



Republic of the Philippines  
**SUPREME COURT**  
Manila

SECOND DIVISION

**G.R. No. 94052**      **August 9, 1991**

**ORIENTAL ASSURANCE CORPORATION**, petitioner,  
vs.  
**COURT OF APPEALS AND PANAMA SAW MILL CO., INC.**, respondents.

*Alejandro P. Ruiz, Jr. for petitioner.*  
*Federico R. Reyes for private respondent.*

**MELENCIO-HERRERA, J:**

An action to recover on a marine insurance policy, issued by petitioner in favor of private respondent, arising from the loss of a shipment of apitong logs from Palawan to Manila.

The facts relevant to the present review disclose that sometime in January 1986, private respondent Panama Sawmill Co., Inc. (Panama) bought, in Palawan, 1,208 pieces of apitong logs, with a total volume of 2,000 cubic meters. It hired Transpacific Towage, Inc., to transport the logs by sea to Manila and insured it against loss for P1-M with petitioner Oriental Assurance Corporation (Oriental Assurance). There is a claim by Panama, however, that the insurance coverage should have been for P3-M were it not for the fraudulent act of one Benito Sy Yee Long to whom it had entrusted the amount of P6,000.00 for the payment of the premium for a P3-M policy.

Oriental Assurance issued Marine Insurance Policy No. OACM 86/002, which stipulated, among others:

Name of Insured:  
Panama Sawmill, Inc.  
Karuhatan, Valenzuela  
Metro Manila

Vessel:

MT. 'Seminole' Barge PCT 7,000-1,000 cubic meter apitong Logs  
Barge Transpac 1,000-1,000 cubic meter apitong Logs  
Voyage or Period of Insurance:

From Palawan-ETD January 16, 1986  
To: Manila

Subject matter Insured:

2,000 cubic meters apitong Logs  
Agreed Value

Amount Insured Hereunder:

Pesos: One Million Only (P1,000,000.00)  
Philippine Currency

Premium — P2,500.00 rate — 0.250%

Doc. stamps 187.60 Invoice No. 157862

I % P/tax 25.00

TOTAL P2,712.50

#### CLAUSES, ENDORSEMENTS, SPECIAL CONDITIONS and WARRANTIES

Warranted that this Insurance is against TOTAL LOSS ONLY. Subject to the following clauses:

- Civil Code Article 1250 Waiver clause
- Typhoon warranty clause
- Omnibus clause.

The logs were loaded on two (2) barges: (1) on barge PCT-7000,610 pieces of logs with a volume of 1,000 cubicmeters; and (2) on Barge TPAC-1000, 598 pieces of logs, also with a volume of 1,000 cubic meters.

On 28 January 1986, the two barges were towed by one tug-boat, the MT 'Seminole' But, as fate would have it, during the voyage, rough seas and strong winds caused damage to Barge TPAC-1000 resulting in the loss of 497 pieces of logs out of the 598 pieces loaded thereon.

Panama demanded payment for the loss but Oriental Assurance refuse on the ground that its contracted liability was for "TOTAL LOSS ONLY." The rejection was upon the recommendation of the Tan Gatue Adjustment Company.

Unable to convince Oriental Assurance to pay its claim, Panama filed a Complaint for Damages against Ever Insurance Agency (allegedly, also liable), Benito Sy Lee Yong and Oriental Assurance, before the Regional Trial Court, Kalookan, Branch 123, docketed as Civil Case No. C-12601.

After trial on the merit, the RTC<sup>1</sup> rendered its Decision, with the following dispositive portion:

WHEREFORE, upon all the foregoing premises, judgment is hereby rendered:

1. Ordering the defendant Oriental Assurance Corporation to pay plaintiff Panama Saw Mill Inc. the amount of P415,000.00 as insurance indemnity with interest at the rate of 12% per annum computed from the date of the filing of the complaint;
2. Ordering Panama Saw Mill to pay defendant Ever Insurance Agency or Antonio Sy Lee Yong, owner thereof, (Ever being a single proprietorship) for the amount of P20,000.00 as attorney's fee and another amount of P20,000.00 as moral damages.
3. Dismissing the complaint against defendant Benito Sy Lee Yong.

SO ORDERED.

On appeal by both parties, respondent Appellate Court<sup>2</sup> affirmed the lower Court judgment in all respects except for the rate of interest, which was reduce from twelve (12%) to six (6%) per annum.

Both Courts shared the view that the insurance contract should be liberally construed in order to avoid a denial of substantial justice; and that the logs loaded in the two barges should be treated separately such that the loss sustained by the shipment in one of them may be considered as "constructive total loss" and correspondingly compensable.

In this Petition for Review on Certiorari, Oriental Assurance challenges the aforesaid dispositions. In its Comment, Panama, in turn, maintains that the constructive total loss should be based on a policy value of P3-M and not P1-M, and prays that the award to Ever Insurance Agency or Antonio Sy Lee Yong of damages and attorney's fees be set aside.

The question for determination is whether or not Oriental Assurance can be held liable under its marine insurance policy based on the theory of a divisible contract of insurance and, consequently, a constructive total loss.

Our considered opinion is that no liability attaches.

The terms of the contract constitute the measure of the insurer liability and compliance therewith is a condition precedent to the insured's right to recovery from the insurer (Perla Compania de Seguros, Inc. v. Court of Appeals, G.R. No. 78860, May 28, 1990, 185 SCRA 741). Whether a contract is entire or severable is a question of intention to be determined by the language employed by the parties. The policy in question shows that the subject matter insured was the entire shipment of 2,000 cubic meters of apitong logs. The fact that the logs were loaded on two

different barges did not make the contract several and divisible as to the items insured. The logs on the two barges were not separately valued or separately insured. Only one premium was paid for the entire shipment, making for only one cause or consideration. The insurance contract must, therefore, be considered indivisible.

More importantly, the insurer's liability was for "total loss only." A total loss may be either actual or constructive (Sec. 129, Insurance Code). An actual total loss is caused by:

- (a) A total destruction of the thing insured;
- (b) The irretrievable loss of the thing by sinking, or by being broken up;
- (c) Any damage to the thing which renders it valueless to the owner for the purpose for which he held it; or
- (d) Any other event which effectively deprives the owner of the possession, at the port of destination, of the thing insured. (Section 130, Insurance Code).

A constructive total loss is one which gives to a person insured a right to abandon, under Section 139 of the Insurance Code. This provision reads:

SECTION 139. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof *separately valued by the policy, or otherwise separately insured*, and recover for a total loss thereof, when the cause of the loss is a peril injured against,

- (a) If more than three-fourths thereof in value is actually lost, or would have to be expended to recover it from the peril;
- (b) If it is injured to such an extent as to reduce its value more than three-fourths;

x x x      x x x      x x x

(Emphasis supplied)

Respondent Appellate Court treated the loss as a constructive total loss, and for the purpose of computing the more than three-fourths value of the logs actually lost, considered the cargo in one barge as separate from the logs in the other. Thus, it concluded that the loss of 497 pieces of logs from barge TPAC-1000, mathematically speaking, is more than three-fourths ( $\frac{3}{4}$ ) of the 598 pieces of logs loaded in that barge and may, therefore, be considered as constructive total loss.

The basis thus used is, in our opinion, reversible error. The requirements for the application of Section 139 of the Insurance Code, quoted above, have not been met. The logs involved, although placed in two barges, were not separately valued by the policy, nor separately insured. Resultantly, the logs lost in barge TPAC-1000 in relation to the total number of logs loaded on the same barge can not be made the basis for determining constructive total loss. The logs having been insured as one inseparable unit, the correct basis for determining the existence of constructive total loss is the totality of the shipment of logs. Of the entirety of 1,208, pieces of logs, only 497 pieces thereof were lost or 41.45% of the entire shipment. Since the cost of those 497 pieces does not exceed 75% of the value of all 1,208 pieces of logs, the shipment can not be said to have sustained a constructive total loss under Section 139(a) of the Insurance Code.

In the absence of either actual or constructive total loss, there can be no recovery by the insured Panama against the insurer, Oriental Assurance.

By reason of the conclusions arrived at, Panama's asseverations in its Comment need no longer be passed upon, besides the fact that no review, in proper form, has been sought by it.

WHEREFORE, the judgment under review is hereby SET ASIDE and petitioner, Oriental Assurance Corporation, is hereby ABSOLVED from liability under its marine insurance policy No. OAC-M-86/002. No costs.

SO ORDERED.

*Paras, Padilla, Sarmiento and Regalado, JJ., concur.*

## Footnotes

<sup>1</sup> Presided over by Judge Mauro T. Allarde

<sup>2</sup> Special Eighth Division, composed of Justice Felipe B. Kalalo Acting Chairman and ponente; and Justices Luis D. Victor and Abelardo M. Dayrit, Members.

## Unchecked Article