Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. L-69044 May 29, 1987

EASTERN SHIPPING LINES, INC., petitioner,
vs.
INTERMEDIATE APPELLATE COURT and DEVELOPMENT INSURANCE & SURETY CORPORATION, respondents.

No. 71478 May 29, 1987

EASTERN SHIPPING LINES, INC., petitioner,
vs.
THE NISSHIN FIRE AND MARINE INSURANCE CO., and DOWA FIRE & MARINE INSURANCE CO., LTD., respondents.

MELENCIO-HERRERA, *J.:*

These two cases, both for the recovery of the value of cargo insurance, arose from the same incident, the sinking of the M/S ASIATICA when it caught fire, resulting in the total loss of ship and cargo.

The basic facts are not in controversy:

In *G.R. No. 69044*, sometime in or prior to June, 1977, the M/S ASIATICA, a vessel operated by petitioner Eastern Shipping Lines, Inc., (referred to hereinafter as Petitioner Carrier) loaded at Kobe, Japan for transportation to Manila, 5,000 pieces of calorized lance pipes in 28 packages valued at P256,039.00 consigned to Philippine Blooming Mills Co., Inc., and 7 cases of spare parts valued at P92,361.75, consigned to Central Textile Mills, Inc. Both sets of goods were insured against marine risk for their stated value with respondent Development Insurance and Surety Corporation.

In *G.R. No. 71478,* during the same period, the same vessel took on board 128 cartons of garment fabrics and accessories, in two (2) containers, consigned to Mariveles Apparel Corporation, and two cases of surveying instruments consigned to Aman Enterprises and General Merchandise. The 128 cartons were insured for their stated value by respondent Nisshin Fire & Marine Insurance Co., for US $46,583.00, and the 2 cases by respondent Dowa Fire & Marine Insurance Co., Ltd., for US $11,385.00.

Enroute for Kobe, Japan, to Manila, the vessel caught fire and sank, resulting in the total loss of ship and cargo. The respective respondent Insurers paid the corresponding marine insurance values to the consignees concerned and were thus subrogated unto the rights of the latter as the insured.

G.R. NO. 69044

On May 11, 1978, respondent Development Insurance & Surety Corporation (Development Insurance, for short), having been subrogated unto the rights of the two insured companies, filed suit against petitioner Carrier for the recovery of the amounts it had paid to the insured before the then Court of First instance of Manila, Branch XXX (Civil Case No. 6087).

Petitioner-Carrier denied liability mainly on the ground that the loss was due to an extraordinary fortuitous event, hence, it is not liable under the law.

On August 31, 1979, the Trial Court rendered judgment in favor of Development Insurance in the amounts of P256,039.00 and P92,361.75, respectively, with legal interest, plus P35,000.00 as attorney's fees and costs.

Petitioner Carrier took an appeal to the then Court of Appeals which, on August 14, 1984, affirmed.

Petitioner Carrier is now before us on a Petition for Review on Certiorari.

G.R. NO. 71478

On June 16, 1978, respondents Nisshin Fire & Marine Insurance Co. NISSHIN for short), and Dowa Fire & Marine Insurance Co., Ltd. (DOWA, for brevity), as subrogees of the insured, filed suit against Petitioner Carrier for the recovery of the insured value of the cargo lost with the then Court of First Instance of Manila, Branch 11 (Civil Case No. 116151), imputing unseaworthiness of the ship and non-observance of extraordinary diligence by petitioner Carrier.

Petitioner Carrier denied liability on the principal grounds that the fire which caused the sinking of the ship is an exempting circumstance under Section 4(2) (b) of the Carriage of Goods by Sea Act (COGSA); and that when the loss of fire is established, the burden of proving negligence of the vessel is shifted to the cargo shipper.

On September 15, 1980, the Trial Court rendered judgment in favor of NISSHIN and DOWA in the amounts of US $46,583.00 and US $11,385.00, respectively, with legal interest, plus attorney's fees of P5,000.00 and costs. On appeal by petitioner, the then Court of Appeals on September 10, 1984, affirmed with modification the Trial Court's judgment by decreasing the amount recoverable by DOWA to US $1,000.00 because of $500 per package limitation of liability under the COGSA.

Hence, this Petition for Review on certiorari by Petitioner Carrier.

Both Petitions were initially denied for lack of merit. G.R. No. 69044 on January 16, 1985 by the First Division, and G. R. No. 71478 on September 25, 1985 by the Second Division. Upon Petitioner Carrier's Motion for Reconsideration, however, G.R. No. 69044 was given due course on March 25, 1985, and the parties were required to submit their respective Memoranda, which they have done.

On the other hand, in G.R. No. 71478, Petitioner Carrier sought reconsideration of the Resolution denying the Petition for Review and moved for its consolidation with G.R. No. 69044, the lower-numbered case, which was then pending resolution with the First Division. The same was granted; the Resolution of the Second Division of September 25, 1985 was set aside and the Petition was given due course.

At the outset, we reject Petitioner Carrier's claim that it is not the operator of the M/S Asiatica but merely a charterer thereof. We note that in G.R. No. 69044, Petitioner Carrier stated in its Petition:

> There are about 22 cases of the "ASIATICA" pending in various courts where various plaintiffs are represented by various counsel representing various consignees or insurance companies. The common defendant in these cases is petitioner herein, being the operator of said vessel. ... [1]

Petitioner Carrier should be held bound to said admission. As a general rule, the facts alleged in a party's pleading are deemed admissions of that party and binding upon it. [2] And an admission in one pleading in one action may be received in evidence against the pleader or his successor-in-interest on the trial of another action to which he is a party, in favor of a party to the latter action. [3]

The threshold issues in both cases are: (1) which law should govern — the Civil Code provisions on Common carriers or the Carriage of Goods by Sea Act? and (2) who has the burden of proof to show negligence of the carrier?

On the Law Applicable

The law of the country to which the goods are to be transported governs the liability of the common carrier in case of their loss, destruction or deterioration. [4] As the cargoes in question were transported from Japan to the Philippines, the liability of Petitioner Carrier is governed primarily by the Civil Code. [5] However, in all matters not regulated by said Code, the rights and obligations of common carrier shall be governed by the Code of Commerce and by special laws. [6] Thus, the Carriage of Goods by Sea Act, a special law, is suppletory to the provisions of the Civil Code. [7]

On the Burden of Proof

Under the Civil Code, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over goods, according to all the circumstances of each case. [8] 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;
>
> xxx xxx xxx [9]

Petitioner Carrier claims that the loss of the vessel by fire exempts it from liability under the phrase "natural disaster or calamity. " However, we are of the opinion that fire may not be considered a natural disaster or calamity. This must be so as it arises almost invariably from some act of man or by human means. **10** It does not fall within the category of an act of God unless caused by lightning **11** or by other natural disaster or calamity. **12** It may even be caused by the actual fault or privity of the carrier. **13**

Article 1680 of the Civil Code, which considers fire as an extraordinary fortuitous event refers to leases of rural lands where a reduction of the rent is allowed when more than one-half of the fruits have been lost due to such event, considering that the law adopts a protection policy towards agriculture. **14**

As the peril of the fire is not comprehended within the exception in Article 1734, *supra,* Article 1735 of the Civil Code provides that all cases than those mention in Article 1734, the common carrier shall be presumed to have been at fault or to have acted negligently, unless it proves that it has observed the extraordinary deligence required by law.

In this case, the respective Insurers. as subrogees of the cargo shippers, have proven that the transported goods have been lost. Petitioner Carrier has also proved that the loss was caused by fire. The burden then is upon Petitioner Carrier to proved that it has exercised the extraordinary diligence required by law. In this regard, the Trial Court, concurred in by the Appellate Court, made the following Finding of fact:

> The cargoes in question were, according to the witnesses defendant placed in hatches No, 2 and 3 cf the vessel, Boatswain Ernesto Pastrana noticed that smoke was coming out from hatch No. 2 and hatch No. 3; that where the smoke was noticed, the fire was already big; that the fire must have started twenty-four 24) our the same was noticed; that carbon dioxide was ordered released and the crew was ordered to open the hatch covers of No, 2 tor commencement of fire fighting by sea water: that all of these effort were not enough to control the fire.
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> Pursuant to Article 1733, common carriers are bound to extraordinary diligence in the vigilance over the goods. The evidence of the defendant did not show that extraordinary vigilance was observed by the vessel to prevent the occurrence of fire at hatches numbers 2 and 3. Defendant's evidence did not likewise show he amount of diligence made by the crew, on orders, in the care of the cargoes. What appears is that after the cargoes were stored in the hatches, no regular inspection was made as to their condition during the voyage. Consequently, the crew could not have even explain what could have caused the fire. The defendant, in the Court's mind, failed to satisfactorily show that extraordinary vigilance and care had been made by the crew to prevent the occurrence of the fire. The defendant, as a common carrier, is liable to the consignees for said lack of deligence required of it under Article 1733 of the Civil Code. **15**

Having failed to discharge the burden of proving that it had exercised the extraordinary diligence required by law, Petitioner Carrier cannot escape liability for the loss of the cargo.

And even if fire were to be considered a "natural disaster" within the meaning of Article 1734 of the Civil Code, it is required under Article 1739 of the same Code that the "natural disaster" must have been the "proximate and only cause of the loss," and that the carrier has "exercised due diligence to prevent or minimize the loss before, during or after the occurrence of the disaster. " This Petitioner Carrier has also failed to establish satisfactorily.

Nor may Petitioner Carrier seek refuge from liability under the Carriage of Goods by Sea Act, It is provided therein that:

> Sec. 4(2). Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
>
> (b) Fire, unless caused by the actual fault or privity of the carrier.
>
> xxx xxx xxx

In this case, both the Trial Court and the Appellate Court, in effect, found, as a fact, that there was "actual fault" of the carrier shown by "lack of diligence" in that "when the smoke was noticed, the fire was already big; that the fire must have started twenty-four (24) hours before the same was noticed; " and that "after the cargoes were stored in the hatches, no regular inspection was made as to their condition during the voyage." The foregoing suffices to show that the circumstances under which the fire originated and spread are such as to show that Petitioner Carrier or its servants were negligent in connection therewith. Consequently, the complete defense afforded by the COGSA when loss results from fire is unavailing to Petitioner Carrier.

On the US $500 Per Package Limitation:

Petitioner Carrier avers that its liability if any, should not exceed US $500 per package as provided in section 4(5) of the COGSA, which reads:

> (5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been

> declared by the shipper before shipment and inserted in bill of lading. This declaration if embodied in the bill of lading shall be prima facie evidence, but all be conclusive on the carrier.
>
> By agreement between the carrier, master or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: Provided, That such maximum shall not be less than the figure above named. In no event shall the carrier be Liable for more than the amount of damage actually sustained.
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> xxx xxx xxx

Article 1749 of the New Civil Code also allows the limitations of liability in this wise:

> Art. 1749. A stipulation that the common carrier's liability as limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.

It is to be noted that the Civil Code does not of itself limit the liability of the common carrier to a fixed amount per package although the Code expressly permits a stipulation limiting such liability. Thus, the COGSA which is suppletory to the provisions of the Civil Code, steps in and supplements the Code by establishing a statutory provision limiting the carrier's liability in the absence of a declaration of a higher value of the goods by the shipper in the bill of lading. The provisions of the Carriage of Goods by.Sea Act on limited liability are as much a part of a bill of lading as though physically in it and as much a part thereof as though placed therein by agreement of the parties. **16**

In *G.R. No. 69044*, there is no stipulation in the respective Bills of Lading (Exhibits "C-2" and "I-3") 1 7 limiting the carrier's liability for the loss or destruction of the goods. Nor is there a declaration of a higher value of the goods. Hence, Petitioner Carrier's liability should not exceed US $500 per package, or its peso equivalent, at the time of payment of the value of the goods lost, but in no case "more than the amount of damage actually sustained."

The actual total loss for the 5,000 pieces of calorized lance pipes was P256,039 (Exhibit "C"), which was exactly the amount of the insurance coverage by Development Insurance (Exhibit "A"), and the amount affirmed to be paid by respondent Court. The goods were shipped in 28 packages (Exhibit "C-2") Multiplying 28 packages by $500 would result in a product of $14,000 which, at the current exchange rate of P20.44 to US $1, would be P286,160, or "more than the amount of damage actually sustained." Consequently, the aforestated amount of P256,039 should be upheld.

With respect to the seven (7) cases of spare parts (Exhibit "I-3"), their actual value was P92,361.75 (Exhibit "I"), which is likewise the insured value of the cargo (Exhibit "H") and amount was affirmed to be paid by respondent Court. however, multiplying seven (7) cases by $500 per package at the present prevailing rate of P20.44 to US $1 (US $3,500 x P20.44) would yield P71,540 only, which is the amount that should be paid by Petitioner Carrier for those spare parts, and not P92,361.75.

In *G.R. No. 71478,* in so far as the two (2) cases of surveying instruments are concerned, the amount awarded to DOWA which was already reduced to $1,000 by the Appellate Court following the statutory $500 liability per package, is in order.

In respect of the shipment of 128 cartons of garment fabrics in two (2) containers and insured with NISSHIN, the Appellate Court also limited Petitioner Carrier's liability to $500 per package and affirmed the award of $46,583 to NISSHIN. it multiplied 128 cartons (considered as COGSA packages) by $500 to arrive at the figure of $64,000, and explained that "since this amount is more than the insured value of the goods, that is $46,583, the Trial Court was correct in awarding said amount only for the 128 cartons, which amount is less than the maximum limitation of the carrier's liability."

We find no reversible error. The 128 cartons and not the two (2) containers should be considered as the shipping unit.

In *Mitsui & Co., Ltd. vs. American Export Lines, Inc.* 636 F 2d 807 (1981), the consignees of tin ingots and the shipper of floor covering brought action against the vessel owner and operator to recover for loss of ingots and floor covering, which had been shipped in vessel — supplied containers. The U.S. District Court for the Southern District of New York rendered judgment for the plaintiffs, and the defendant appealed. The United States Court of Appeals, Second Division, modified and affirmed holding that:

> When what would ordinarily be considered packages are shipped in a container supplied by the carrier and the number of such units is disclosed in the shipping documents, each of those units and not the container constitutes the "package" referred to in liability limitation provision of Carriage of Goods by Sea Act. Carriage of Goods by Sea Act, 4(5), 46 U.S.C.A.& 1304(5).
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> Even if language and purposes of Carriage of Goods by Sea Act left doubt as to whether carrier-furnished containers whose contents are disclosed should be treated as packages, the interest in securing international uniformity would suggest that they should not be so treated. Carriage of Goods by Sea Act, 4(5), 46 U.S.C.A. 1304(5).

... After quoting the statement in Leather's Best, supra, 451 F 2d at 815, that treating a container as a package is inconsistent with the congressional purpose of establishing a reasonable minimum level of liability, Judge Beeks wrote, 414 F. Supp. at 907 (footnotes omitted):

> Although this approach has not completely escaped criticism, there is, nonetheless, much to commend it. It gives needed recognition to the responsibility of the courts to construe and apply the statute as enacted, however great might be the temptation to "modernize" or reconstitute it by artful judicial gloss. If COGSA's package limitation scheme suffers from internal illness, Congress alone must undertake the surgery. There is, in this regard, obvious wisdom in the Ninth Circuit's conclusion in Hartford that technological advancements, whether or not forseeable by the COGSA promulgators, do not warrant a distortion or artificial construction of the statutory term "package." A ruling that these large reusable metal pieces of transport equipment qualify as COGSA packages — at least where, as here, they were carrier owned and supplied — would amount to just such a distortion.
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> Certainly, if the individual crates or cartons prepared by the shipper and containing his goods can rightly be considered "packages" standing by themselves, they do not suddenly lose that character upon being stowed in a carrier's container. I would liken these containers to detachable stowage compartments of the ship. They simply serve to divide the ship's overall cargo stowage space into smaller, more serviceable loci. Shippers' packages are quite literally "stowed" in the containers utilizing stevedoring practices and materials analogous to those employed in traditional on board stowage.

In *Yeramex International v. S.S. Tando,,* 1977 A.M.C. 1807 (E.D. Va.) rev'd on other grounds, 595 F 2nd 943 (4 Cir. 1979), another district with many maritime cases followed Judge Beeks' reasoning in Matsushita and similarly rejected the functional economics test. Judge Kellam held that when rolls of polyester goods are packed into cardboard cartons which are then placed in containers, the cartons and not the containers are the packages.

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The case of *Smithgreyhound v. M/V Eurygenes,* **18** followed the Mitsui test:

> Eurygenes concerned a shipment of stereo equipment packaged by the shipper into cartons which were then placed by the shipper into a carrier- furnished container. *The number of cartons was disclosed to the carrier in the bill of lading. Eurygenes followed the Mitsui test and treated the cartons, not the container, as the COGSA packages.* However, Eurygenes indicated that a carrier could limit its liability to $500 per container if the bill of lading failed to disclose the number of cartons or units within the container, or if the parties indicated, in clear and unambiguous language, an agreement to treat the container as the package.
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> (Admiralty Litigation in Perpetuum: The Continuing Saga of Package Limitations and Third World Delivery Problems by Chester D. Hooper & Keith L. Flicker, published in Fordham International Law Journal, Vol. 6, 1982-83, Number 1) (Emphasis supplied)

In this case, the Bill of Lading (Exhibit "A") disclosed the following data:

> 2 Containers
>
> (128) Cartons)
>
> Men's Garments Fabrics and Accessories Freight Prepaid
>
> Say: Two (2) Containers Only.

Considering, therefore, that the Bill of Lading clearly disclosed the contents of the containers, the number of cartons or units, as well as the nature of the goods, and applying the ruling in the *Mitsui* and *Eurygenes* cases it is clear that the 128 cartons, not the two (2) containers should be considered as the shipping unit subject to the $500 limitation of liability.

True, the evidence does not disclose whether the containers involved herein were carrier-furnished or not. Usually, however, containers are provided by the carrier. **19** In this case, the probability is that they were so furnished for Petitioner Carrier was at liberty to pack and carry the goods in containers if they were not so packed. Thus, at the dorsal side of the Bill of Lading (Exhibit "A") appears the following stipulation in fine print:

> 11. (Use of Container) Where the goods receipt of which is acknowledged on the face of this Bill of Lading are not already packed into container(s) at the time of receipt, the Carrier shall be at liberty to

pack and carry them in any type of container(s).

The foregoing would explain the use of the estimate "Say: Two (2) Containers Only" in the Bill of Lading, meaning that the goods could probably fit in two (2) containers only. It cannot mean that the shipper had furnished the containers for if so, "Two (2) Containers" appearing as the first entry would have sufficed. and if there is any ambiguity in the Bill of Lading, it is a cardinal principle in the construction of contracts that the interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity. [20] This applies with even greater force in a contract of adhesion where a contract is already prepared and the other party merely adheres to it, like the Bill of Lading in this case, which is draw. up by the carrier. [21]

On Alleged Denial of Opportunity to Present Deposition of Its Witnesses: (in G.R. No. 69044 only)

Petitioner Carrier claims that the Trial Court did not give it sufficient time to take the depositions of its witnesses in Japan by written interrogatories.

We do not agree. petitioner Carrier was given- full opportunity to present its evidence but it failed to do so. On this point, the Trial Court found:

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> Indeed, since after November 6, 1978, to August 27, 1979, not to mention the time from June 27, 1978, when its answer was prepared and filed in Court, until September 26, 1978, when the pre-trial conference was conducted for the last time, the defendant had more than nine months to prepare its evidence. Its belated notice to take deposition on written interrogatories of its witnesses in Japan, served upon the plaintiff on August 25th, just two days before the hearing set for August 27th, knowing fully well that it was its undertaking on July 11 the that the deposition of the witnesses would be dispensed with if by next time it had not yet been obtained, only proves the lack of merit of the defendant's motion for postponement, for which reason it deserves no sympathy from the Court in that regard. The defendant has told the Court since February 16, 1979, that it was going to take the deposition of its witnesses in Japan. Why did it take until August 25, 1979, or more than six months, to prepare its written interrogatories. Only the defendant itself is to blame for its failure to adduce evidence in support of its defenses.
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> xxx xxx xxx [22]

Petitioner Carrier was afforded ample time to present its side of the case. [23] It cannot complain now that it was denied due process when the Trial Court rendered its Decision on the basis of the evidence adduced. What due process abhors is absolute lack of opportunity to be heard. [24]

On the Award of Attorney's Fees:

Petitioner Carrier questions the award of attorney's fees. In both cases, respondent Court affirmed the award by the Trial Court of attorney's fees of P35,000.00 in favor of Development Insurance in G.R. No. 69044, and P5,000.00 in favor of NISSHIN and DOWA in G.R. No. 71478.

Courts being vested with discretion in fixing the amount of attorney's fees, it is believed that the amount of P5,000.00 would be more reasonable in G.R. No. 69044. The award of P5,000.00 in G.R. No. 71478 is affirmed.

WHEREFORE, 1) in G.R. No. 69044, the judgment is modified in that petitioner Eastern Shipping Lines shall pay the Development Insurance and Surety Corporation the amount of P256,039 for the twenty-eight (28) packages of calorized lance pipes, and P71,540 for the seven (7) cases of spare parts, with interest at the legal rate from the date of the filing of the complaint on June 13, 1978, plus P5,000 as attorney's fees, and the costs.

2) In G.R.No.71478,the judgment is hereby affirmed.

SO ORDERED.

Narvasa, Cruz, Feliciano and Gancayco, JJ., concur.

Separate Opinions

YAP, *J.,* concurring and dissenting:

With respect to G.R. No. 71478, the majority opinion holds that the 128 cartons of textile materials, and not the two (2) containers, should be considered as the shipping unit for the purpose of applying the $500.00 limitation under the Carriage of Goods by Sea Act (COGSA).

The majority opinion followed and applied the interpretation of the COGSA "package" limitation adopted by the Second Circuit, United States Court of Appeals, in *Mitsui & Co., Ltd. vs. American Export Lines, Inc.,* 636 F. 2d 807 (1981) and the *Smithgreyhound v. M/V Eurygenes*, 666, F 2nd, 746. Both cases adopted the rule that carrier-furnished containers whose contents are fully disclosed are not "packages" within the meaning of Section 4 (5) of COGSA.

I cannot go along with the majority in applying the *Mitsui* and *Eurygenes* decisions to the present case, for the following reasons: (1) The facts in those cases differ materially from those obtaining in the present case; and (2) the rule laid down in those two cases is by no means settled doctrine.

In *Mitsui* and *Eurygenes,* the containers were supplied by the carrier or shipping company. In *Mitsui* the Court held: "Certainly, if the individual crates or cartons prepared by the shipper and containing his goods can rightly be considered "packages" standing by themselves, they do not suddenly lose that character upon being stowed in a carrier's container. I would liken these containers to detachable stowage compartments of the ship." Cartons or crates placed inside carrier-furnished containers are deemed stowed in the vessel itself, and do not lose their character as individual units simply by being placed inside container provided by the carrier, which are merely "detachable stowage compartments of the ship.

In the case at bar, there is no evidence showing that the two containers in question were carrier-supplied. This fact cannot be presumed. The facts of the case in fact show that this was the only shipment placed in containers. The other shipment involved in the case, consisting of surveying instruments, was packed in two "cases."

We cannot speculate on the meaning of the words "Say: Two (2) Containers Only, " which appear in the bill of lading. Absent any positive evidence on this point, we cannot say that those words constitute a mere estimate that the shipment could fit in two containers, thereby showing that when the goods were delivered by the shipper, they were not yet placed inside the containers and that it was the petitioner carrier which packed the goods into its own containers, as authorized under paragraph 11 on the dorsal side of the bill of lading, Exhibit A. Such assumption cannot be made in view of the following words clearly stamped in red ink on the face of the bill of lading: "Shipper's Load, Count and Seal Said to Contain." This clearly indicates that it was the shipper which loaded and counted the goods placed inside the container and sealed the latter.

The two containers were delivered by the shipper to the carrier already sealed for shipment, and the number of cartons said to be contained inside them was indicated in the bill of lading, on the mere say-so of the shipper. The freight paid to the carrier on the shipment was based on the measurement (by volume) of the two containers at $34.50 per cubic meter. The shipper must have saved on the freight charges by using containers for the shipment. Under the circumstances, it would be unfair to the carrier to have the limitation of its liability under COGSA fixed on the number of cartons inside the containers, rather than on the containers themselves, since the freight revenue was based on the latter.

The *Mitsui* and *Eurygenes* decisions are not the last word on the subject. The interpretation of the COGSA package limitation is in a state of flux, [1] as the courts continue to wrestle with the troublesome problem of applying the statutory limitation under COGSA to containerized shipments. The law was adopted before modern technological changes have revolutionized the shipping industry. There is need for the law itself to be updated to meet the changes brought about by the container revolution, but this is a task which should be addressed by the legislative body. Until then, this Court, while mindful of American jurisprudence on the subject, should make its own interpretation of the COGSA provisions, consistent with what is equitable to the parties concerned. There is need to balance the interests of the shipper and those of the carrier.

In the case at bar, the shipper opted to ship the goods in two containers, and paid freight charges based on the freight unit, i.e., cubic meters. The shipper did not declare the value of the shipment, for that would have entailed higher freight charges; instead of paying higher freight charges, the shipper protected itself by insuring the shipment. As subrogee, the insurance company can recover from the carrier only what the shipper itself is entitled to recover, not the amount it actually paid the shipper under the insurance policy.

In our view, under the circumstances, the container should be regarded as the shipping unit or "package" within the purview of COGSA. However, we realize that this may not be equitable as far as the shipper is concerned. If the container is not regarded as a "package" within the terms of COGSA, then, the $500.00 liability limitation should be based on "the customary freight unit." Sec. 4 (5) of COGSA provides that in case of goods not shipped in packages, the limit of the carrier's liability shall be $500.00 "per customary freight unit." In the case at bar, the petitioner's liability for the shipment in question based on "freight unit" would be $21,950.00 for the shipment of 43.9 cubic meters.

I concur with the rest of the decision.

Sarmiento, J., concur.

Separate Opinions

YAP, *J.,* concurring and dissenting:

With respect to G.R. No. 71478, the majority opinion holds that the 128 cartons of textile materials, and not the two (2) containers, should be considered as the shipping unit for the purpose of applying the $500.00 limitation under the Carriage of Goods by Sea Act (COGSA).

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In *Mitsui* and *Eurygenes,* the containers were supplied by the carrier or shipping company. In *Mitsui* the Court held: "Certainly, if the individual crates or cartons prepared by the shipper and containing his goods can rightly be considered "packages" standing by themselves, they do not suddenly lose that character upon being stowed in a carrier's container. I would liken these containers to detachable stowage compartments of the ship." Cartons or crates placed inside carrier-furnished containers are deemed stowed in the vessel itself, and do not lose their character as individual units simply by being placed inside container provided by the carrier, which are merely "detachable stowage compartments of the ship.

In the case at bar, there is no evidence showing that the two containers in question were carrier-supplied. This fact cannot be presumed. The facts of the case in fact show that this was the only shipment placed in containers. The other shipment involved in the case, consisting of surveying instruments, was packed in two "cases."

We cannot speculate on the meaning of the words "Say: Two (2) Containers Only, " which appear in the bill of lading. Absent any positive evidence on this point, we cannot say that those words constitute a mere estimate that the shipment could fit in two containers, thereby showing that when the goods were delivered by the shipper, they were not yet placed inside the containers and that it was the petitioner carrier which packed the goods into its own containers, as authorized under paragraph 11 on the dorsal side of the bill of lading, Exhibit A. Such assumption cannot be made in view of the following words clearly stamped in red ink on the face of the bill of lading: "Shipper's Load, Count and Seal Said to Contain." This clearly indicates that it was the shipper which loaded and counted the goods placed inside the container and sealed the latter.

The two containers were delivered by the shipper to the carrier already sealed for shipment, and the number of cartons said to be contained inside them was indicated in the bill of lading, on the mere say-so of the shipper. The freight paid to the carrier on the shipment was based on the measurement (by volume) of the two containers at $34.50 per cubic meter. The shipper must have saved on the freight charges by using containers for the shipment. Under the circumstances, it would be unfair to the carrier to have the limitation of its liability under COGSA fixed on the number of cartons inside the containers, rather than on the containers themselves, since the freight revenue was based on the latter.

The *Mitsui* and *Eurygenes* decisions are not the last word on the subject. The interpretation of the COGSA package limitation is in a state of flux, [1] as the courts continue to wrestle with the troublesome problem of applying the statutory limitation under COGSA to containerized shipments. The law was adopted before modern technological changes have revolutionized the shipping industry. There is need for the law itself to be updated to meet the changes brought about by the container revolution, but this is a task which should be addressed by the legislative body. Until then, this Court, while mindful of American jurisprudence on the subject, should make its own interpretation of the COGSA provisions, consistent with what is equitable to the parties concerned. There is need to balance the interests of the shipper and those of the carrier.

In the case at bar, the shipper opted to ship the goods in two containers, and paid freight charges based on the freight unit, i.e., cubic meters. The shipper did not declare the value of the shipment, for that would have entailed higher freight charges; instead of paying higher freight charges, the shipper protected itself by insuring the shipment. As subrogee, the insurance company can recover from the carrier only what the shipper itself is entitled to recover, not the amount it actually paid the shipper under the insurance policy.

In our view, under the circumstances, the container should be regarded as the shipping unit or "package" within the purview of COGSA. However, we realize that this may not be equitable as far as the shipper is concerned. If the container is not regarded as a "package" within the terms of COGSA, then, the $500.00 liability limitation should be based on "the customary freight unit." Sec. 4 (5) of COGSA provides that in case of goods not shipped in packages, the limit of the carrier's liability shall be $500.00 "per customary freight unit." In the case at bar, the petitioner's liability for the shipment in question based on "freight unit" would be $21,950.00 for the shipment of 43.9 cubic meters.

I concur with the rest of the decision.

Sarmiento, J., concur.

Footnotes

1 Petition, p. 6, Rollo of G.R. No. 69044, p. 15.

2 Granada vs. PNB, 18 SCRA 1 (1966); Gardner vs. CA, 131 SCRA 85 (1984)

3 p.51, Vol. 5, Rules of Court by Ruperto G. Martin, citing 31 C.J.S. 1075.

4 Article 1753, Civil Code.

5 See Samar Mining Co., Inc. vs. Nordeutscher Lloyd, 132 SCRA 529 (1984).

6 Art. 1766, Civil Code; Samar Mining Co. Inc. vs. Lloyd, supra.

7 See American President Lines vs. Klepper, 110 Phil. 243, 248 (1960).

8 Article 1733, Civil Code.

9 Article 1734, Civil Code.

10 Africa vs. Caltex Phil. 16 SCRA 448, 455 (1966).

11 Lloyd vs. Haugh & K. Storage & Transport Co., 293 Pa. 148, A 516; Forward v. Pittard, ITR 27, 99 Eng. Reprint, 953.

12 Article 1734, Civil Code.

13 Section 4, Carriage of Goods by Sea Act.

14 Manresa, cited in p. 147, V. Outline of the Civil Law, J.B.L. Reyes and R.C. Puno.

15 Decision, Court of Appeals in CA-G.R. No. 67848-R, appealed in G.R. No. 71478.

16 Shackman v. Cunard White Star, D.C. N. Y. 1940, 31 F. Supp. 948. 46 USCA 866: cited in Phoenix Assurance Company vs. Macondray 64 SCRA 15 (1975),

17 Folio of Exhibits, pp. 6 and 23.

18 666 F. 2d 746, 1982 A.M.C. 320 (2d Circuits 1981).

19 A container is a permanent reusable article of transport equipment not packaging of goods durably made of metal, and equipped with doors for easy access to the goods and for repeated use. It is designed to facilitate the handling, loading, stowage aboard ship, carriage, discharge from ship, movement, and transfer of large numbers of packages simultaneously by mechanical means to minimize the cost and risks of manually processing each package individually, It functions primarily as ship's gear for cargo handling, and is usually provided by the carrier. (Simon, The Law of Shipping Containers) (Emphasis supplied).

20 Article 1377, Civil Code.

21 See Qua Chee Gan vs. Law Union & Rock Ins. Co., Ltd., 98 Phil. 85 (1956).

22 Amended Record on Appeal, Annex "D," p. 62; Rollo in G.R. No. 69044, p. 89.

23 Associated Citizens Bank vs. Ople, 103 SCRA 130 (1981).

24 Tajonera vs. Lamaroza, 110 SCRA 438 (1981).

Yap, J.:

1 See R.M. Sharpe, Jr. and Mark E. Steiner, "The Container as Customary Freight Unit". Round Two of the Container Debate?", South Texas Law Journal Vol. 24, No. 2 (1983).

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