. The consignee filed a claim with the private respondent insurance corporation for the value of the lost liquid cargo. A conference attended by representatives of the petitioner, the consignee and of the Claimsman Adjustment Corporation, represented by marine surveyor, was held to determine the amount of alkyl benzene lost in the overflow and the net amount payable by the insurance. A compromise quantity of 67.649MT of alkyl benzene was agreed to have been lost in

the overflow and respondent insurance corporation agreed to pay the consignee the net amount of P811,609.53. Private respondent instituted this action for collection of sum of money as subrogee of the consignee after failure to extrajudicially settle the matter with Bayne Adjusters.

Both the trial court and the appellate court found the petitioner's failure to comply with the Standard Operating Procedure for Handling Liquid Bulk Cargo when pumping operation is suspended as the proximate cause of the loss. It is not denied by the petitioner's surveyor that he did not close the valve of the tank when the pumping operations were suspended due to pump break down, as required by standard procedure. This enabled the barge men, in the absence of any instruction to the contrary, to resume pumping operations without supervision and consequently, caused the overflow of the liquid cargo from the tank.

Petitioner denies the finding of negligence. It is contended that negligence in this case cannot be presumed and no sufficient evidence was presented by the plaintiff that the loss suffered by the consignee is due to the negligence of the petitioner. The petitioner argues that it is not bound to guard the cargo at all times and its only duty is to supervise the transfer of the liquid cargo from the chemical tanker to the barge and from the barge to the shore tank of the consignee. The petitioner cites the private respondent's own witness who stated in court that the operator of the barge pump continued pumping into the consignee's shore tank without authorization from the petitioner's surveyor and that the overflow was caused by this unauthorized pumping operation. Petitioner also raised in issue that both the trial and the appellate court gave undue weight to the testimony of the private respondents supposed expert witness who admitted in court that he made a mistake in his affidavit that the petitioner is liable under a protective survey contract when in fact the agreement between the petitioner and the consignee is that of a superintendent survey. The petitioner argues that following the statement of the private respondent's witness that the agreement between the consignee and the petitioner is that of a protective survey agreement, the standard operating procedure for handling liquid bulk cargo should not be the criterion for the evaluation of the alleged negligence of the petitioner.

The private respondent filed comment to the petition stating that the petition is asking this Court to review the findings of facts and findings as to the credibility of witnesses made by both the trial and appellate court which under settled jurisprudence is conclusive upon the Supreme Court and in the absence of a showing that any of the exceptions to this rule is applicable the petition should be dismissed. On the merits, the private respondent prays for the affirmance in toto of the findings of the trial and appellate courts. The testimony of the expert witness presented by the private respondent is not based on hearsay evidence but from his personal investigation of the incident and his conclusion that the petitioner's surveyors are at fault is based on his experience as a marine cargo surveyor for eight years. The expert witness found that the petitioner's surveyors failed to perform what is required of them under the standard operating procedure for marine surveyors^[1] when pumping operation is suspended, i.e, to seal all cargo manhole covers including the barge and shore manifolds. Their negligence to do so paved the way for the barge operators to resume pumping operations without expert supervision which should have been provided by the petitioner's surveyors. Further, petitioner's own report admits that it is bound to the consignee under a superintendent contract of survey which includes the supervision in the discharge of