Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 116940 June 11, 1997

THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC., petitioner,
vs.
COURT OF APPEALS and FELMAN SHIPPING LINES, respondents.

BELLOSILLO, *J.:*

This case deals with the liability, if any, of a shipowner for loss of cargo due to its failure to observe the extraordinary diligence required by Art. 1733 of the Civil Code as well as the right of the insurer to be subrogated to the rights of the insured upon payment of the insurance claim.

On 6 July 1983 Coca-Cola Bottlers Philippines, Inc., loaded on board "*MV Asilda*," a vessel owned and operated by respondent Felman Shipping Lines (FELMAN for brevity), 7,500 cases of 1-liter Coca-Cola softdrink bottles to be transported from Zamboanga City to Cebu City for consignee Coca-Cola Bottlers Philippines, Inc., Cebu.[1] The shipment was insured with petitioner Philippine American General Insurance Co., Inc. (PHILAMGEN for brevity), under Marine Open Policy No. 100367-PAG.

"*MV Asilda*" left the port of Zamboanga in fine weather at eight o'clock in the evening of the same day. At around eight forty-five the following morning, 7 July 1983, the vessel sank in the waters of Zamboanga del Norte bringing down her entire cargo with her including the subject 7,500 cases of 1-liter Coca-Cola softdrink bottles.

On 15 July 1983 the consignee Coca-Cola Bottlers Philippines, Inc., Cebu plant, filed a claim with respondent FELMAN for recovery of damages it sustained as a result of the loss of its softdrink bottles that sank with "*MV Asilda*." Respondent denied the claim thus prompting the consignee to file an insurance claim with PHILAMGEN which paid its claim of P755,250.00.

Claiming its right of subrogation PHILAMGEN sought recourse against respondent FELMAN which disclaimed any liability for the loss. Consequently, on 29 November 1983 PHILAMGEN sued the shipowner for sum of money and damages.

In its complaint PHILAMGEN alleged that the sinking and total loss of "*MV Asilda*" and its cargo were due to the vessel's unseaworthiness as she was put to sea in an unstable condition. It further alleged that the vessel was improperly manned and that its officers were grossly negligent in failing to take appropriate measures to proceed to a nearby port or beach after the vessel started to list.

On 15 February 1985 FELMAN filed a motion to dismiss based on the affirmative defense that no right of subrogation in favor of PHILAMGEN was transmitted by the shipper, and that, in any event, FELMAN had abandoned all its rights, interests and ownership over "*MV Asilda*" together with her freight and appurtenances for the purpose of limiting and extinguishing its liability under Art. 587 of the Code of Commerce.[2]

On 17 February 1986 the trial court dismissed the complaint of PHILAMGEN. On appeal the Court of Appeals set aside the dismissal and remanded the case to the lower court for trial on the merits. FELMAN filed a petition for *certiorari* with this Court but it was subsequently denied on 13 February 1989.

On 28 February 1992 the trial court rendered judgment in favor of FELMAN.[3] It ruled that "*MV Asilda*" was seaworthy when it left the port of Zamboanga as confirmed by certificates issued by the Philippine Coast Guard and the shipowner's surveyor attesting to its seaworthiness. Thus the loss of the vessel and its entire shipment could only be attributed to either a fortuitous event, in which case, no liability should attach unless there was a stipulation

to the contrary, or to the negligence of the captain and his crew, in which case, Art. 587 of the Code of Commerce should apply.

The lower court further ruled that assuming "*MV Asilda*" was unseaworthy, still PHILAMGEN could not recover from FELMAN since the assured (Coca-Cola Bottlers Philippines, Inc.) had breached its implied warranty on the vessel's seaworthiness. Resultantly, the payment made by PHILAMGEN to the assured was an undue, wrong and mistaken payment. Since it was not legally owing, it did not give PHILAMGEN the right of subrogation so as to permit it to bring an action in court as a subrogee.

On 18 March 1992 PHILAMGEN appealed the decision to the Court of Appeals. On 29 August 1994 respondent appellate court rendered judgment finding "*MV Asilda*" unseaworthy for being top-heavy as 2,500 cases of Coca-Cola softdrink bottles were improperly stowed on deck. In other words, while the vessel possessed the necessary Coast Guard certification indicating its seaworthiness with respect to the structure of the ship itself, it was not seaworthy with respect to the cargo. Nonetheless, the appellate court denied the claim of PHILAMGEN on the ground that the assured's implied warranty of seaworthiness was not complied with. Perfunctorily, PHILAMGEN was not properly subrogated to the rights and interests of the shipper. Furthermore, respondent court held that the filing of notice of abandonment had absolved the shipowner/agent from liability under the limited liability rule.

The issues for resolution in this petition are: (a) whether "*MV Asilda*" was seaworthy when it left the port of Zamboanga; (b) whether the limited liability under Art. 587 of the Code of Commerce should apply; and, (c) whether PHILAMGEN was properly subrogated to the rights and legal actions which the shipper had against FELMAN, the shipowner.

"*MV Asilda*" was unseaworthy when it left the port of Zamboanga. In a joint statement, the captain as well as the chief mate of the vessel confirmed that the weather was fine when they left the port of Zamboanga. According to them, the vessel was carrying 7,500 cases of 1-liter Coca-Cola softdrink bottles, 300 sacks of seaweeds, 200 empty CO2 cylinders and an undetermined quantity of empty boxes for fresh eggs. They loaded the empty boxes for eggs and about 500 cases of Coca-Cola bottles on deck.[4] The ship captain stated that around four o'clock in the morning of 7 July 1983 he was awakened by the officer on duty to inform him that the vessel had hit a floating log. At that time he noticed that the weather had deteriorated with strong southeast winds inducing big waves. After thirty minutes he observed that the vessel was listing slightly to starboard and would not correct itself despite the heavy rolling and pitching. He then ordered his crew to shift the cargo from starboard to portside until the vessel was balanced. At about seven o'clock in the morning, the master of the vessel stopped the engine because the vessel was listing dangerously to portside. He ordered his crew to shift the cargo back to starboard. The shifting of cargo took about an hour afterwhich he rang the engine room to resume full speed.

At around eight forty-five, the vessel suddenly listed to portside and before the captain could decide on his next move, some of the cargo on deck were thrown overboard and seawater entered the engine room and cargo holds of the vessel. At that instance, the master of the vessel ordered his crew to abandon ship. Shortly thereafter, "*MV Asilda*" capsized and sank. He ascribed the sinking to the entry of seawater through a hole in the hull caused by the vessel's collision with a partially submerged log.[5]

The Elite Adjusters, Inc., submitted a report regarding the sinking of "*MV Asilda*." The report, which was adopted by the Court of Appeals, reads —

> We found in the course of our investigation that a reasonable explanation for the series of lists experienced by the vessel that eventually led to her capsizing and sinking, was that the vessel was *top-heavy* which is to say that while the vessel may not have been overloaded, yet the distribution or stowage of the cargo on board was done in such a manner that the vessel was in top-heavy condition at the time of her departure and which condition rendered her unstable and unseaworthy for that particular voyage.
>
> In this connection, we wish to call attention to the fact that this vessel was designed as a fishing vessel . . . and it was not designed to carry a substantial amount or quantity of cargo on deck. Therefore, we believe strongly that had her cargo been confined to those that could have been accommodated under deck, her stability would not have been affected and the vessel would not have been in any danger of capsizing, even given the prevailing weather conditions at that time of sinking.
>
> But from the moment that the vessel was utilized to load heavy cargo on its deck, the vessel was rendered unseaworthy for the purpose of carrying the type of cargo because the weight of the deck cargo so decreased the vessel's metacentric height as to cause it to become unstable.
>
> Finally, with regard to the allegation that the vessel encountered big waves, it must be pointed out that ships are precisely designed to be able to navigate safely even during heavy weather and frequently we hear of ships safely and successfully weathering encounters with typhoons and although they may sustain some amount of damage, the sinking of ship during heavy weather is not a frequent occurrence and is not likely to occur unless they are inherently unstable and unseaworthy . . . .

> We believe, therefore, and so hold that the *proximate cause* of the sinking of the M/V "*Asilda*" was her condition of unseaworthiness arising from her having been top-heavy when she departed from the Port of Zamboanga. Her having capsized and eventually sunk was bound to happen and was therefore in the category of an inevitable occurrence (emphasis supplied).[6]

We subscribe to the findings of the Elite Adjusters, Inc., and the Court of Appeals that the proximate cause of the sinking of "*MV Asilda*" was its being top-heavy. Contrary to the ship captain's allegations, evidence shows that approximately 2,500 cases of softdrink bottles were stowed on deck. Several days after "*MV Asilda*" sank, an estimated 2,500 empty Coca-Cola plastic cases were recovered near the vicinity of the sinking. Considering that the ship's hatches were properly secured, the empty Coca-Cola cases recovered could have come only from the vessel's deck cargo. It is settled that carrying a deck cargo raises the presumption of unseaworthiness unless it can be shown that the deck cargo will not interfere with the proper management of the ship. However, in this case it was established that "*MV Asilda*" was not designed to carry substantial amount of cargo on deck. The inordinate loading of cargo deck resulted in the decrease of the vessel's metacentric height [7] thus making it unstable. The strong winds and waves encountered by the vessel are but the ordinary vicissitudes of a sea voyage and as such merely contributed to its already unstable and unseaworthy condition.

On the second issue, Art. 587 of the Code of Commerce is not applicable to the case at bar.[8] Simply put, the ship agent is liable for the negligent acts of the captain in the care of goods loaded on the vessel. This liability however can be limited through abandonment of the vessel, its equipment and freightage as provided in Art. 587. Nonetheless, there are exceptional circumstances wherein the ship agent could still be held answerable despite the abandonment, as where the loss or injury was due to the fault of the shipowner and the captain.[9] The international rule is to the effect that the right of abandonment of vessels, as a legal limitation of a shipowner's liability, does not apply to cases where the injury or average was occasioned by the shipowner's own fault. [10] It must be stressed at this point that Art. 587 speaks only of situations where the fault or negligence is committed solely by the captain. Where the shipowner is likewise to be blamed, Art. 587 will not apply, and such situation will be covered by the provisions of the Civil Code on common carrier. [11]

It was already established at the outset that the sinking of "*MV Asilda*" was due to its unseaworthiness even at the time of its departure from the port of Zamboanga. It was top-heavy as an excessive amount of cargo was loaded on deck. Closer supervision on the part of the shipowner could have prevented this fatal miscalculation. As such, FELMAN was equally negligent. It cannot therefore escape liability through the expedient of filing a notice of abandonment of the vessel by virtue of Art. 587 of the Code of Commerce.

Under Art 1733 of the Civil Code, "(c)ommon 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 and for the safety of the passengers transported by them, according to all the circumstances of each case . . ." In the event of loss of goods, common carriers are presumed to have acted negligently. FELMAN, the shipowner, was not able to rebut this presumption.

In relation to the question of subrogation, respondent appellate court found "*MV Asilda*" unseaworthy with reference to the cargo and therefore ruled that there was breach of warranty of seaworthiness that rendered the assured not entitled to the payment of is claim under the policy. Hence, when PHILAMGEN paid the claim of the bottling firm there was in effect a "voluntary payment" and no right of subrogation accrued in its favor. In other words, when PHILAMGEN paid it did so at its own risk.

It is generally held that in every marine insurance policy the assured impliedly warrants to the assurer that the vessel is seaworthy and such warranty is as much a term of the contract as if expressly written on the face of the policy. [12] Thus Sec. 113 of the Insurance Code provides that "(i)n every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy." Under Sec. 114, a ship is "seaworthy when reasonably fit to perform the service, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy." Thus it becomes the obligation of the cargo owner to look for a reliable common carrier which keeps its vessels in seaworthy condition. He may have no control over the vessel but he has full control in the selection of the common carrier that will transport his goods. He also has full discretion in the choice of assurer that will underwrite a particular venture.

We need not belabor the alleged breach of warranty of seaworthiness by the assured as painstakingly pointed out by FELMAN to stress that subrogation will not work in this case. In policies where the law will generally imply a warranty of seaworthiness, it can only be excluded by terms in writing in the policy in the clearest language. [13] And where the policy stipulates that the seaworthiness of the vessel as between the assured and the assurer is admitted, the question of seaworthiness cannot be raised by the assurer without showing concealment or misrepresentation by the assured. [14]

The marine policy issued by PHILAMGEN to the Coca-Cola bottling firm in at least two (2) instances has dispensed with the usual warranty of worthiness. Paragraph 15 of the Marine Open Policy No. 100367-PAG reads "(t)he liberties as per Contract of Affreightment the presence of the Negligence Clause and/or Latent Defect Clause in the Bill of Lading and/or Charter Party and/or Contract of Affreightment as between the Assured and the Company shall

not prejudice the insurance. The seaworthiness of the vessel as between the Assured and the Assurers is hereby admitted."[15]

The same clause is present in par. 8 of the Institute Cargo Clauses (F.P.A.) of the policy which states "(t)he seaworthiness of the vessel as between the Assured and Underwriters in hereby admitted . . . ." [16]

The result of the admission of seaworthiness by the assurer PHILAMGEN may mean one or two things: (a) that the warranty of the seaworthiness is to be taken as fulfilled; or, (b) that the risk of unseaworthiness is assumed by the insurance company. [17] The insertion of such waiver clauses in cargo policies is in recognition of the realistic fact that cargo owners cannot control the state of the vessel. Thus it can be said that with such categorical waiver, PHILAMGEN has accepted the risk of unseaworthiness so that if the ship should sink by unseaworthiness, as what occurred in this case, PHILAMGEN is liable.

Having disposed of this matter, we move on to the legal basis for subrogation. PHILAMGEN's action against FELMAN is squarely sanctioned by Art. 2207 of the Civil Code which provides:

> Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

In *Pan Malayan Insurance Corporation v. Court of Appeals*, [18] we said that payment by the assurer to the assured operates as an equitable assignment to the assurer of all the remedies which the assured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.

The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay. [19] Therefore, the payment made by PHILAMGEN to Coca-Cola Bottlers Philippines, Inc., gave the former the right to bring an action as subrogee against FELMAN. Having failed to rebut the presumption of fault, the liability of FELMAN for the loss of the 7,500 cases of 1-liter Coca-Cola softdrink bottles is inevitable.

WHEREFORE, the petition is GRANTED. Respondent FELMAN SHIPPING LINES is ordered to pay petitioner PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., Seven Hundred Fifty-five Thousand Two Hundred and Fifty Pesos (P755,250.00) plus legal interest thereon counted from 29 November 1983, the date of judicial demand, pursuant to Arts. 2212 and 2213 of the Civil Code. [20]

SO ORDERED.

Vitug, Kapunan and Hermosisima, Jr., JJ., concur.

Padilla, J., is on leave.

Footnotes

1 Bill of Lading No. CCBPI-1 dated 7 July 1983, Exh. "B," Plaintiff's Formal Offer of Exhibits.

2 Art. 587 states: he ship agent shall also be civilly liable for the indemnities in favor of third parties which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight it may have earned during the voyage.

3 Civil Case No. 5812; Decision penned by Judge Salvador S. Abad Santos, RTC-Br. 65, Makati; Records, pp. 239-241.

4 Exhs. "A-6" to "A-17," Plaintiff's Formal Offer of Exhibits.

5 *Ibid*.

6 Exh. "M," Plaintiff's Formal Offer of Exhibits.

7 Metacentric height refers to the distance of the metacenter above the center of gravity of a floating body. *See* Webster's Third New International Dictionary, 1986 Ed., p. 1419.

8 *See* Note 2.

9 Chua Yek Hong v. Intermediate Appellate Court, G.R. No. 74811, 30 September 1988, 166 SCRA 189.

10 Manila Steamship Co., Inc. v. Insa Abdulhanan and Lim Hong To, 100 Phil. 38, 39 (1956).

11 Heirs of Amparo de los Santos v. Court of Appeals, G.R. No. 51165, 21 June 1990, 186 SCRA 658.

12 Vance, Handbook on the Law of Insurance, 3rd Ed., 1930, pp. 920-921.

13 New Orleans Ry. Co. v. Union Marine Ins. Co., 286 F. 32, cited in Vance, *op*. *cit*., p. 920.

14 Clinchfield Fuel Co. v. Aetna Ins. Co., 114 S. E. 543, 548.

15 Exh. "C-1," Plaintiff's Formal Offer of Exhibits.

16 *Ibid*.

17 *See* Note 15.

18 G.R. No. 81026, 3 April 1990, 184 SCRA 54, *citing* Compania Maritima v. Insurance Company of North America, No. L-18965, 30 October 1964, 12 SCRA 213; Fireman's Fund Insurance Company v. Jamila and Company, Inc., No. L-27427, 7 April 1976, 70 SCRA 323.

19 Boney, Insurance Commissioner v. Central Mutual Ins. Co. of Chicago, 197 S.E. 122.

20 Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

Art. 2213. Interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty. (*See* Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 94712, 12 July 1994, 234 SCRA 78, 95).

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