

FIRST DIVISION

[G.R. No. 106999, June 20, 1996]

**PHILIPPINE HOME ASSURANCE CORPORATION, PETITIONER,
VS. COURT OF APPEALS AND EASTERN SHIPPING LINES, INC.,
RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

Eastern Shipping Lines, Inc. (ESLI) loaded on board SS Eastern Explorer in Kobe, Japan, the following shipment for carriage to Manila and Cebu, freight pre-paid and in good order and condition, *viz*: (a) two (2) boxes internal combustion engine parts, consigned to William Lines, Inc. under Bill of Lading No. 042283; (b) ten (10) metric tons (334 bags) ammonium chloride, consigned to Orca's Company under Bill of Lading No. KCE-12; (c) two hundred (200) bags Glue 300, consigned to Pan Oriental Match Company under Bill of Lading No. KCE-8; and (d) garments, consigned to Ding Velayo under Bills of Lading Nos. KMA-73 and KMA-74.

While the vessel was off Okinawa, Japan, a small flame was detected on the acetylene cylinder located in the accommodation area near the engine room on the main deck level. As the crew was trying to extinguish the fire, the acetylene cylinder suddenly exploded sending a flash of flame throughout the accommodation area, thus causing death and severe injuries to the crew and instantly setting fire to the whole superstructure of the vessel. The incident forced the master and the crew to abandon the ship.

Thereafter, SS Eastern Explorer was found to be a constructive total loss and its voyage was declared abandoned.

Several hours later, a tugboat under the control of Fukuda Salvage Co. arrived near the vessel and commenced to tow the vessel for the port of Naha, Japan.

Fire fighting operations were again conducted at the said port. After the fire was extinguished, the cargoes which were saved were loaded to another vessel for delivery to their original ports of destination. ESLI charged port. After the fire was extinguished, the cargoes which were saved were loaded to another vessel for delivery to their original ports of destination. ESLI charged the consignees several amounts corresponding to additional freight and salvage charges, as follows: (a) for the goods covered by Bill of Lading No. 042283, ESLI charged the consignee the sum of P1,927.65, representing salvage charges assessed against the goods; (b) for the goods covered by Bill of Lading No. KCE-12, ESLI charged the consignee the sum of P2,980.64 for additional freight and P826.14 for salvage charges against the goods; (c) for the goods covered by Bill of Lading No. KCE-8, ESLI charged the consignee the sum of P3,292.26 for additional freight and P4,130.68 for salvage charges against the goods; and (d) for the goods under Bills of Lading Nos. KMA-73

and KMA-74, ESLI charged the consignee the sum of P8,337.06 for salvage charges against the goods.

The charges were all paid by Philippine Home Assurance Corporation (PHAC) under protest for and in behalf of the consignees.

PHAC, as subrogee of the consignees, thereafter filed a complaint before the Regional Trial Court of Manila, Branch 39, against ESLI to recover the sum paid under protest on the ground that the same were actually damages directly brought about by the fault, negligence, illegal act and/or breach of contract of ESLI.

In its answer, ESLI contended that it exercised the diligence required by law in the handling, custody and carriage of the shipment; that the fire was caused by an unforeseen event; that the additional freight charges are due and demandable pursuant to the Bill of Lading;^[1] and that salvage charges are properly collectible under Act No. 2616, known as the Salvage Law.

The trial court dismissed PHAC's complaint and ruled in favor of ESLI ratiocinating thus:

The question to be resolved is whether or not the fire on the vessel which was caused by the explosion of an acetylene cylinder loaded on the same was the fault or negligence of the defendant.

Evidence has been presented that the SS "Eastern Explorer" was a seaworthy vessel (Deposition of Jumpei Maeda, October 23, 1980, p. 3) and before the ship loaded the Acetylene Cylinder No. NCW 875, the same has been tested, checked and examined and was certified to have complied with the required safety measures and standards (Deposition of Senjei Hayashi, October 23, 1980, pp. 2-3). When the fire was detected by the crew, fire fighting operations was immediately conducted but due to the explosion of the acetylene cylinder, the crew were unable to contain the fire and had to abandon the ship to save their lives and were saved from drowning by passing vessels in the vicinity. The burning of the vessel rendering it a constructive total loss and incapable of pursuing its voyage to the Philippines was, therefore, not the fault or negligence of defendant but a natural disaster or calamity which nobody would like to happen. The salvage operations conducted by Fukuda Salvage Company (Exhibits "4-A" and "6-A") was perfectly a legal operation and charges made on the goods recovered were legitimate charges.

Act No. 2616, otherwise known as the Salvage Law, is thus applicable to the case at bar. Section 1 of Act No. 2616 states:

"Section 1. When in case of shipwreck, the vessel or its cargo shall be beyond the control of the crew, or shall have been abandoned by them, and picked up and conveyed to a safe place by other persons, the latter shall be entitled to a reward for the salvage.

Those who, not being included in the above paragraph, assist in saving a vessel or its cargo from shipwreck, shall be entitled to like reward."

In relation to the above provision, the Supreme Court has ruled in *Erlanger & Galinger v. Swedish East Asiatic Co., Ltd.*, 34 Phil. 178, that three elements are necessary to a valid salvage claim, namely (a) a marine peril (b) service voluntarily rendered when not required as an existing duty or from a special contract and (c) success in whole or in part, or that the service rendered contributed to such success.

The above elements are all present in the instant case. Salvage charges may thus be assessed on the cargoes saved from the vessel. As provided for in Section 13 of the Salvage Law, "The expenses of salvage, as well as the reward for salvage or assistance, shall be a charge on the things salvaged or their value." In *Manila Railroad Co. v. Macondray Co.*, 37 Phil. 583, it was also held that "when a ship and its cargo are saved together, the salvage allowance should be charged against the ship and cargo in the proportion of their respective values, the same as in a case of general average . . ." Thus, the "compensation to be paid by the owner of the cargo is in proportion to the value of the vessel and the value of the cargo saved." (*Atlantic Gulf and Pacific Co. v. Uchida Kisen Kaisha*, 42 Phil. 321). (Memorandum for Defendant, Records, pp. 212-213).

With respect to the additional freight charged by defendant from the consignees of the goods, the same are also validly demandable.

As provided by the Civil Code:

"Article 1174. Except in cases expressly specified by law, or when it is otherwise declared by stipulation, or when the nature of the obligation require the assumption or risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable."

"Article 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor."

The burning of "EASTERN EXPLORER" while off Okinawa rendered it physically impossible for defendant to comply with its obligation of delivering the goods to their port of destination pursuant to the contract of carriage. Under Article 1266 of the Civil Code, the physical impossibility of the prestation extinguished defendant's obligation.

It is but legal and equitable for the defendant therefore, to demand additional freight from the consignees for forwarding the goods from Naha, Japan to Manila and Cebu City on board another vessel, the

"EASTERN MARS." This finds support under Article 844 of the Code of Commerce which provides as follows:

"Article 844. A captain who may have taken on board the goods saved from the wreck shall continue his course to the port of destination; and on arrival should deposit the same, with judicial intervention at the disposal of their legitimate owners. x x x

The owners of the cargo shall defray all the expenses of this arrival as well as the payment of the freight which, after taking into consideration the circumstances of the case, may be fixed by agreement or by a judicial decision."

Furthermore, the terms and conditions of the Bill of Lading authorize the imposition of additional freight charges in case of forced interruption or abandonment of the voyage. At the dorsal portion of the Bills of Lading issued to the consignees is this stipulation:

"12. All storage, transshipment, forwarding or other disposition of cargo at or from a port of distress or other place where there has been a forced interruption or abandonment of the voyage shall be at the expense of the owner, shipper, consignee of the goods or the holder of this bill of lading who shall be jointly and severally liable for all freight charges and expenses of every kind whatsoever, whether payable in advance or not that may be incurred by the cargo in addition to the ordinary freight, whether the service be performed by the named carrying vessel or by carrier's other vessels or by strangers. All such expenses and charges shall be due and payable day by day immediately when they are incurred."

The bill of lading is a contract and the parties are bound by its terms (Govt. of the Philippine Islands vs. Ynchausti and Co., 40 Phil. 219). The provision quoted is binding upon the consignee.

Defendant therefore, can validly require payment of additional freight from the consignee. Plaintiff can not thus recover the additional freight paid by the consignee to defendant. (Memorandum for Defendant, Record, pp. 215-216).^[2]

On appeal to the Court of Appeals, respondent court affirmed the trial court's findings and conclusions,^[3] hence, the present petition for review before this Court on the following errors: