Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. L-66935 November 11, 1985

ISABELA ROQUE, doing busines under the name and style of Isabela Roque Timber Enterprises and ONG CHIONG, petitioners,
vs.
HON. INTERMEDIATE APPELATE COURT and PIONEER INSURANCE AND SURETY CORPORATION, respondent.

GUTIERREZ, JR., *J.:*

This petition for certiorari asks for the review of the decision of the Intermediate Appellate Court which absolved the respondent insurance company from liability on the grounds that the vessel carrying the insured cargo was unseaworthy and the loss of said cargo was caused not by the perils of the sea but by the perils of the ship.

On February 19, 1972, the Manila Bay Lighterage Corporation (Manila Bay), a common carrier, entered into a contract with the petitioners whereby the former would load and carry on board its barge Mable 10 about 422.18 cubic meters of logs from Malampaya Sound, Palawan to North Harbor, Manila. The petitioners insured the logs against loss for P100,000.00 with respondent Pioneer Insurance and Surety Corporation (Pioneer).

On February 29, 1972, the petitioners loaded on the barge, 811 pieces of logs at Malampaya Sound, Palawan for carriage and delivery to North Harbor, Port of Manila, but the shipment never reached its destination because Mable 10 sank with the 811 pieces of logs somewhere off Cabuli Point in Palawan on its way to Manila. As alleged by the petitioners in their complaint and as found by both the trial and appellate courts, the barge where the logs were loaded was not seaworthy such that it developed a leak. The appellate court further found that one of the hatches was left open causing water to enter the barge and because the barge was not provided with the necessary cover or tarpaulin, the ordinary splash of sea waves brought more water inside the barge.

On March 8, 1972, the petitioners wrote a letter to Manila Bay demanding payment of P150,000.00 for the loss of the shipment plus P100,000.00 as unrealized profits but the latter ignored the demand. Another letter was sent to respondent Pioneer claiming the full amount of P100,000.00 under the insurance policy but respondent refused to pay on the ground that its hability depended upon the "Total loss by Total Loss of Vessel only". Hence, petitioners commenced Civil Case No. 86599 against Manila Bay and respondent Pioneer.

After hearing, the trial court found in favor of the petitioners. The dispositive portion of the decision reads:

> FOR ALL THE FOREGOING, the Court hereby rendered judgment as follows:
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> (a) Condemning defendants Manila Bay Lighterage Corporation and Pioneer Insurance and Surety Corporation to pay plaintiffs, jointly and severally, the sum of P100,000.00;
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> (b) Sentencing defendant Manila Bay Lighterage Corporation to pay plaintiff, in addition, the sum of P50,000.00, plus P12,500.00, that the latter advanced to the former as down payment for transporting the logs in question;
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> (c) Ordering the counterclaim of defendant Insurance against plaintiffs, dismissed, for lack of merit, but as to its cross-claim against its co-defendant Manila Bay Lighterage Corporation, the latter is ordered to reimburse the former for whatever amount it may pay the plaintiffs as such surety;
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> (d) Ordering the counterclaim of defendant Lighterage against plaintiffs, dismissed for lack of merit;

> (e) Plaintiffs' claim of not less than P100,000.00 and P75,000.00 as exemplary damages are ordered dismissed, for lack of merits; plaintiffs' claim for attorney's fees in the sum of P10,000.00 is hereby granted, against both defendants, who are, moreover ordered to pay the costs; and
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> (f) The sum of P150,000.00 award to plaintiffs, shall bear interest of six per cent (6%) from March 25, 1975, until amount is fully paid.

Respondent Pioneer appealed to the Intermediate Appellate Court. Manila Bay did not appeal. According to the petitioners, the transportation company is no longer doing business and is without funds.

During the initial stages of the hearing, Manila Bay informed the trial court that it had salvaged part of the logs. The court ordered them to be sold to the highest bidder with the funds to be deposited in a bank in the name of Civil Case No. 86599.

On January 30, 1984, the appellate court modified the trial court's decision and absolved Pioneer from liability after finding that there was a breach of implied warranty of seaworthiness on the part of the petitioners and that the loss of the insured cargo was caused by the "perils of the ship" and not by the "perils of the sea". It ruled that the loss is not covered by the marine insurance policy.

After the appellate court denied their motion for reconsideration, the petitioners filed this petition with the following assignments of errors:

> I
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> THE INTERMEDIATE APPELLATE COURT ERRED IN HOLDING THAT IN CASES OF MARINE CARGO INSURANCE, THERE IS A WARRANTY OF SEAWORTHINESS BY THE CARGO OWNER.
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> II
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> THE INTERMEDIATE APPELLATE COURT ERRED IN HOLDING THAT THE LOSS OF THE CARGO IN THIS CASE WAS CAUSED BY "PERILS OF THE SHIP" AND NOT BY "PERILS OF THE SEA."
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> III
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> THE INTERMEDIATE APPELLATE COURT ERRED IN NOT ORDERING THE RETURN TO PETITIONER OF THE AMOUNT OF P8,000.00 WHICH WAS DEPOSITED IN THE TRIAL COURT AS SALVAGE VALUE OF THE LOGS THAT WERE RECOVERED.

In their first assignment of error, the petitioners contend that the implied warranty of seaworthiness provided for in the Insurance Code refers only to the responsibility of the shipowner who must see to it that his ship is reasonably fit to make in safety the contemplated voyage.

The petitioners state that a mere shipper of cargo, having no control over the ship, has nothing to do with its seaworthiness. They argue that a cargo owner has no control over the structure of the ship, its cables, anchors, fuel and provisions, the manner of loading his cargo and the cargo of other shippers, and the hiring of a sufficient number of competent officers and seamen. The petitioners' arguments have no merit.

There is no dispute over the liability of the common carrier Manila Bay. In fact, it did not bother to appeal the questioned decision. However, the petitioners state that Manila Bay has ceased operating as a firm and nothing may be recovered from it. They are, therefore, trying to recover their losses from the insurer.

The liability of the insurance company is governed by law. Section 113 of the Insurance Code provides:

> In every marine insurance upon a ship or freight, or freightage, or upon any thing which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

Section 99 of the same Code also provides in part.

Marine insurance includes:

> (1) Insurance against loss of or damage to:
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> (a) Vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, ...

From the above-quoted provisions, there can be no mistaking the fact that the term "cargo" can be the subject of marine insurance and that once it is so made, the implied warranty of seaworthiness immediately attaches to whoever is insuring the cargo whether he be the shipowner or not.

As we have ruled in the case of *Go Tiaoco y Hermanos v. Union Insurance Society of Canton* (40 Phil. 40):

> The same conclusion must be reached if the question be discussed with reference to the seaworthiness of the ship. It is universally accepted that in every contract of insurance upon anything which is the subject of marine insurance, a warranty is implied that the ship shall be seaworthy at the time of the inception of the voyage. This rule is accepted in our own Insurance Law (Act No. 2427, sec. 106). ...

Moreover, the fact that the unseaworthiness of the ship was unknown to the insured is immaterial in ordinary marine insurance and may not be used by him as a defense in order to recover on the marine insurance policy.

As was held in *Richelieu and Ontario Nav. Co. v. Boston Marine, Inc., Co.* (136 U.S. 406):

> There was no look-out, and both that and the rate of speed were contrary to the Canadian Statute. The exception of losses occasioned by unseaworthiness was in effect a warranty that a loss should not be so occasioned, and whether the fact of unseaworthiness were known or unknown would be immaterial.

Since the law provides for an implied warranty of seaworthiness in every contract of ordinary marine insurance, it becomes the obligation of a cargo owner to look for a reliable common carrier which keeps its vessels in seaworthy condition. The shipper of cargo may have no control over the vessel but he has full control in the choice of the common carrier that will transport his goods. Or the cargo owner may enter into a contract of insurance which specifically provides that the insurer answers not only for the perils of the sea but also provides for coverage of perils of the ship.

We are constrained to apply Section 113 of the Insurance Code to the facts of this case. As stated by the private respondents:

> In marine cases, the risks insured against are "perils of the sea" (Chute v. North River Ins. Co., Minn— 214 NW 472, 55 ALR 933). The purpose of such insurance is protection against contingencies and against possible damages and such a policy does not cover a loss or injury which must inevitably take place in the ordinary course of things. There is no doubt that the term 'perils of the sea' extends only to losses caused by sea damage, or by the violence of the elements, and does not embrace all losses happening at sea. They insure against losses from *extraordinary occurrences* only, such as stress of weather, winds and waves, lightning, tempests, rocks and the like. These are understood to be the "perils of the sea" referred in the policy, and not those ordinary perils which every vessel must encounter. "Perils of the sea" has been said to include only such losses as are of *extraordinary* nature, or *arise from some overwhelming power*, which cannot be guarded against by the ordinary exertion of human skill and prudence. Damage done to a vessel by perils of the sea includes every species of damages done to a vessel at sea, as distinguished from the ordinary wear and tear of the voyage, and *distinct from injuries* suffered by the vessel in consequence of her not being seaworthy at the outset of her voyage (as in this case). It is also the general rule that everything which happens thru the inherent vice of the thing, or by the act of the owners, master or shipper, shall not be reputed a peril, if not otherwise borne in the policy. (14 RCL on Insurance, Sec. 384, pp. 1203- 1204; Cia. de Navegacion v. Firemen's Fund Ins. Co., 277 US 66, 72 L. ed. 787, 48 S. Ct. 459).

With regard to the second assignment of error, petitioners maintain, that the loss of the cargo was caused by the perils of the sea, not by the perils of the ship because as found by the trial court, the barge was turned loose from the tugboat east of Cabuli Point "where it was buffeted by storm and waves." Moreover, petitioners also maintain that barratry, against which the cargo was also insured, existed when the personnel of the tugboat and the barge committed a mistake by turning loose the barge from the tugboat east of Cabuli Point. The trial court also found that the stranding and foundering of Mable 10 was due to improper loading of the logs as well as to a leak in the barge which constituted negligence.

On the contention of the petitioners that the trial court found that the loss was occasioned by the perils of the sea characterized by the "storm and waves" which buffeted the vessel, the records show that the court ruled otherwise. It stated:

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> ... The other affirmative defense of defendant Lighterage, 'That the supposed loss of the logs was occasioned by force majeure... "was not supported by the evidence. At the time Mable 10 sank, there was no typhoon but ordinary strong wind and waves, a condition which is natural and normal in the open sea. The evidence shows that the sinking of Mable 10 was due to improper loading of the logs on one side so that the barge was tilting on one side and for that it did not navigate on even keel; that it was no longer seaworthy that was why it developed leak; that the personnel of the tugboat and the barge committed a mistake when it turned loose the barge from the tugboat east of Cabuli point where

> it was buffeted by storm and waves, while the tugboat proceeded to west of Cabuli point where it was protected by the mountain side from the storm and waves coming from the east direction. ..."

In fact, in the petitioners' complaint, it is alleged that "the barge Mable 10 of defendant carrier developed a leak which allowed water to come in and that one of the hatches of said barge was negligently left open by the person in charge thereof causing more water to come in and that "the loss of said plaintiffs' cargo was due to the fault, negligence, and/or lack of skill of defendant carrier and/or defendant carrier's representatives on barge Mable 10."

It is quite unmistakable that the loss of the cargo was due to the perils of the ship rather than the perils of the sea. The facts clearly negate the petitioners' claim under the insurance policy. In the case of *Go Tiaoco y Hermanos v. Union Ins. Society of Canton, supra*, we had occasion to elaborate on the term "perils of the ship." We ruled:

> It must be considered to be settled, furthermore, that a loss which, in the ordinary course of events, results from the natural and inevitable action of the sea, from the ordinary wear and tear of the ship, or from the negligent failure of the ship's owner to provide the vessel with proper equipment to convey the cargo under ordinary conditions, is not a peril of the sea. Such a loss is rather due to what has been aptly called the "peril of the ship." The insurer undertakes to insure against perils of the sea and similar perils, not against perils of the ship. As was well said by *Lord Herschell in Wilson, Sons & Co. v. Owners of Cargo per the Xantho* ([1887], 12 A. C., 503, 509), there must, in order to make the insurer liable, be some casualty, something which could not be foreseen as one of the necessary incidents of the adventure. The purpose of the policy is to secure an indemnity against accidents which may happen, not against events which must happen.
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> In the present case the entrance of the sea water into the ship's hold through the defective pipe already described was not due to any accident which happened during the voyage, but to the failure of the ship's owner properly to repair a defect of the existence of which he was apprised. The loss was therefore more analogous to that which directly results from simple unseaworthiness than to that which result from the perils of the sea.
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> xxx xxx xxx
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> Suffice it to say that upon the authority of those cases there is no room to doubt the liability of the shipowner for such a loss as occurred in this case. By parity of reasoning the insurer is not liable; for generally speaking, the shipowner excepts the perils of the sea from his engagement under the bill of lading, while this is the very perils against which the insurer intends to give protection. As applied to the present case it results that the owners of the damaged rice must look to the shipowner for redress and not to the insurer.

Neither can petitioners allege barratry on the basis of the findings showing negligence on the part of the vessel's crew.

Barratry as defined in American Insurance Law is "any willful misconduct on the part of master or crew in pursuance of some unlawful or fraudulent purpose without the consent of the owners, and to the prejudice of the owner's interest." (Sec. 171, U.S. Insurance Law, quoted in Vance, Handbook on Law of Insurance, 1951, p. 929.)

Barratry necessarily requires a willful and intentional act in its commission. No honest error of judgment or mere negligence, unless criminally gross, can be barratry. (See Vance on Law of Insurance, p. 929 and cases cited therein.)

In the case at bar, there is no finding that the loss was occasioned by the willful or fraudulent acts of the vessel's crew. There was only simple negligence or lack of skill. Hence, the second assignment of error must likewise be dismissed.

Anent the third assignment of error, we agree with the petitioners that the amount of P8,000.00 representing the amount of the salvaged logs should have been awarded to them. However, this should be deducted from the amounts which have been adjudicated against Manila Bay Lighterage Corporation by the trial court.

WHEREFORE, the decision appealed from is AFFIRMED with the modification that the amount of P8,000.00 representing the value of the salvaged logs which was ordered to be deposited in the Manila Banking Corporation in the name of Civil Case No. 86599 is hereby awarded and ordered paid to the petitioners. The liability adjudged against Manila Bay Lighterage Corporation in the decision of the trial court is accordingly reduced by the same amount.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, De la Fuente and Patajo, JJ., concur.

Relova, J., is on leave.

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