Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EASTERN SHIPPING LINES, INC.,
Petitioner,

- versus -

BPI/MS INSURANCE CORP., and MITSUI SUMITOMO INSURANCE CO., LTD.,
Respondents.

G.R. No. 193986

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JAN 15 2014

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DECISION

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 88361, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC), of Makati City, Branch 138 in Civil Case No. 04-1005.

The facts follow:

On August 29, 2003, Sumitomo Corporation (Sumitomo) shipped through MV Eastern Challenger V-9-S, a vessel owned by petitioner Eastern Shipping Lines, Inc. (petitioner), 31 various steel sheets in coil weighing 271,828 kilograms from Yokohama, Japan for delivery in favor of the consignee Calamba Steel Center Inc. (Calamba Steel).[4] The cargo had a declared value of US$125,417.26 and was insured against all risk by Sumitomo with respondent Mitsui Sumitomo Insurance Co., Ltd. (Mitsui). On or about September 6, 2003, the shipment arrived at the port of Manila. Upon unloading

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1 *Rollo*, pp. 3-41.
2 Id. at 45-59. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Isaias P. Dicdican and Japar B. Dimaampao concurring.
3 Id. at 153-159. Penned by Judge Jenny Lind R. Aldecoa-Delorino (now Deputy Court Administrator).
4 CA *rollo*, p. 111.

from the vessel, nine coils were observed to be in bad condition as evidenced by the Turn Over Survey of Bad Order Cargo No. 67327. The cargo was then turned over to Asian Terminals, Inc. (ATI) for stevedoring, storage and safekeeping pending Calamba Steel's withdrawal of the goods. When ATI delivered the cargo to Calamba Steel, the latter rejected its damaged portion, valued at US$7,751.15, for being unfit for its intended purpose.[5]

Subsequently, on September 13, 2003, a second shipment of 28 steel sheets in coil, weighing 215,817 kilograms, was made by Sumitomo through petitioner's MV Eastern Challenger V-10-S for transport and delivery again to Calamba Steel.[6] Insured by Sumitomo against all risk with Mitsui,[7] the shipment had a declared value of US$121,362.59. This second shipment arrived at the port of Manila on or about September 23, 2003. However, upon unloading of the cargo from the said vessel, 11 coils were found damaged as evidenced by the Turn Over Survey of Bad Order Cargo No. 67393. The possession of the said cargo was then transferred to ATI for stevedoring, storage and safekeeping pending withdrawal thereof by Calamba Steel. When ATI delivered the goods, Calamba Steel rejected the damaged portion thereof, valued at US$7,677.12, the same being unfit for its intended purpose.[8]

Lastly, on September 29, 2003, Sumitomo again shipped 117 various steel sheets in coil weighing 930,718 kilograms through petitioner's vessel, MV Eastern Venus V-17-S, again in favor of Calamba Steel.[9] This third shipment had a declared value of US$476,416.90 and was also insured by Sumitomo with Mitsui. The same arrived at the port of Manila on or about October 11, 2003. Upon its discharge, six coils were observed to be in bad condition. Thereafter, the possession of the cargo was turned over to ATI for stevedoring, storage and safekeeping pending withdrawal thereof by Calamba Steel. The damaged portion of the goods being unfit for its intended purpose, Calamba Steel rejected the damaged portion, valued at US$14,782.05, upon ATI's delivery of the third shipment.[10]

Calamba Steel filed an insurance claim with Mitsui through the latter's settling agent, respondent BPI/MS Insurance Corporation (BPI/MS), and the former was paid the sums of US$7,677.12, US$14,782.05 and US$7,751.15 for the damage suffered by all three shipments or for the total amount of US$30,210.32. Correlatively, on August 31, 2004, as insurer and subrogee of Calamba Steel, Mitsui and BPI/MS filed a Complaint for Damages against petitioner and ATI.[11]

As synthesized by the RTC in its decision, during the pre-trial conference of the case, the following facts were established, *viz*:

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5 *Rollo*, p. 46.
6 CA *rollo*, p. 60.
7 Id. at 388.
8 *Rollo*, pp. 46-47.
9 CA *rollo*, p. 108.
10 *Rollo*, pp. 47-48.
11 Id. at 48.

1. The fact that there were shipments made on or about August 29, 2003, September 13, 2003 and September 29, 2003 by Sumitomo to Calamba Steel through petitioner's vessels;

2. The declared value of the said shipments and the fact that the shipments were insured by respondents;

3. The shipments arrived at the port of Manila on or about September 6, 2003, September 23, 2003 and October 11, 2003 respectively;

4. Respondents paid Calamba Steel's total claim in the amount of US$30,210.32.[12]

Trial on the merits ensued.

On September 17, 2006, the RTC rendered its Decision,[13] the dispositive portion of which provides:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants Eastern Shipping Lines, Inc. and Asian Terminals, Inc., jointly and severally, ordering the latter to pay plaintiffs the following:
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> 1. Actual damages amounting to US$30,210.32 plus 6% legal interest thereon commencing from the filing of this complaint, until the same is fully paid;
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> 2. Attorney's fees in a sum equivalent to 25% of the amount claimed;
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> 3. Costs of suit.
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> The defendants' counterclaims and ATI's crossclaim are DISMISSED for lack of merit.
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> SO ORDERED.[14]

Aggrieved, petitioner and ATI appealed to the CA. On July 9, 2010, the CA in its assailed Decision affirmed with modification the RTC's findings and ruling, holding, among others, that both petitioner and ATI were very negligent in the handling of the subject cargoes. Pointing to the affidavit of Mario Manuel, Cargo Surveyor, the CA found that "*during the unloading operations, the steel coils were lifted from the vessel but were not carefully laid on the ground. Some were even 'dropped' while still several inches from the ground while other coils bumped or hit one another at the pier while being arranged by the stevedores and forklift operators of ATI and [petitioner]*." The CA added that such finding coincides with the factual findings of the RTC that both petitioner and ATI were both negligent in handling the goods. However, for failure of the RTC to state the justification for the award of attorney's fees in the body of its decision, the

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12 Id. at 155.
13 Id. at 153-159.
14 Id. at 159.

CA accordingly deleted the same.[15] Petitioner filed its Motion for Reconsideration[16] which the CA, however, denied in its Resolution[17] dated October 6, 2010.

Both petitioner and ATI filed their respective separate petitions for review on certiorari before this Court. However, ATI's petition, docketed as G.R. No. 192905, was denied by this Court in our Resolution[18] dated October 6, 2010 for failure of ATI to show any reversible error in the assailed CA decision and for failure of ATI to submit proper verification. Said resolution had become final and executory on March 22, 2011.[19] Nevertheless, this Court in its Resolution[20] dated September 3, 2012, gave due course to this petition and directed the parties to file their respective memoranda.

In its Memorandum,[21] petitioner essentially avers that the CA erred in affirming the decision of the RTC because the survey reports submitted by respondents themselves as their own evidence and the pieces of evidence submitted by petitioner clearly show that the cause of the damage was the rough handling of the goods by ATI during the discharging operations. Petitioner attests that it had no participation whatsoever in the discharging operations and that petitioner did not have a choice in selecting the stevedore since ATI is the only arrastre operator mandated to conduct discharging operations in the South Harbor. Thus, petitioner prays that it be absolved from any liability relative to the damage incurred by the goods.

On the other hand, respondents counter, among others, that as found by both the RTC and the CA, the goods suffered damage while still in the possession of petitioner as evidenced by various Turn Over Surveys of Bad Order Cargoes which were unqualifiedly executed by petitioner's own surveyor, Rodrigo Victoria, together with the representative of ATI. Respondents assert that petitioner would not have executed such documents if the goods, as it claims, did not suffer any damage prior to their turn-over to ATI. Lastly, respondents aver that petitioner, being a common carrier is required by law to observe extraordinary diligence in the vigilance over the goods it carries.[22]

Simply put, the core issue in this case is whether the CA committed any reversible error in finding that petitioner is solidarily liable with ATI on account of the damage incurred by the goods.

The Court resolves the issue in the negative.

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15 Id. at 54-59.
16 CA *rollo*, pp. 319-341.
17 *Rollo*, p. 61.
18 CA *rollo*, p. 420.
19 Id. at 419.
20 *Rollo*, pp. 340-341.
21 Dated December 5, 2012; id. at 342-370.
22 Respondents' Memorandum dated November 27, 2012; id. at 371-388.

Well entrenched in this jurisdiction is the rule that factual questions may not be raised before this Court in a petition for review on certiorari as this Court is not a trier of facts. This is clearly stated in Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, which provides:

> SECTION 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Thus, it is settled that in petitions for review on certiorari, only questions of law may be put in issue. Questions of fact cannot be entertained.[23]

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[24]

In this petition, the resolution of the question as to who between petitioner and ATI should be liable for the damage to the goods is indubitably factual, and would clearly impose upon this Court the task of reviewing, examining and evaluating or weighing all over again the probative value of the evidence presented[25] – something which is not, as a rule, within the functions of this Court and within the office of a petition for review on certiorari.

While it is true that the aforementioned rule admits of certain exceptions,[26] this Court finds that none are applicable in this case. This Court finds no cogent reason to disturb the factual findings of the RTC which were duly affirmed by the CA. Unanimous with the CA, this Court

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23 *Philippine National Railways Corporation v. Vizcara*, G.R. No. 190022, February 15, 2012, 666 SCRA 363, 375.

24 *Santos v. Committee on Claims Settlement*, G.R. No. 158071, April 2, 2009, 583 SCRA 152, 159-160.

25 *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 171406, April 4, 2011, 647 SCRA 111, 126.

26 The exceptions are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. [*International Container Terminal Services, Inc. v. FGU Insurance Corporation*, 578 Phil. 751, 756 (2008); see also *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86.]

gives credence and accords respect to the factual findings of the RTC – a special commercial court[27] which has expertise and specialized knowledge on the subject matter[28] of maritime and admiralty – highlighting the solidary liability of both petitioner and ATI. The RTC judiciously found:

> x x x **The Turn Over Survey of Bad Order Cargoes (TOSBOC, for brevity) No. 67393 and Request for Bad Order Survey No. 57692 show that prior to the turn over of the first shipment to the custody of ATI, eleven (11) of the twenty-eight (28) coils were already found in bad order condition. Eight (8) of the said eleven coils were already "*partly dented/crumpled*" and the remaining three (3) were found "*partly dented, scratches on inner hole, crumple* (sic)". On the other hand, the TOSBOC No. 67457 and Request for Bad Order Survey No. 57777 also show that prior to the turn over of the second shipment to the custody of ATI, a total of six (6) coils thereof were already "*partly dented on one side, crumpled/cover detach* (sic)". These documents were issued by ATI. The said TOSBOC's were jointly executed by ATI, vessel's representative and surveyor while the Requests for Bad Order Survey were jointly executed by ATI, consignee's representative and the Shed Supervisor**. The aforementioned documents were corroborated by the Damage Report dated 23 September 2003 and Turn Over Survey No. 15765 for the first shipment, Damage Report dated 13 October 2003 and Turn Over Survey No. 15772 for the second shipment and, two Damage Reports dated 6 September 2003 and Turn Over Survey No. 15753 for the third shipment.
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> It was shown to this Court that a Request for Bad Order Survey is a document which is requested by an interested party that incorporates therein the details of the damage, if any, suffered by a shipped commodity. Also, a **TOSBOC, usually issued by the arrastre contractor (ATI in this case), is a form of certification that states therein the bad order condition of a particular cargo, as found prior to its turn over to the custody or possession of the said arrastre contractor.**
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> **The said Damage Reports, Turn Over Survey Reports and Requests for Bad Order Survey led the Court to conclude that before the subject shipments were turned over to ATI, the said cargo were already in bad order condition due to damage sustained during the sea voyage. Nevertheless, this Court cannot turn a blind eye to the fact that there was also negligence on the part of the employees of ATI and [Eastern Shipping Lines, Inc.] in the discharging of the cargo as observed by plaintiff's witness, Mario Manuel, and [Eastern Shipping Lines, Inc.'s] witness, Rodrigo Victoria**.
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> In ascertaining the cause of the damage to the subject shipments, Mario Manuel stated that the "*coils were roughly handled during their discharging from the vessel to the pier of (sic) ASIAN TERMINALS, INC. and even during the loading operations of these coils from the pier to the trucks that will transport the coils to the consignee's warehouse.* ***During the aforesaid operations, the employees and forklift operators of EASTERN SHIPPING LINES and ASIAN TERMINALS, INC. were very negligent in the handling of the subject cargoes****. Specifically, "during unloading, the steel coils were lifted from the vessel and not*

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27 Per A.M. No. 05-4-05-SC dated April 12, 2005.

28 *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*, G.R. No. 175844, July 29, 2013, p. 8.

> *carefully laid on the ground, sometimes were even 'dropped' while still several inches from the ground. The tine (forklift blade) or the portion that carries the coils used for the forklift is improper because it is pointed and sharp and the centering of the tine to the coils were negligently done such that the pointed and sharp tine touched and caused scratches, tears and dents to the coils. Some of the coils were also dragged by the forklift instead of being carefully lifted from one place to another.* ***Some coils bump/hit one another at the pier while being arranged by the stevedores/forklift operators of ASIAN TERMINALS, INC. and EASTERN SHIPPING LINES.***[29] (Emphasis supplied.)

Verily, it is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier.[30] As hereinbefore found by the RTC and affirmed by the CA based on the evidence presented, the goods were damaged even before they were turned over to ATI. Such damage was even compounded by the negligent acts of petitioner and ATI which both mishandled the goods during the discharging operations. Thus, it bears stressing unto petitioner that 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 transported by them. Subject to certain exceptions enumerated under Article 1734[31] of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier 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 a right to receive them.[32] 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 they transported deteriorated or got lost or destroyed. That is, unless they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such high level of diligence.[33] In this case, petitioner failed to hurdle such burden.

In sum, petitioner failed to show any reversible error on the part of the CA in affirming the ruling of the RTC as to warrant the modification, much less the reversal of its assailed decision.

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29 *Rollo*, pp. 155-156.

30 *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, March 26, 2009, 582 SCRA 457, 472.

31 ART. 1734. 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.

32 *Asian Terminals, Inc. v. Philam Insurance Co., Inc. (now Chartis Philippines Insurance, Inc.),* G.R. Nos. 181163, 181262 & 181319, July 24, 2013, p. 14.

33 *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*, 432 Phil. 567, 579 (2002).

WHEREFORE, the petition is **DENIED**. The Decision dated July 9, 2010 of the Court of Appeals in CA-G.R. CV No. 88361 is hereby **AFFIRMED**.

With costs against the petitioner.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice